

**CODIFIED  
ORDINANCES  
OF THE  
CITY OF  
WILLIAMSTOWN  
WEST VIRGINIA**

Complete to August 1, 2014

CERTIFICATION

I, Jean Ford, Mayor of Williamstown, West Virginia, pursuant to West Virginia Code 8-11-4(b), hereby certify that the general and permanent ordinances of the City of Williamstown, West Virginia, as revised, rearranged, compiled, numbered as to sections, recodified and printed herewith in component codes are correctly set forth and constitute the 2014 Codified Ordinances of the City of Williamstown, West Virginia.

/s/ Jean Ford  
Mayor

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

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## CITY OF WILLIAMSTOWN

## ROSTER OF OFFICIALS

(2014)

COUNCIL

Marty Seufer  
Ron Erb  
Gene Duncan  
Barbara Lewis

ADMINISTRATION

Jean Ford  
Blaine Myers  
Susan Knopp  
Shawn Graham  
J.L. Dean  
David VanHorn  
Alan Gates

Jim Hildreth  
George Chandler

Mayor  
City Attorney  
City Clerk/Treasurer  
Chief of Police  
Fire Chief  
Building Commissioner  
Director of Public Works for Water  
and Sewer  
City Engineer  
City Judge

The publisher expresses  
his appreciation to

SUSAN KNOPP  
City Clerk/Treasurer

and all other officers and employees who  
gave time and counsel in the preparation  
of the 2014 codification of the  
City's ordinances.

AN ORDINANCE TO ADOPT THE CODIFIED ORDINANCES; TO ADOPT NEW MATTER; TO REPEAL ORDINANCES IN CONFLICT THEREWITH; AND TO DIRECT THAT THE STATUTORY REQUIREMENTS FOR THE CODIFICATION OF ORDINANCES BE COMPLIED WITH.

WHEREAS, the Council of the City of Williamstown, West Virginia has deemed it necessary to recodify the City ordinances of a permanent and general nature;

WHEREAS, it has heretofore entered into a contract with Walter H. Drane Company to prepare and publish such codification;

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of such ordinances, together with the new matter to be adopted, the matters to be amended and those to be repealed are before the Council;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF WILLIAMSTOWN:

Section I: The ordinances of the City of Williamstown, West Virginia, of a general and permanent nature, as revised, codified, rearranged and consolidated into component codes, chapters, articles and sections are hereby approved, adopted and enacted as the Codified Ordinances of Williamstown, West Virginia, 2016.

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

- (a) Notice of the proposed adoption of the Codified Ordinances shall be given by publication as provided in West Virginia Code 8-11-4(a)(2);
- (b) Through authentication of this Ordinance the Mayor shall certify the 2016 Williamstown Codified Ordinances which shall be filed as a permanent record in the office of the City Clerk.

Section III: The provisions of this Ordinance, including all provisions of the Codified Ordinances, shall be in full force and effect as provided by law. All ordinances and resolutions or parts thereof enacted prior to January 1, 2016, which are inconsistent with any provision of the Codified Ordinances, are hereby repealed as of the effective date of this Ordinance except as follows:

- (a) The enactment of the Codified Ordinances shall not be construed to affect a right or liability accrued or incurred under any legislative provisions prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in the violation of any such legislative provisions, nor to affect any indictment or prosecution therefor. For such purposes, any such legislative provisions shall continue in full force notwithstanding its repeal for the purpose of revision and codification.

- (b) The repeal provided above shall not affect:
- (1) The grant or creation of a franchise, license, right, easement or privilege.
  - (2) The purchase, sale, lease or transfer of property.
  - (3) The appropriation or expenditure of money or promise or guarantee of payment.
  - (4) The assumption of any contract or obligation.
  - (5) The issuance and delivery of any bonds, obligations or other instruments of indebtedness.
  - (6) The levy or imposition of taxes, assessments or charges.
  - (7) The establishment, naming, vacating or grade level of any street or public way.
  - (8) The dedication of property or plat approval.
  - (9) The annexation or detachment of territory.
  - (10) Any legislation enacted subsequent to December 31, 2015

Section IV: This ordinance shall become effective from and after its date of passage.

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MAYOR

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CLERK

First Reading: \_\_\_\_\_

Second Reading and Adoption: \_\_\_\_\_

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### EDITOR'S NOTE

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

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

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

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



## GENERAL INDEX

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

- (a) The comparative Section Table which indicates in the Codified Ordinances the disposition of the ordinances or resolutions integrated therein.
- (b) The table of contents preceding each component code, and the sectional analysis preceding each chapter.
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**CHARTER  
OF THE CITY OF  
WILLIAMSTOWN, WEST VIRGINIA**

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**EDITOR'S NOTE:** The Charter herein set out is as enacted by the legislature, acts 1921 (Munl. ch.) chapter 30, passed April 19, 1921, approved by the governor April 20, 1921, effective ninety days from passage, as subsequently amended by the legislature and by Home Rule Ordinances, and each section is followed by an historical citation indicating the derivation of the section. The frontal section analysis differs somewhat from that of chapter 30 of the 1921 Act, so as to more fully disclose the contents, and section catchlines have been added in accord therewith, none of which is to be regarded as official. Similarly, the editors have inserted some words in brackets; they have adopted a uniform system of capitalization, and have used Arabic numerals instead of spelling out dates.

The legislature, in its 1969 revision and consolidation of chapters 8 and 8A of the Code of West Virginia into a new chapter 8, recognized, in section 8-1-6, "that when the provisions of existing special legislative charters are compared with and are considered in the light of the provisions of this chapter [i.e., the new chapter 8], there are five basic possibilities as to the relationship between such charter provisions and the provisions of this chapter, namely: (1) As to any particular charter provisions, such charter provisions may be inconsistent or in conflict with the pertinent provisions of this chapter; (2) although relating to the same subject matter and although not inconsistent or in conflict with any provisions of this chapter, certain charter provisions may be sufficiently different from pertinent provisions of this chapter as to indicate, as a matter of practical construction, that either the charter provisions or the provisions of this chapter, but not both, should be applicable; (3) although varying in certain respects, certain charter provisions may be similar to and in essential harmony with corresponding provisions of this chapter; (4) as to any particular charter provisions, there may be no counterpart of such provisions in this chapter; and (5) as to any provisions of this chapter, there may be no counterpart charter provisions."

Section 8-1-6, therefore, sets forth certain rules to be applied, in addition to the usual and ordinary rules of statutory construction, with respect to construction and applicability of legislative charters, and it is suggested that users of this City Code refer to W.Va. Code, §8-1-6, in determining the present construction and applicability of any portion of the Williamstown Charter to any given situation.

For state law as to revising or amending a municipal charter, see W.Va. Code, §§ 8-4-7, 8-4-8.

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**THE CHARTER  
OF THE  
CITY OF WILLIAMSTOWN, WEST VIRGINIA**

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Sec. 1.        "The City of Williamstown" incorporated; corporate powers generally.

The inhabitants of so much of the County of Wood as is within the bounds prescribed by section 2 of this act, [charter], and their successors, shall be and remain and they are hereby constituted a body politic and corporate, by the name of "The City of Williamstown", and as such, and by that name shall have perpetual succession and a common seal and may contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, and may purchase, take, receive, hold and use goods and chattels, lands and tenements, and choses in action, or any interest, right or estate therein, either for the proper use of said city or in trust for the benefit of any person or corporation therein; and the same may grant, sell, convey, transfer, let and assign, pledge, mortgage, charge and encumber in any case, and in any manner, in which it would be lawful for a private individual so to do, subject to the limitations and provisions of the Constitution of the state; and may have and use a common seal and alter and renew the same at pleasure; and generally shall have all the rights, franchises, capacities and powers appertaining to like corporations in this state, and shall have and succeed to all powers, franchises and immunities, rights and privileges, which were conferred upon or belonged or appertained to the Town of Williamstown by virtue of any act or acts of the general assembly of the State of Virginia or of the legislature of this state heretofore passed; and shall have all the rights, privileges, capacities and powers provided by chapter 47 of the Code of West Virginia, as contained in the edition of the year 1899 and for which provision is not herein otherwise expressly made. (Acts 1921 (Munl. ch.), ch. 30, §1.)

EDITOR'S NOTE: The reference to chapter 147 of the Code of "1899" appears to relate to chapter 47 of the Code of 1906, captioned, "Cities, towns and villages," the subject matter of which is now contained in W.Va. Code, chapter 8.)

Sec. 2.        Corporate limits.

The corporation limits and boundary of said City of Williamstown shall be as follows:

Beginning at a point on the bank of the Ohio river on the land of the heirs of George Henderson, deceased, from which an elm 40 inches in diameter bearing N. 65 degrees 30' E. 2 31/100 chains distant; and running thence from said point, S. 42 degrees E. 45 chains to a point where a hickory 20 inches in diameter bears S. 16 degrees and 30' W. 16 links distant and a hickory 18 inches in diameter bears S. 75 degrees E. 71 links distant; thence S. 64 degrees and

30' E. 40 chains and 45/100 to a point in line between Biddle and Spies where a hickory 14 inches in diameter bears N. 65 degrees and 30' E. 19 links distant, and a white oak 14 inches in diameter bears S. 8 degrees and 30' W. 25 links distant; thence with said line N. 38 degrees E. 6 70/100 chains to a stake near a corner to lands of Spies and Ruf; thence N. 64 degrees and 10' E. 31 and 30/100 chains to the east line of Joseph Bush; thence N. 34 degrees and 20' E. 11 and 20/100 chains with his line to a stone at the south-east corner of lands of said Bush; thence N. 58 degrees W. 1 4/100 chains with another of his lines; thence with the line between Wanless and Arbour N. 26 degrees E. 43 and 87/100 chains to the Ohio river; and thence same course continued 10 35/100 chains to the island known as Kerr's Island; thence same course 4 88/100 chains across the said island; thence same course 11 and 90/100 chains to low water line on the Ohio side; thence down the river and with the meanders thereof N. 64 degrees W. 6 chains; thence N. 69 degrees W. 20 chains; thence N. 79 degrees W. 12 chains; thence N. 84 degrees 30' W. 11 chains; thence N. 88 degrees 30' W. 10 and 92/100 chains; thence 84 degrees W. 7 50/100 chains; thence S. 83 degrees 10' W. 19 and 4/100 chains to the mouth of the Muskingum river; thence S. 83 degrees W. 12 and 61/100 chains across said river; thence S. 32 degrees W. 7 chains; thence S. 46 degrees 30' W. 9 chains; thence 66 degrees W. 27 chains; thence 62 degrees W. 12 and 50/100 chains; thence S. 56 degrees W. 8 and 88/100 chains; thence S. 42 degrees E. 22 chains crossing the Ohio river to the place of beginning, containing 969 and 35/100 acres including the Ohio river, which contains 315 and 20/100 acres, containing exclusive of the Ohio river 654 and 15/100 acres, in said boundary, which territory is situated in the district of Williams, in the County of Wood and State of West Virginia.  
(Acts 1921 (Munl. ch.), ch. 30, §2.)

Sec. 3.           Applicability of state general and special laws; continuity of ordinances, etc., of former Town of Williamstown.

All general and special laws of the State of West Virginia, governing cities and towns and now [April 19, 1921] applicable and not inconsistent with the provisions of this act, [Charter], shall apply to and govern the City of Williamstown. All by-laws, ordinances and resolutions lawfully passed and in force in the Town of Williamstown under its former organization, and not inconsistent herewith, shall remain in force throughout the City of Williamstown until altered or repealed by the council elected under the provisions of this act [Charter]. All rights and property heretofore vested in said Town of Williamstown are continued and preserved in its title and property vested in said City of Williamstown and no right or liability, either in favor of or against, the said Town of Williamstown at the time this act takes effect [90 days from April 19, 1921], and no suit or prosecution of any kind, shall be effected by such change, unless otherwise provided for in this act [Charter]. (Acts 1921 (Munl. ch.), ch. 30, §3.)

Sec. 4.           Mayor and four councilmen at large constitute city council; governing body; election date and terms of office; filling vacancies.

The governing body of the City shall be a Council composed of a Mayor and four Councilmen who shall be elected at large. The elections shall be held in the City every two years on the second Tuesday in May of each even numbered year. The first election under this section as hereby amended shall be held on the second Tuesday in May in the year 2004.



In order to achieve the transition from odd numbered to even numbered year elections as provided by this section as hereby amended, the terms of the incumbent Mayor and incumbent Councilmen whose terms were scheduled to expire in June 2003, shall be extended for an additional one year ending on June 30, 2004, and the terms of the incumbent Councilmen whose terms were scheduled to expire in June 2005, shall be extended by one year ending on June 30, 2006.

At the election in 2004, a Mayor shall be elected for a term of two years commencing on July 1, 2004, and at all subsequent elections held, there shall be a Mayor to be elected to serve for two years.

In the election of 2004, two members of Council shall be elected at large for a term of four years, commencing July 1, 2004. Each such Councilman elected shall serve for a term of four years, and elections shall be held for said Council seats thereafter in four year intervals.

Beginning with the election of 2006, two members of Council shall be elected at large for a term of four years commencing July 1, 2006. Each such Councilman elected shall serve for a term of four years and elections shall be held for said Council seats thereafter in four year intervals.

If any vacancy occurs in any such office, the remaining members of the said council shall appoint an eligible person to fill such vacancy during the balance of the unexpired term. (Amended by voters 11-5-2002.)

Sec. 5. "General election;" announcement of candidacies; printing of ballots; conduct of elections; determination of results, etc.

There shall be one municipal election, known as the "General Election" wherein the Mayor and councilmen shall be elected.

Any person desiring to become a candidate for Mayor or Council shall, no later than the last Friday in January prior to said election, file with the City Clerk a statement of such candidacy in substantially the following form. (7-15-08.)

"State of West Virginia, Wood County, ss:

"I, \_\_\_\_\_, being first duly sworn, say that I reside at \_\_\_\_\_ Street, City of Williamstown, County of Wood, State of West Virginia; that I am a qualified voter therein; that I am a candidate for the office of (mayor or councilman) to be voted upon at the general election to be held on the second Tuesday in May, 20\_\_, and I hereby request that my name be printed upon the official ballot as a candidate for such office.

"Signed \_\_\_\_\_ "Subscribed and sworn to  
(or affirmed) before me by \_\_\_\_\_ on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

"Signed \_\_\_\_\_"

and at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall contain the street addresses of its signers and shall be verified by one or more persons as to qualifications and residences. The said petition shall be in substantially the following form:

### “PETITION ACCOMPANYING NOMINATING STATEMENT

“The undersigned, duly qualified electors of the City of Williamstown, residing at the places set forth opposite our respective names hereon, do hereby request that the name of (name of candidate) be placed on the ballot as candidate for (name of office) at the general election to be held in such City on the second Tuesday in May of each even numbered year.

“We further state that we know him to be a qualified elector of said city and a man of good moral character, and qualified, in our judgment, for the duties of such office.

“Names of Qualified Electors      Street Address.”

Immediately upon expiration of the time of filing the statements and petitions for candidates, the clerk of the municipality [city clerk] shall cause to be published in proper form, the names of the persons as they are to appear upon the general ballot, which publication may be made by posting copies thereof at four of the most public places in the said City of Williamstown, including the place of the meeting of the council and the mayor’s office at least ten days immediately preceding the general election, or if the council so orders, by publication in the last issue of a newspaper of general circulation in said City of Williamstown immediately preceding such general election; and the said clerk shall thereupon cause the ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically shall first be placed, with a square to the left of each name and immediately below the words “vote for one”, and immediately below the names of the candidates for mayor shall appear in alphabetical order the names of the candidates for councilmen with a square at the left of each name and below the names of such candidates shall be the words “vote for two”. All ballots shall be printed upon plain, substantial white paper and shall be headed “Candidates for Mayor and Councilmen of the City of Williamstown, at the General Election”. No political party designation or mark whatsoever shall appear upon any ballot. The ballot shall be in substantially the following form:

“(Place a cross in the square preceding the names of the parties for whom you wish to vote for the respective offices.)

### “OFFICIAL GENERAL BALLOT”

“Candidates for mayor and councilmen of the City of Williamstown at the General Election.”

“For Mayor

“( ) (name of candidate)  
(vote for one)

"For Councilmen

"( ) (names of candidates)  
(vote for two)

"Official ballot, attest:

"Signature \_\_\_\_\_  
City Clerk"

The ballots shall be prepared by the said clerk for all subsequent elections in said city under the provisions of this act [section] as amended and shall be printed upon the same kind of paper and shall be in the same form.

Having caused said ballots to be printed, the city clerk shall cause to be delivered to each polling place a number of ballots equal to twice the number of votes cast in such polling precinct at the last general election for mayor. Persons who are qualified to vote at the general elections shall be permitted to vote and challenges can be made by not more than two persons, to be appointed at the time of the opening of the polls by the judge of the election. The law applicable to challenges at a general municipal election shall be applicable. [See W.Va. Code, § 3-1-41.] Judges of elections shall, immediately upon closing of the polls, count the ballots and ascertain the number of votes cast in such precinct for each of the candidates, and make return thereof to the city clerk without unnecessary delay.

On the day following the general election the clerk shall canvass the returns so received from all the polling precincts, and shall make and publish in some newspaper of general circulation in the city at least once, the result thereof and post the same at four of the most public places in the City of Williamstown, including the place of the meeting of the council and the mayor's office. Said canvass by the clerk shall be publicly made.

At all general elections to be held in the City of Williamstown the candidate receiving the highest number of votes for mayor shall become the mayor, and the two candidates receiving the highest number of votes for councilmen shall become councilmen.

In all elections in such city the election precincts, voting places and announcing of results, shall be the same as by law provided for election of county and state officers in said city, so far as the same are applicable to and not inconsistent with the provisions of this section. (Acts 1921 (Munl. ch.), ch. 30, § 5; Acts 1925 (Munl. ch.), ch. 13, §5; Home Rule Ord. 10-17-72.)

**Sec. 6.           Composition of council; voting in council; quorum; recording of votes; presiding officer; authentication of acts of the council.**

Said city shall be governed by a council, consisting of the mayor and four councilmen chosen as provided in this act [Charter], each of whom shall have the right to vote on all questions coming before the council. Three members of the council shall constitute a quorum, and the affirmative of three members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure. Upon every vote the yeas and nays shall be called and recorded, and every motion, resolution or ordinance shall be reduced to writing and read before the vote is taken thereon. The mayor shall preside at all meetings of the council; he shall have no power to veto any measure, but every resolution or ordinance passed by the council must be signed by the mayor, or by three councilmen, and be recorded before the same shall be in force.  
(Acts 1921 (Munl. ch.), ch. 30, §6.)

**Sec. 7.           Powers of council and its members; certain departments established and powers and duties defined; assignment of personnel; rules and regulations.**

The council shall have and possess, and the council and its members shall exercise, all executive, legislative and judicial powers conferred upon cities, towns and villages by the general law of the state and by this act (Charter).

The executive and administrative powers, authority and duties in said city shall be distributed into and among five departments as follows:

- (a)     Department of public safety and affairs,
- (b)     Department of accounts and finance,
- (c)     Department of waterworks,
- (d)     Department of sewers,
- (e)     Department of streets, parks, public improvements and public property.

The council shall determine the powers and duties to be performed by, and assign them to, the appropriate department, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments; may require an officer or employee to perform duties in two or more departments; and may make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city. (Acts 1921 (Munl. ch.), ch. 30, §7.)

**Sec. 8.           Mayor as ex officio department head; designation of other department heads; appointment of other city officers; removal of city officers.**

The mayor shall be superintendent of the department of public affairs and public safety, and shall, at the first regular meeting after each election of council, designate one councilperson to be superintendent of the department of accounts and finance, one to be superintendent of the department of waterworks, one to be superintendent of the department of sewers and one to be superintendent of the department of streets, parks, public improvements and public property. Any such assignment may be changed by the mayor whenever it appears that the public service would be benefited thereby.

The council may, at the first meeting, or as soon as practicable thereafter, select by a majority vote the following officers: A clerk, solicitor, city civil engineer, city physician, chief of police, chief of fire department, city collector, street commission and such other officers and assistants as shall be provided for by ordinance and necessary to the proper and efficient conduct of the affairs of the city. Any officer, assistant or employee selected, appointed or employed may be removed at any time by a vote of a majority of the members of the council, under such regulations as the council may prescribe.

(Acts 1921 (Munl. ch.), ch. 30, §8; Home Rule Ord. 10-17-72).

EDITOR'S NOTE: The mayor no longer acts as city judge; see chapter 12 of this code, relating to the municipal court of the city, established pursuant to authority of W.Va. Code, § 8-10-2.

Sec. 9            Authority of council to create, fill and discontinue other positions and to provide compensation therefor.

The council shall have power from time to time to create, fill and discontinue offices and employments other than herein prescribed, according to their judgement of the needs of the city, and may, by resolution or otherwise, prescribe, limit or change the compensation of such officers or employees. (Acts 1921 (Munl. ch.), ch. 30, §9.)

Sec 10.           Office or offices for mayor and council; compensation of mayor, councilmen and all other officers and employees, and how paid.

The Mayor and Council shall have an office or offices and their total compensation shall be as follows: the annual salary of the Mayor, effective for the term of the Mayor commencing July 1, 2004, shall be \$2,000.00, and the annual salary of each Councilman, effective from and after July 1, 2004, shall be \$1,000.00, which salaries shall be payable in equal quarterly installments.

The salaries of Mayor and Councilmen may be increased by Ordinance duly adopted by City Council, after giving notice of a public hearing prior to the adoption of same, provided that the compensation of the Mayor may not be increased during his or her term of office, nor shall the salary of any member of City Council be increased during his or her term of office, unless significant additional duties are imposed upon such member of Council by ordinance.

Every other officer or assistant shall receive such salary or compensation as the Council shall by ordinance provide, payable in equal monthly installments.

The salary and compensation of all other employees of said City shall be fixed by Council, and shall be payable monthly or at such shorter period as Council may determine.  
(Passed 7-6-2004.)

For state law providing that "notwithstanding any charter provision to the contrary," the governing body of every municipality may fix the compensation of all officers and employees; but no officer's salary shall be increased or diminished during this term, see W.Va. Code, §8-5-12.

- Sec. 11. Council meetings; president and vice president of council; reports to council by mayor; who acts for absent or disabled mayor.

Regular meetings of the council shall be held on the second Monday after the election of councilmen, and thereafter at least twice each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen. All meetings of the council, whether regular or special, at which any person not a city officer is admitted, shall be open to the public.

The mayor shall be president of the council and preside at all meetings, and shall supervise all departments and report to the council for its action all matters requiring attention in any department. The superintendent of the department of accounts and finance shall be vice-president of the council, and in case of vacancy in the office of mayor, or the absence or inability of the mayor, shall perform the duties of mayor. (Acts 1921 (Munl. ch.), ch. 30, §11.)

- Sec. 12. Certain ordinances to be available for public inspection in final form one week before passage; limitations on granting of franchises.

Every ordinance or resolution appropriating money or ordering any street improvement or sewer, or making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges or public places in the city for any purpose, shall be complete in the form in which it is finally passed, and remain on file with the city clerk for public inspection at least one week before the final passage or adoption thereof. No franchise or right to occupy or use the streets, highways, bridges or public places in said city shall be granted, renewed or extended, except by ordinance. No franchise shall be granted for a period exceeding thirty years, and no amendment or addition thereto shall extend beyond the termination of the original franchise.

(Acts 1921 (Munl. ch.), ch. 30, §12.)

For state law as to cases requiring enactment of ordinance, see W.Va. Code, §8-11-3. As to procedures for enactment of ordinances, "notwithstanding any charter provision to the contrary," see W.Va. Code, § 8-11-4.

- Sec. 13. Prohibited taking of gifts or accepting of services by city officers and employees; contracts void when in violation of this section.

No officer or employee of said city shall accept or receive, directly or indirectly, from any person, firm or corporation, operating within the territorial limits of said city any interurban railway, street railway, gas works, water works, electric light or power plant, heating plant, telegraph line or exchange, or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accepts or receives [accept or receive], directly or indirectly, from any such person, firm or corporation, any other service upon terms more favorable than is granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor, and every such contract or agreement shall be void.

Such prohibition of free transportation shall not apply to policemen or firemen in uniform; nor shall any free service to city officials heretofore provided by any franchise or ordinance be affected by this section. (Acts 1921 (Munl. ch.), ch. 30, § 13.)

Sec. 14. Authority of council to create civil service board and to establish civil service throughout city.

Council may create by appointment, a civil service board, consisting of three residents of the city, whose duty it shall be to examine all applicants for positions in the departments of police, fire, and such other departments as may be ordained, including the chiefs of such departments; and shall define the terms and prescribe the duties of the members of said board. All appointments to said departments shall be made from applicants recommended by said board, and when appointed, shall be removed only for cause. (Acts 1921 (Munl. ch.), ch. 30, § 14.)

Sec. 15. Authority of council to publish receipts and expenditures; annual audit of all city books and accounts, and publication of results.

The council may each month print a pamphlet for a detailed itemized statement of all receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies thereof to the state library, the weekly newspapers of the city, and to persons who apply therefor at the office of the city clerk. At the end of each year the council shall cause a full and complete examination of all books and accounts of the city to be made by competent accountants and shall publish the results of such examination in the manner provided for publication of statements of monthly expenditures. (Acts 1921 (Munl. ch.), ch. 30, § 15.)

For state law as to annual financial statements required of all municipalities, see W. Va. Code, § 8-13-23.

Sec. 16. Special appropriations authority of city council elected in 1921; section now obsolete.

Editor's note. - The text of this section, being § 16, ch. 30, Acts 1921, (Munl. Ch.), is omitted as obsolete.

Sec. 17. "Officers," "franchise" and "electors," as used in Charter, defined.

In the construction of this act [Charter] the following rules shall be observed, unless such construction would be inconsistent with the manifest intent, or repugnant to the context:

- (a) When an "officer" or "officers" is named in any law referred to in this act it shall, when applied to said city, be construed to mean the officer or officers having the same functions or duties under the provisions of this act, or under ordinances passed under authority thereof.
  - (b) The word "franchise" shall include every special privilege in the streets, highways and public places of the city' whether granted by the state or the city, which does not belong to citizens generally by common right.
  - (c) The word "electors" shall be construed to mean persons qualified to vote for elective officers at regular municipal elections.
- (Acts 1921 (Munl. ch.), ch. 30, § 17.)

Sec. 18. Power of council to levy and collect taxes on real and personal property, and to grant licenses and collect license taxes thereon.

Council shall have the right to levy and collect taxes on property, real and personal, and to grant licenses, and to assess and collect taxes on such licenses as are taxable under the laws of the State of West Virginia, not to exceed in amount and rate the tax on such licenses imposed by the State of West Virginia.

(Acts 1921 (Munl. ch.) , ch. 30, § 18.)

Sec. 19. Paving and sewerage; two-thirds of cost to be paid by property owners; street railways' part; one-tenth to be paid each year; cost of lien upon property; statements of assessments to be recorded in office of clerk of county court; default in payment, how collected; notices describing improvements and property giving amount of assessments to be published; grievances; council to appoint day for hearing; bonds for pavements, sidewalks and sewers; how same are to be issued; not to be sold for less than par; payable in ten years; assessments applied to liquidation; debts not to exceed five per centum of taxable property; to be submitted to voters and receive three-fifths of votes cast; issue not to exceed amount authorized by election; chapter forty-seven-a of the code to apply; plans, specifications, profiles and estimates to be on file for examination; notice giving nature of work and manner of payment to be published.

The council of the city may cause any street or alley or part thereof, to be paved with cobblestone, brick, concrete or other suitable material, curbing and suitable sidewalks laid, and a sewer or sewers to be constructed therein, or to have such paving done without the construction of such sewer or sewers, or a sewer or sewers constructed without such paving under such regulations, not inconsistent with the provisions of this section, as shall be fixed by council, upon the lowest and best terms to be obtained by the council by advertising for bids or proposals therefor, and two-thirds of the cost thereof (which cost shall include the cost and expense of preliminary and other survey, of printing and publishing all notices required to be published in relation thereto, and the cost of construction) shall be assessed to and paid by the owners of the lots or fractional parts of lots abutting or bounding on that part of the street so improved, paved or sewerage; and against the said lots or fractional parts of lots abutting or bounding on that part of the street so improved, paved or sewerage; and against the said lots or fractional parts of lots in proportion to the number of feet frontage owned by each, and one-third of the cost thereof and the whole of the cost of paving and sewerage intersections of streets and public alleys, and the proportion for lots, or parts of lots, or property against which no assessment can be legally made, shall be assessed to and paid by the city; provided, further, in case of a street or public alley occupied by street car tracks or other railway, the cost of paving the space between the rails, and for two feet additional outside each rail, shall be assessed to and paid by the street car or other railway company.



The amount assessed against such abutting lots, or fractional parts of lots, to the said abutting property owners, the city and street car or other railway company, as aforesaid, respectively, shall be paid in ten payments as follows: that is to say, one-tenth of said amount, together with the interest at the rate of six per centum from the acceptance of the work by the city on the whole assessment, shall be paid to the city on or before the first day of May next after the work is accepted, and a like one-tenth, together with interest for one year upon the whole amount remaining unpaid, on or before the first day of May in each succeeding year, thereafter, until all has been paid; and each installment shall bear interest at the rate of six per centum per annum from the date of its maturity; and, moreover, to each installment remaining unpaid on the days herein specified for the payment thereof, a penalty of ten per centum per annum of said installment shall be added and collected by the city. Provided, however, that any abutting property owner, the city, or street car or other railway company, against whom or against whose property said assessments have been made, shall have the right at any time after such assessments shall have been certified to the superintendent of the department of accounts and finance for collection, as hereinafter provided, to anticipate any or all of such assessments and shall be allowed to pay the face of said assessments with interest only to the time of payment.

- (a) The sum or sums of money so assessed, together with the interest and penalty aforesaid, for paving or sewerage, or other said improvements, shall be a lien upon the lots or fractional parts of lots, and in case of a street car or other railway company, upon its tracks for the distance of said improvement, from the date of acceptance of said work by the city, and said lien shall have priority over all other liens except those for taxes due to the state, and shall be on a parity with the taxes and assessments due the city; provided, however, such assessments shall, after six months from the date of the acceptance of said work, cease to constitute liens against said property as against creditors of the owners thereof or purchasers thereof for value without actual notice of such liens unless within six months a statement of said liens, certified as hereinafter provided, shall be filed for record in the office of the clerk of the county court of the county in which said property is situated.
- (b) Immediately upon the acceptance of the work by the city, the clerk shall make out bills for the sums of money assessed as aforesaid against the property owners aforesaid, and shall at the same time make and certify a statement of the assessments aforesaid in which shall be given the location of the real estate affected, and the name of the owner, the date of the acceptance of said work by the city, and the amount of the assessment, and it shall be sufficient description of the location of said real estate to describe it as abutting upon said improvement included between the terminal of said improvement, or by the description by which it is described on the land books of the county in which said lots are situated, and shall cause said statement to be immediately recorded in the office of the clerk of the county court of the county in which such property is situated; and it shall be, and it is hereby made the duty of said county clerk, to record said statement in the trust deed books in the name of the city and also in the name of each person against whose property said assessments appear therein, and said clerk shall be paid for recording said statement the same fees as for recording deeds of trust. And said bills for said assessment shall be charged to the superintendent of the department of accounts and finance and immediately certified and delivered for collection.

- (c) Upon default being made in the payment of any installment of the assessment aforesaid, the same shall be immediately reported to the council by the superintendent of the department of accounts and finance, and the council shall forthwith refer the same to such officer as it may deem expedient, for collection, and payment of said delinquent installments, with the interest and the penalty aforesaid, may be enforced in all respects as provided for the collection of city taxes, or the lien aforesaid may be enforced by a suit in equity in the name of the city in any court having jurisdiction thereof; and the said delinquent assessments or any installment thereof, may be collected from the person against whom the same were assessed by action at law before any court or a justice of the peace having jurisdiction thereof.
- (d) Immediately upon the completion and acceptance of any of the work aforesaid, constructed by virtue of this section, the council shall direct the clerk to cause to be prepared a notice which shall name and describe the location of the street or alley upon which said work shall have been constructed; give the names of the owners of each lot or fractional part of lot abutting or bounding upon said street or alley, and also the name of any street car or other railroad company having tracks upon said street or alley, where assessed for paving, if known, and if the name or names of the owners or owner of any lot or fractional part of lot, or of such street car or other railway company are unknown, such lot or fractional part of lot, and the location of the paving assessed to such street car or other railway company, shall be described with reasonable certainty so that the same may be identified. The number of feet that each lot or a fractional part of lot abuts upon said street or alley, the street or alley intersections and all abutting city property and property not liable to assessment, and the number of square feet or yards to be paid for by said street car or other railway company, also the amount assessed against the city, as well as the amount assessed against any street car or other railway company, shall be stated. Said notice shall cite all owners of lots or fractional parts, of lots abutting upon the streets or alleys aforesaid, and also said street car or other railway company, to appear before the council at a regular meeting thereof within thirty days from the first publication thereof and show cause, if any, they can, why the assessments aforesaid should not become final, which notice shall be published once a week for two successive weeks in one or more newspapers of general circulation published in said county, and affidavits of the publication of such notices showing the publication thereof as herein provided, shall be recorded in the minutes of the council at their next regular meeting. The council shall, upon the request of any one or more of the owners of said lots or fractional parts of lots, or of said street car or other railway company, appoint a day for hearing the grievances of said owner or owners, street car or other railway company, and may correct or amend any assessment made against them, or any one of them, for good cause shown. The clerk shall give notice to all persons claiming to be injured by said assessment, of the time and place of hearing said matters, which meeting shall be held within ten days after the expiration of the thirty days mentioned in said notice. The council may adjourn the hearing from time to time. In case any owner

or owners of abutting property, or street car or other railway company, fail to complain of any damage or injury they may have suffered or may suffer, by reason of the assessments aforesaid, and shall fail to appear for the purpose of having the same corrected, the assessments as to them, as laid, shall be final, and the said assessments shall then be recorded in the book in which the plans, specifications, profiles and estimates are recorded under the provisions hereof and next following the same therein. The finding of said council shall be conclusive. The rights conferred by this section are cumulative and shall not be exhausted as to any particular street or alley by reason of having been once exercised.

- (e) Whenever it is deemed expedient by the council to provide for paving, sidewalks, curbing or sewers in or upon any of the streets or alleys of the city by the issue and sale of bonds of the city, it shall, by resolution entered of record on the minutes of its proceedings, so declare and thereupon the city shall be and is hereby empowered and authorized to issue its bonds for the purpose of providing for paving, laying sidewalks, curbing the streets and alleys of the city, in anticipation of special assessments to be made upon the property abutting upon the streets and alleys so improved, and upon street car and other railway companies occupying the said streets or alleys with tracks, and such bonds may be in such amount as shall be sufficient to pay the entire cost and expense of said improvements for which such special assessments are levied; and said city is also authorized to sell said bonds as a whole issue at one time or in separate lots or parcels from time to time as the council may deem advisable; provided, that the price for which they are sold shall not be below the par value of said bonds; said bonds shall be payable not to exceed ten years from the date of the issue thereof and shall bear interest at the rate not to exceed six per centum per annum, payable semi-annually, and in the issuance and sale of said bonds the city shall be governed by all the restrictions and limitations of the Constitution of the state, and, so far as not in conflict with the provisions of this section, by the restrictions and limitations of this state with respect to the issuance and sale of other bonds; and the assessments, as paid and provided for in this section, shall be applied to the liquidation of said bonds and the interest thereon and to that end paid to the trustees of the sinking fund of the city to be by them invested for the best advantage of the city, anything in any general or special statute of the state notwithstanding to the contrary; and if by reason of penalties collected with the delinquent installments there may be any balance after the payment of said bonds and all accrued interest and costs the said balance shall be turned into the city treasury to the credit of a fund for street improvements for said city and used for no other purpose; provided, that the city shall not by the sale or issue of such bonds therein; nor shall said city make such issue and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and principal thereof within and not exceeding ten years.

All the assessments, interest and penalties thereon collected from the abutting property owners on account of the grading, paving, sewerage or otherwise improving the streets and alleys of the city, under the provisions of this section, shall annually be applied to the annual tax required to pay the interest on such debt and such principal within and not exceeding ten years; and in the event that the assessments, interest and penalties so collected should not amount to the sum sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years, then the council shall collect so much of said levy as will pay annually the interest on such debt and the principal thereof within and not exceeding ten years.

- (f) It is especially provided that no bonds shall be issued under the provisions of this section, unless and until the question of issuing said bonds shall have first been submitted to a vote of the people of the city and shall have received three-fifths of all votes cast at said election for or against the same. The council may provide by ordinance for an election every year at which the question shall be submitted to the people as to whether the city shall be authorized to issue bonds for the purpose and under the provisions of this section, to an amount not to exceed in the ensuing year the amount recommended by said ordinance for said ensuing year; but the ordinance providing for said election need not specify in detail the location of the improvements contemplated to be paid for during the ensuing year out of said aggregate issue authorized for said year; and it shall be sufficient description of the purpose for which said election is held, if the ordinance calling the same shall cite that it authorizes the council to issue bonds for the purpose of paving, curbing, laying sidewalks or sewerage the streets and alleys of said city, at such time as the council shall see fit during the ensuing year ending on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, to an amount not exceeding in the aggregate during said year the sum of \$ \_\_\_\_\_; and when the council shall have once been authorized by a vote of the people to issue bonds for the said purpose and to a sum not to exceed the amount set forth in the ordinance calling the said election, no further election shall be necessary for the issuing of bonds during said ensuing year up to the amount stipulated in said ordinance calling said election; but the council shall from time to time during the ensuing year by ordinance authorize the issue of said bonds, in such sums, and for the improvements of such streets and alleys as to it may seem best; provided, the requirements of this section are complied with. The aggregate amount of bonds authorized by said annual election shall not be exceeded during said year, unless and except the same be authorized by a special election held at a subsequent time in said year and duly called as provided for the calling of the annual bond election.

The provisions of chapter 47a of the code concerning bond elections, [Barnes' Code of West Virginia, 1923, shall, so far as they are not in conflict with the provisions of this section, apply to the annual bond elections and special bond elections herein provided for.

Editor's note. --Those provisions of Barnes' Code of W. Va. which are still in effect are covered by or set out in W. Va. Const., art. X, § 1, and W. Va. Code, §8-13-23 and ch. 13, art. 3.

- (g) Whenever it is deemed expedient by the council to provide for paving, curbing, sidewalks or sewers, or any other improvements on any streets or alleys of the city in whole or part, either by the issue of bonds theretofore authorized as herein provided, or by the appropriation of funds in the city treasury not otherwise appropriated, it shall first, having on file in the city clerk's office plans, specifications, profiles and estimates of the proposed improvements, showing the proposed grade of the street, or alley, after completion with reference to the abutting property, declare by resolution the expediency of the work; and said plans, specifications, profiles and estimates shall be open to public inspection.

Said resolutions shall determine the general nature of the work, the method of paying for the same, whether by an appropriation from the funds in the treasury not otherwise appropriated, or whether or not the bonds theretofore, as in this section provided, should be issued and sold; said resolution shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection one week before the final passage or adoption thereof. Immediately upon the filing of said resolution with the clerk, a copy thereof shall be published once in some newspaper of general circulation in the city, and affidavits of the publishers of said newspapers showing the publication, with a copy of the notice attached, shall be spread upon the minutes of the meeting of the council at which said resolution is passed or adopted. Said resolution shall be posted at the front door of the building where the council holds its meetings on the day it is filed as aforesaid, and affidavit thereof shall be recorded in the minutes of the council at the next regular meeting.

Until said resolution is finally passed, the council shall hear all persons interested in relation thereto at any regular meeting, and if it decides to proceed with the improvement, it shall pass said resolution. And then said council may by resolution correct or amend said plans, specifications, profiles and estimates and approve and adopt them as so corrected, or as they were in their original form as to it may seem proper; and said plans, specifications, profiles and estimates shall be forthwith filed with the city clerk and by him recorded and attested in a well bound and permanent record book to be kept in his office. Both resolutions shall be in effect when finally passed.

The council may then adopt and pass ordinances for said purpose which shall provide generally the character of the work, make appropriations for the payment thereof, fix the time of payment of assessments therefor and the manner of giving notice of said assessment and correcting the same and providing advertisements for bids for said work; shall also set forth the streets and alleys upon which the property is to be assessed for said improvements, the general character of materials which may be bid upon therefor the mode of payment for same and a reference to the resolution theretofore passed for said improvements, giving the date of passage, and a statement of the intention of council to proceed therewith in accordance with said resolution and in accordance with the plans, specifications, estimates and profiles provided for such improvements.

In any case where the council has determined to pay for nay of such improvements out of the funds in the city treasury not otherwise appropriated, and not by the issuance or sale of bonds, said ordinance shall be passed and become effective as provided in section 12 of this chapter [Charter]; but in the event it has been determined to issue and sell bonds for the payment thereof, the said ordinance shall not be effective so as to permit any contract to be made or work to be done thereunder until, in addition to the compliance with the provisions of section 12, the fact that the proceeds of the sale of said bonds have been received by the city shall be certified by the superintendent of the department of accounts and finance and such certificate entered upon the minutes of the council.

- (h) When the whole or any portion of the improvements authorized by this section passes through or by a public market, space, park, cemetery, structure for the fire department, water works, school building, infirmary, market house, work house, hospital, house of refuge, bridge, gas works, public prison, church, or any other public structure or public grounds, within said city, and belonging to said city, or to the county, state, board of education, or any church association or eleemosynary institution, the council shall direct the proper proportion of the cost and expenses of the improvements to be certified to the clerk of the county court of the county, wherein said city is situate, and the same shall thereupon be recorded by said clerk in the proper trust deed book and shall thereupon become a lien against said property and collectable as other assessments are collected against individuals under this section; and it shall be the duty of those persons, having charge of the fiscal affairs of any such property or institution, to make proper arrangements for meeting of such assessments when due and payable.
- (i) All acts or parts of acts, whether special or general, which are in conflict with the provisions of this act [Charter] , so far as they may apply to the City of Williamstown are to that extent repealed, except that said city may continue to pave sidewalks as the Town of Williamstown has authorized, and nothing herein contained shall in anywise affect or impair the right of the city to enforce the collection of any and all paving, sewerage or sidewalk bills or assessments, heretofore issued, laid or levied by the said City of Williamstown or Town of Williamstown, by virtue of any authority had by it. (Acts 1921 (Munl. ch.), ch. 30, § 19.)

Sec. 20. Limited authority to levy annual tax on real and personal property for paving and for sewer construction.

The council shall have authority to levy and collect an annual tax for the purpose hereinafter specified, on the personal property and real estate in said city subject to taxation by said city, not to exceed in any year ten cents on every hundred dollars of the assessed value thereof; the money so collected shall be used for the purpose of paying its proportion of the cost of paving or re-paving streets and alleys and for constructing sewers in said city, in accordance with the provisions of section 19 of this act [Charter]; and such money shall in no case be used to pay for repairs or streets or alleys or sewers , or for any other purpose than for paving or for sewers. Provided, that the total levy for all purposes shall not exceed the total levy authorized by law. (Acts 1921 (Munl. ch.) ch. 30, § 20.)

Sec. 21. Procedure for recall of elected officer and to elect a successor; person sought to be recalled may be candidate to succeed himself.

The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per centum of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city clerk; which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall

add to his signature his place of residence, giving the street number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition, the city clerk shall examine, and from the voters' register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the council shall allow him to have extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If by the clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The clerk shall, within ten days after such amendment, make like examination of the amended petition and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the clerk shall submit the same to the council without delay. If the petition shall be found to be sufficient, the council shall order and fix a date for holding said election, not less than thirty days nor more than forty days from the date of the clerk's certificate to the council that a sufficient petition is filed.

The council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned, and the result thereof declared in all respects as are other city elections. So far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the clerk, at least ten days prior to said special election, a statement of candidacy accompanied by a petition signed by electors entitled to vote at said special election, equal in number to at least ten per centum of the entire vote for all candidates for the office of mayor at the last preceding general municipal election; which said statement of candidacy and petition shall be substantially in the form set out in section 5 of this act [Charter], so far as the same is applicable, substituting the word "special" for the word "primary" in such statement and petition and stating therein that such person is a candidate for election instead of nomination.

Editor's note. -By home rule ordinance enacted in 1972, section 5 of the charter was amended so as to abolish primary elections; and this section should be construed accordingly.

The ballot for such special election shall be in substantially the following form:

"Official Ballot.

"Special election for the balance of the unexpired term of \_\_\_\_\_, as \_\_\_\_\_

"For \_\_\_\_\_

"(Vote for one only)

"(Name of candidate)

"[ ] \_\_\_\_\_

"[ ] \_\_\_\_\_

"Name of present incumbent.

"Official ballot, attest:

"Signature \_\_\_\_\_

City Clerk."

The successor of any officer shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from office upon qualification of his successor. In case the party who received the highest number of votes shall fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods heretofore provided by law. (Acts. 1921 (Munl. ch.), ch. 30, § 21.)

Sec. 22. Initiative and referendum; ordinances adopted by vote of electorate may be repealed only by vote of electorate.

Any proposed ordinance may be submitted to the council by the petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verifications, inspection, certification, amendment and submission of such petition shall be the same as provided for petition under section 21 hereof.

If this petition accompanying the proposed ordinance be signed by electors equal in number to twenty per centum of the votes cast for all candidates for mayor at the last preceding general election, and contain a request that the said ordinance be submitted to a vote of the people, if not passed by the council, such council shall either--

(a) Pass such ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition; or,

(b) Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, the council shall call a special election, unless the general municipal election is fixed within ninety days thereafter, and at such special or general municipal election, if one is fixed, such ordinance shall be submitted without alteration to the vote of the electors of said city. But if the petition is signed by no less than ten per centum of the electors, as above defined, then the council shall within twenty days, pass said ordinance without change, or submit the same at the next general election, occurring not more than ninety days nor less than thirty days after the clerk's certificate of sufficiency is attached to said petition.

The ballots used when voting upon said ordinance shall contain these words: "for the ordinance" and "against the ordinance" (stating the nature of the proposed ordinance). If the majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city; and any ordinance proposed by petition or which shall be adopted by a vote of the people, cannot be repealed or amended except by a vote of the people. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this section; but there shall not be more than one special election in any period of six months for such purpose.



The council may submit a proposition for the repeal of any such ordinance or for amendment thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall thereby be repealed or amended accordingly. Whenever any ordinance or proposition is required by this act [Charter] to be submitted to the voters of the city at any election, the city clerk shall cause such ordinance or proposition to be published once in one of the newspapers published in said city; such publication. to be not more than twenty nor less than five days before the submission of such proposition or ordinance to be voted on. (Acts 1921 (Munl. ch.), ch. 30, § 22.)

Sec. 23.       Effective date of ordinances and franchises and required posting thereof; suspension from operation upon protest of twenty per centum of voters; submission to election.

No ordinance or franchise passed by the council, except when otherwise required by the general laws of the state or by the provisions of this act [Charter] , except no ordinance for the immediate preservation of the public peace, health or safety, which shall contain a statement of its urgency, shall go into effect before ten days from the time of its final passage, and not then unless within two days after passage, Sundays and holidays excepted, copies of the same shall have been posted and left posted at the mayor's office and at least three other public places in the said city. And if during said ten days a petition signed by electors of the city, equal in number to at least twenty per centum of the entire votes cast for all candidates for mayor at the last preceding general municipal election at which a mayor was elected, protesting against the passage of such ordinance or franchise, be presented to the council, the said ordinance or franchise shall thereupon be suspended from going into operation; and it shall be the duty of the council to reconsider such ordinance or franchise, and if the same is not entirely repealed, the council shall submit the ordinance or franchise, as is provided by subsection "b" of section 22 of this act [Charter], to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose; and such ordinance or franchise shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of said section 22, except as to the percentage of signers, and be examined and certified to the clerk in all respects as therein provided. (Acts 1921 (Munl. ch.), ch. 30, § 23.)

For state law as to procedures for adoption of municipal ordinances, "notwithstanding any charter provision to the contrary", see W. Va. Code, §8-11-4.

Sec. 24.       Petitions to be signed by legal voters only, supported by affidavit.

Petitions provided for in this act [Charter] shall be signed by none but legal voters of the city. Each petition shall contain in addition to the names of the petitioners, the street on which petitioner resides, his age and length of residence in the city. It also shall be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made. (Acts 1921 (Munl. ch.), ch. 30, § 24.)

- Sec. 25. Reiteration of authority of council to levy annual tax on real and personal property; other taxing authority; taxes to be uniform; limitation on taxation.

The council shall have authority to levy and collect an annual tax on real estate and personal property in said city, and to impose a license and assess a tax thereon on wheeled vehicles for public hire and for all dogs kept within said city, and to impose a tax upon all other subjects of taxation under the several laws of the state, which shall be uniform with respect to persons and property within the jurisdiction of said city, and shall only be levied on such property, real, personal and mixed on which the state imposes a tax; provided, that no greater levy shall be laid by said council on the taxable property of said city than is permitted to be laid under any state law, relating to municipalities, except as herein provided; and, provided, further, that the council shall in making such levy, be subject to all the provisions of chapter 9 of the acts of the legislature of 1908 and any and all amendments thereto, except as herein provided.  
(Acts 1921 (Munl. ch.), ch. 30, § 25.)

Editor's note. - The provisions of Acts 1908, chapter 9, are now codified in W. Va. Code, §§ 11-8-9, 11-8-10, 11-8-12, 11-8-14, 11-8-16 to 11-8-18, 11-8-26.

- Sec. 99. Authority to acquire and equip various public utilities, parks, buildings, etc. , and to issue and sell bonds for such purpose subject to conditions and limitations herein specified.

Editor's note. --There are no sections 26 through 98 of this Charter.

The said City of Williamstown is hereby authorized to purchase, build and equip electric light plants, water works and distribution lines and mains, public parks, playgrounds and municipal buildings and to issue and sell the bonds of said city for that purpose, but in no event shall the aggregate indebtedness of said city, bonded, funded or otherwise, exceed five per centum of the assessed value of the property within said city; and, provided further, that in no event shall any bonds be issued by said city unless and until the question of the issuance thereof shall be submitted to the legal voters thereof and be authorized by a three-fifths vote in favor thereof; and, provided, further, that no bonds shall be issued unless provision be made for sufficient levy to pay the interest and principal thereof as the same shall become due and payable according to the tenor of the said bonds; said bonds may be serial bonds, and no bonds shall be issued for a longer period than thirty years, and the submission and all orders and ordinances in reference thereto shall be under and according to the provisions of chapter 47a of Barnes' Code of West Virginia, 1923, insofar as the same may be applicable. (Added by Acts 1925 (Munl. ch.), ch. 14, § 99.)

Editor's note. --Those provisions of chapter 47a of Barnes' Code of W. Va. which are still in effect are covered by or set out in W. Va. Const., art. X, § 1, and W. Va. Code, § 8-13-23 and ch. 13, art. 3.

## **CODIFIED ORDINANCES OF WILLIAMSTOWN**

### **PART ONE - ADMINISTRATIVE CODE**

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#### **CHAPTER ONE - General Provisions**

- Art. 101. Codified Ordinances.
- Art. 105. Elections.

#### **CHAPTER THREE - Legislative**

- Art. 121. Council.
- Art. 123. Ordinances and Resolutions.

#### **CHAPTER FIVE - Administrative**

- Art. 131. Mayor.
- Art. 133. City Clerk.
- Art. 135. City Treasurer.
- Art. 137. City Attorney.
- Art. 139. Police Department.
- Art. 141. Fire Department.
- Art. 143. Emergency Ambulance and Medical Services.
- Art. 145. Planning Commission.
- Art. 146. Sanitary Board.
- Art. 147. Tree Commission.
- Art. 149. Employees Generally.

#### **CHAPTER SEVEN - Judicial**

- Art. 171. Municipal Court.



## CODIFIED ORDINANCES OF WILLIAMSTOWN

### PART ONE - ADMINISTRATIVE CODE

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#### CHAPTER ONE - General Provisions

Art. 101. Codified Ordinances.  
Art. 105. Elections.

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#### ARTICLE 101 Codified Ordinances

<b>101.01</b> Designation; citation; headings. <b>101.02</b> General definitions. <b>101.03</b> Rules of construction. <b>101.04</b> Repeal of repealing act; effect of repeal.	<b>101.05</b> Construction of section references. <b>101.06</b> Acts by agent or deputy. <b>101.07</b> Conflicting provisions. <b>101.08</b> Separability. <b>101.99</b> General penalty.
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#### CROSS REFERENCES

See sectional histories for similar State law  
Maximum penalty permitted - see W. Va. Code 8-11-1, 8-12-5(57)  
Authority to impose penalties - see W. Va. Code 8-11-1, 8-12-2(11)  
Codification of ordinances - see W. Va. Code 8-11-4(b)

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#### **101.01 DESIGNATION; CITATION; HEADINGS.**

(a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, renumbered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Williamstown, West Virginia, 2016, for which designation "Codified Ordinances" may be substituted. Code, chapter, article and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(b) All references to codes, chapters, articles and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code". Sections may be referred to and cited by the designation "Section" followed by the number, such as "Section 101.01".

#### **101.02 GENERAL DEFINITIONS.**

As used in the Codified Ordinances, unless otherwise expressly provided or the context otherwise requires:

- (a) Council means the legislative authority of the Municipality.
- (b) County means Wood County, West Virginia.
- (c) Land or lands and real estate or real property include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests.
- (d) Laws of the State includes the Constitution of the State and the Constitution of the United States, and treaties and laws made in pursuance thereof. (WVaC 2-2-10)
- (e) Municipality or City means the Municipality of Williamstown, West Virginia.
- (f) Offense includes every act or omission for which a fine, forfeiture or punishment is imposed by law. (WVaC 2-2-10)
- (g) Owner, when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.
- (h) Person or whoever includes corporations, societies, associations and partnerships.
- (i) Personal estate or personal property includes goods, chattels, real and personal, money, credits, investments and the evidences thereof.
- (j) Preceding, succeeding or following used in reference to any section or sections of an article means next preceding, next succeeding or next following that in which such reference is made. (WVaC 2-2-10)
- (k) Premises, as applied to property, includes land and building.
- (l) Property or estate embraces both real and personal estate.  
(WVaC 2-2-10)
- (m) Public place includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance or any other place for the sale of merchandise, public accommodation or amusement.
- (n) Registered mail includes certified mail.
- (o) State means the State of West Virginia or any department, division, commission, board, educational or other institution of the State.
- (p) Street includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.
- (q) Tenant or occupant, as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises alone or with others.
- (r) Written or in writing includes any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his own proper handwriting, or his mark, attested, proved or acknowledged.  
(WVaC 2-2-10)

**101.03 RULES OF CONSTRUCTION.**

(a) General Rule. All words and phrases shall be construed and understood according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

(b) Gender and Plural. A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males.  
(WVaC 2-2-10)

(c) Computation of Time. The time within which an act is to be done shall be computed by excluding the first day and including the last, or if the last be a Saturday, Sunday or legal holiday it shall also be excluded.  
(WVaC 2-2-3)

(d) Joint Authority. Words purporting to give a joint authority to three or more persons confer such authority upon a majority of them, and not upon any less number.  
(WVaC 2-2-10)

(e) Exceptions. The rules of construction shall not apply to any law which contains any express provision excluding such construction, or when the subject matter or context of such law may be repugnant thereto.

**101.04 REPEAL OF REPEALING ACT; EFFECT OF REPEAL.**

(a) When a law which has repealed another is itself repealed, the former law shall not be revived without express words for that purpose.  
(WVaC 2-2-9)

(b) The repeal of a law, or its expiration by virtue of any provision contained therein, shall not affect any offense committed, or penalty or punishment incurred, before the repeal took effect or the law expired, save only that the proceedings thereafter shall conform as far as practicable to the laws in force at the time such proceedings take place, unless otherwise specially provided; and that if any penalty or punishment be mitigated by the new law, such new law may, with the consent of the part affected thereby, be applied to any judgment pronounced after it has taken effect.  
(WVaC 2-2-8)

(c) The repeal by any provision of the Codified Ordinances of an ordinance validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal, but no further.  
(WVaC 2-2-11)

**101.05 CONSTRUCTION OF SECTION REFERENCES.**

When reference is made to any section or group of sections of the Codified Ordinances, such reference shall extend to and include any amendment of or supplement to the section or group of sections so referred to or any section or sections hereafter enacted in lieu thereof; and unless otherwise provided, whenever a reference to a section or group sections is made in any amendment or supplement to any section of the Codified Ordinances hereafter enacted, such reference shall be deemed to refer to the section or sections as the same shall then stand or as thereafter amended.

Whenever in a penalty section reference is made to a violation of a section or an inclusive group of sections, such reference shall be construed to mean a violation of any provision of the section or sections included in such reference.

References in the Codified Ordinances to action taken or authorized under designated sections of the Codified Ordinances include, in every case, action taken or authorized under the applicable legislative provision which is superseded by the Codified Ordinances.

If a section refers to a series of numbers or letters, the first and the last number or letters in the series are deemed to be included.

**101.06 ACTS BY AGENT OR DEPUTY.**

When a section requires that an act be done by an officer or person, it shall be sufficient if it be done by his agent or deputy, unless it be such as cannot lawfully be done by deputation. (WVaC 2-2-5)

**101.07 CONFLICTING PROVISIONS.**

If the provisions of different codes, articles or sections of the Codified Ordinances conflict with or contravene each other, the provisions bearing the latest passage date shall prevail. If the conflicting provisions bear the same passage date, the conflict shall be construed so as to be consistent with the meaning or legal effect of the questions of the subject matter taken as a whole.

**101.08 SEPARABILITY.**

Each section of the Codified Ordinances and every part of each section is an independent section and part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause does not affect the validity or constitutionality of any other section or part thereof.

**101.99 GENERAL PENALTY.**

Whenever, in the Codified Ordinances or in any ordinance of the Municipality, any act is prohibited or is made or declared to be unlawful or an offense, or whenever the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is otherwise provided, whoever violates any such provision shall be fined not more than five hundred dollars (\$500.00). Each day any such violation continues shall constitute a separate offense.



**ARTICLE 105**  
**Elections**

EDITOR'S NOTE: There are no sections in Article 105.  
This Article has been established to provide a place for cross  
references and any future legislation.

**CROSS REFERENCES**

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



### **CHAPTER THREE - Legislative**

Art. 121. Council.

Art. 123. Ordinances and Resolutions.

#### **ARTICLE 121 Council**

- |                                  |  |
|----------------------------------|--|
| <b>121.01 Regular meetings.</b>  | <b>121.07 Minutes of last meeting.</b>             |
| <b>121.02 Open meetings.</b>     | <b>121.08 Willful absence grounds for removal.</b> |
| <b>121.03 Clerk of Council.</b>  | <b>121.09 Disorderly conduct.</b>                  |
| <b>121.04 Presiding officer.</b> | <b>121.10 Rules.</b>                               |
| <b>121.05 Sergeant at arms.</b>  | <b>121.11 Biennial organizational.</b>             |
| <b>121.06 Quorum.</b>            |  |

#### **CROSS REFERENCES**

Open meeting law - see W. Va. Code Art. 6-9A

Composition - see W. Va. Code 8-5-7

Oath - see W. Va. Code 8-5-8

Term - see W. Va. Code 8-5-9

Vacancies - see W. Va. Code 8-5-10

Proceedings - see W. Va. Code Art. 8-9

General powers - see W. Va. Code Art. 8-12

Adoption of rules - see W. Va. Code 8-12-5(45)

Extraterritorial exercise of powers - see W. Va. Code 8-12-19

#### **121.01 REGULAR MEETINGS.**

Regular meetings of the City Council shall be held on the first and third Tuesdays of each month at 7:30 p.m. and that special meetings may be called from time to time by the Mayor or two Councilmen. (Passed 6-19-89.)

**121.02 OPEN MEETINGS.**

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

**121.03 CLERK OF COUNCIL.**

The City Clerk shall be ex officio Clerk of Council. The Clerk of the Council shall attend all meetings of Council and shall keep, in a well bound book, which may be known as the journal, an accurate record of all its proceedings, which shall be fully indexed and open to the inspection of all interested persons; and upon every vote the yeas and nays shall be called and recorded.

**121.04 PRESIDING OFFICER.**

(a) In the absence of both the President and Vice President of Council at any meeting of Council at which three Councilmen are present, such Councilmen present shall choose one of their number to preside at such meeting.

(b) In the absence of the Clerk of the Council at any meeting of Council, the Deputy or Assistant City Clerk, if there be such officer, shall perform the duties of the City Clerk at such meeting; and if there be no such deputy or Assistant City Clerk, then Council shall designate a competent person, who may be one of their number, to perform the duties of the City Clerk at such meeting.

**121.05 SERGEANT AT ARMS.**

The Chief of Police shall attend all meetings of Council, or cause a competent policeman to do so, to serve as sergeant at arms and maintain order in the Council Chamber and in the immediate vicinity thereof; and to execute all lawful orders and processes directed to him by Council or by its Presiding Officer.

**121.06 QUORUM.**

It shall be lawful for any two members of Council who have assembled at a time appointed for a meeting thereof, to recess temporarily or to adjourn to a subsequent time, and to cause the sergeant at arms to compel the attendance of the absent members or give notice to the absent members of the time to which adjournment has been made, requiring their attendance at such adjourned meeting.

**121.07 MINUTES OF LAST MEETING.**

At each meeting of Council the roll shall be called and members shall be recorded in the journal as present or absent. Then the proceedings of the last meeting shall be read and corrected, if erroneous, and signed by the City Clerk and the Presiding Officer for the time being; provided, that the reading of the journal of the proceedings of the last meeting may be dispensed with by majority vote of Council if the members thereof have received and examined a copy of the journal or a synopsis thereof prior to the meeting at which the journal is signed.

**121.08 WILLFUL ABSENCE GROUNDS FOR REMOVAL.**

If the Mayor or any Councilman shall willfully absent himself from any regular or special meeting of Council duly established or called, for four consecutive meetings, whether regular or special, provided he had written notice of such special meetings, then the Council at a regular meeting thereof may, after a public hearing or written changes, declare his office vacant and appoint some duly qualified person to act in his stead.

**121.09 DISORDERLY CONDUCT.**

(a) It shall be unlawful for any person to behave in a boisterous or disorderly manner at any meeting of Council or any committee thereof, or to cause any disturbance thereat, whether by force, shouting or other action tending to disrupt such meeting, or to fail or refuse to obey any ruling or order of the officer presiding at such meeting relative to the orderly procedure thereof.

(b) Boisterous or disorderly behavior within the purview of subsection (a) of this section shall include, but is not limited to, any of the following acts:

- (1) Contemptuous or insolent behavior towards the presiding officer or any member of the City Council or committee of the Council, or its Clerk, sergeant at arms or any other officer, while the council or committee is in session.
- (2) Any breach of the peace, willful disturbance, or indecent conduct in the presence of such Council or committee while so engaged, or so near as to obstruct or interrupt its proceedings.
- (3) Violence or threats of violence to any member of such Council or committee or any officer, witness, or party going to, attending, or returning from, any Council or committee proceeding in respect to anything done or to be done in the course of such proceeding;
- (4) Willful resistance to any lawful order of the presiding officer or sergeant at arms at any such meeting.

(c) The Presiding Officer of Council or of any committee of Council shall have plenary power to order that the Council Chamber and adjacent areas be cleared, or any part thereof, or any person or persons ejected from the Council Chamber or adjacent areas, in the event of disorderly conduct or disturbance which does or tends to interrupt or disrupt the orderly conduct of business by Council or its committee.

**121.10 RULES.**

Council adopts the most recent version of Robert's Rules of Order as its rules.

**121.11 BIENNIAL ORGANIZATIONAL.**

(a) On the first Tuesday in July of each even numbered year the Mayor-Elect, the two Councilmen-Elect, and the two holdover Councilmen shall meet in the Council Chamber at 7:30 p.m., and the Members-Elect of the City Council shall, if they have not already done so, qualify by taking the prescribed oath of office, which shall be administered by the incumbent Mayor or the incumbent City Clerk or by some other office authorized by law so to do, whereupon they shall be deemed to have qualified themselves for the offices for which they, respectively, have been elected.

(b) Council shall then proceed to adopt, readopt, or amend rules governing the official conduct of its members, the transaction of its business and its rules of procedure, and failure to do so shall have the effect of continuing in force the rules of the preceding Council. The Mayor shall designate Councilmen to hold, respectively, the offices of Superintendent of the Department of Accounts and Finance, Superintendent of the Department of Public Safety, Superintendent of the Department of Streets, Parks, Public Improvements and Public Property, and Superintendent of the Department of Water Works and Sewers; provided, however, that due to the current demands of administration of the various departments as set forth above, the Mayor may, if he so elects, divide the Superintendent responsibilities as set forth above, among two or more members of Council. Effective upon adoption of this Amendment, there shall be additional duties imposed upon one or more members of Council for Administration of the Storm Water Management System, and the training of City employees relating to the mapping of water lines, and updating the City's computers and additional training for City employees on the computers, and Chairman of the Tree Commission.

(c) Council shall then proceed to fill vacancies in City offices and take such other action as the Members of the Council may deem appropriate for the organization of the City government for the ensuing two year period; provided, that no appointive City office under the rank of Department Superintendent shall be deemed vacant when such office is in fact held by an incumbent unless the office is then declared to be vacant by a majority vote of Council.  
(Passed 6-15-04.)

**ARTICLE 123**  
**Ordinances and Resolutions**

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| <p><b>123.01 Generally.</b></p> <p><b>123.02 Resolutions and resolutions book.</b></p> | <p><b>123.03 Authentication of ordinances and resolutions.</b></p> <p><b>123.04 Availability of records.</b></p> |
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**CROSS REFERENCES**

To make powers effective - see W.Va. Code 8-11-1  
 Delegating discretion - see W.Va. Code 8-11-2  
 Action required to be by ordinance - see W.Va. Code 8-11-3, 8-5-12  
 Procedures - see W.Va. Code 8-11-4  
 Penalty limitations - see W.Va. Code 8-12-5(58); 8-11-1

**123.01 GENERALLY.**

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

(b) All bills proposing ordinances shall be reduced to writing and be read by the City Clerk before being considered by Council. If, upon consideration by Council, it shall be the opinion of the majority thereof that a bill should pass, the Clerk shall call the roll and the ayes and nays shall be recorded in the journal. No ordinance shall become effective before ten days from the date of its passage unless at the time of passing such ordinance Council shall declare it expedient for the immediate preservation of the public peace, health or safety of the City and, if so declared, it shall be effective from the date of its passage. Council may postpone the consideration of any bill or lay it upon the table for consideration at some future meeting as it may deem proper.

(c) All bills under consideration by Council shall be open to debate and amendment until Council has by a vote passed by the bill, after which no debate or amendment shall be in order unless the amendment be reduced to writing and presented as a new bill.

(d) It shall be the duty of the City Clerk immediately, or as soon thereafter as possible, to spread upon the minutes of the journal all ordinances passed by Council, and they shall be recorded verbatim.

(e) As soon as may be practicable after the effective date of each ordinance, and not later than thirty days thereafter, the City Clerk shall record the ordinance verbatim in a book kept for that purpose, known as the "Ordinance Book," giving the date of the passage of such ordinance at the foot thereof, and properly indexing the same in an index attached or kept within the Ordinance Book. The ordinances when so recorded shall be signed by the Mayor in the same manner as the journal.

### **123.02 RESOLUTIONS AND RESOLUTIONS BOOK.**

(a) Each resolution shall, upon its adoption, be spread upon the journal verbatim by the City Clerk, who shall then record it in a book to be known as the "Resolutions Book;" provided, that an entry in the Resolutions Book of the title, date of passage, number, a summary of its subject matter, and a reference to the Journal Book and page numbers in which a resolution is set forth verbatim shall constitute a sufficient recording thereof in the Resolutions Book.

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

### **123.03 AUTHENTICATION OF ORDINANCES AND RESOLUTIONS.**

Each ordinance and resolution passed by Council shall, after its passage, be presented by the City Clerk to the Mayor for his signature; provided, that if the Mayor was not present when an ordinance or resolution was passed by Council, then the City Clerk shall obtain thereon the signatures of three councilmen who were present at the time of its passage.

### **123.04 AVAILABILITY OF RECORDS.**

(a) Except as may be provided otherwise by State law, this Code or other ordinance or resolution of Council to safeguard the security of license tax returns, personnel records and other confidential information, all records, books, maps, documents and other papers which are maintained on file in any City office shall be open for inspection and use by citizens of the City and others having an interest therein during all regular business hours, but none shall be removed from the office of its custodian except by authority of the Mayor, Council or a valid subpoena duces tecum issuing from a court or officer having jurisdiction in the premises.

(b) No person shall, without proper authority as provided in subsection (a) hereof, remove from the office of its custodian any record, book, map, document or other paper which is maintained on file in any City office, nor shall any person fail to return any such item to its proper custodian within the time set by the custodian for its return.

(c) No person shall willfully destroy, obliterate, secrete, deface, mark upon, disturb the arrangement of, damage or otherwise tamper with any record, book, map, document or other paper which is maintained on file in any City office.



**CHAPTER FIVE - Administrative**

- Art. 131. Mayor.
- Art. 133. City Clerk.
- Art. 135. City Treasurer.
- Art. 137. City Attorney.
- Art. 139. Police Department.
- Art. 141. Fire Department.
- Art. 143. Emergency Ambulance and Medical Services.
- Art. 145. Planning Commission.
- Art. 146. Sanitary Board.
- Art. 147. Tree Commission.
- Art. 149. Employees Generally.

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**ARTICLE 131  
Mayor**

**131.01 Powers and duties.**

**CROSS REFERENCES**

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

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**131.01 POWERS AND DUTIES.**

(a) The Mayor shall be the chief executive officer of the City and shall take care that the public peace and good order are preserved within the City, that persons and property therein are protected, and that the orders, ordinances and resolutions of Council are faithfully executed.

(b) The Mayor shall preside over all meetings of Council and shall have the same right to vote as a Councilman, but he shall have no right of veto.

(c) The Mayor shall cause the City seal to be affixed to all contracts or franchises to which the City is a party and in all other cases where the City seal is necessary to the validity of any instrument.

(d) In case of the death, absence, resignation or disability of the Mayor, the Superintendent of Accounts and Finance shall fill such vacancy temporarily and shall perform the duties of the Mayor until Council shall provide otherwise.

(e) The Mayor shall supervise generally the official conduct of all officers and employees of the City and make examination concerning reasonable complaints made against any officer or employee of the City, and shall have general supervision of all departments and affairs of the City and perform such other duties as may be required of him by the laws of the State, the provisions of this Code and the provisions of other ordinances and resolutions of Council.

**ARTICLE 133**  
**City Clerk**

**133.01 Duties.****133.02 Competitive bidding.**

**CROSS REFERENCES**

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

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**133.01 DUTIES.**

(a) The City Clerk shall be custodian of all records, books, documents, and other papers of the City for which the custody is not otherwise provided, and he shall certify to all true copies thereof and charge such fees therefore as may be prescribed by this Code or other ordinances of Council. The City Clerk shall issue all City licenses and permits not issued by other City officers and keep full and accurate records thereof; and he shall have such other powers and perform such other duties as may be provided for municipal clerks and recorders in applicable provisions of state law not inconsistent with the City Charter, this Code and other ordinances of Council.

(b) The City Clerk shall be under the supervision of, and be responsible to, the Superintendent of Finance in all matters relating to and in the performance of his duties prescribed for the City Clerk in Section 19 of the City Charter.

**133.02 COMPETITIVE BIDDING.**

The following procedure for purchases and contracts be and hereby is established:

- (a) All purchases of and contracts for supplies and contractual services, except professional services, and except as specifically provided herein, be based, wherever possible, on competitive bids.
- (b) (1) All supplies and contractual services when the estimated cost thereof is less than two hundred dollars (\$200.00), a purchase requisition is required to be signed by the City Clerk and a Department Head.
- (2) All supplies and contractual services when the estimated cost thereof exceeds two hundred dollars (\$200.00) and is less than five hundred dollars (\$500.00), a purchase requisition is required to be signed by a Department Head and the Mayor. (Passed 9-2-08)

- (3) All supplies and contractual services when the estimated cost thereof is from five hundred dollars (\$500.00) to ten thousand dollars (\$10,000), a purchase requisition is required to be signed by the Mayor and approved by Council.
- (4) All supplies and contractual services when the estimated cost thereof exceeds ten thousand dollars (\$10,000) shall be purchased by contract from the lowest responsible bidder after due notice inviting proposals. Notwithstanding any provision to the contrary, no such "notice inviting proposals" shall be issued without the prior agreement of Council.
- (c) (1) Notice inviting bids shall be published once in at least one newspaper of general circulation in or around the City and at least five days preceding the last day set for the receiving of proposals. Such notice shall include a general description for the articles to be purchased or sold, and shall state where specifications may be secured, and the time and place for opening bids.
- (2) The City Clerk shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders' list" which the City Clerk shall maintain, by sending them a copy of such newspaper notice or such other notice to acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
- (d) When deemed necessary by the City Clerk, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the City Clerk has required such. A successful bidder shall forfeit any surety required by the Clerk upon failure on his part to enter into a contract within ten days after the award of a successful bid.
- (e) Bids shall be submitted, sealed, to the City Clerk and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be posted for public inspection.
- (f) The City Council shall have the authority to reject all bids, parts of all bids, or all bids for any one or more supplies or contractual services included in the proposed contract, when the public interest will be served thereby. This statement shall appear in all invitations for bids.
- (g) Contracts shall be awarded to the lowest responsible bidder. In determining the lowest responsible bidder, in addition to price, Council shall consider:
  - (1) The ability, capacity and skill of the bidder to perform the contract or provide the services required;
  - (2) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
  - (3) The quality of performance of other contracts or services;
  - (4) The sufficiency of the financial resource and ability of the bidder to perform the contract or provide the services;
  - (5) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

- (h) Council shall have the authority to require a performance bond before entering into a contract, in such amount as he or she finds reasonably necessary to protect the best interests of the City.
- (i) Local Vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a bidder residing or doing business in the City.
- (j) Outside Vendors. Where subsection (i) hereof is not in effect, Council shall award the contract to one of the tie bidders by drawing lots in public.
- (k) Council shall have the authority to require a performance bond before entering into a contract, in such amount as he or she finds reasonably necessary to protect the best interests of the City.
- (l) No contract or purchase shall be subdivided to avoid the requirements of this section.
- (m) All purchases of supplies and contractual services, of less than the estimated value of ten thousand dollars (\$10,000), shall be made in the open market, without newspaper advertisement, and without observing the procedure prescribed for the awarding of contracts involving sums in excess of ten thousand dollars (\$10,000). All open market purchases shall, wherever possible, be based upon at least three competitive bids, and shall be awarded to the lowest responsible bidder in accordance with the standards herein set forth.
- (n) In case of an apparent emergency which requires immediate purchase of supplies or contractual services, the Mayor or Department Head shall be empowered to authorize the City Clerk to secure by open market procedure, as herein set forth, at the lowest obtainable price, any supplies or contractual services, regardless of the amount of the expenditure, but subject always, however, to any prohibition contained in the Charter, Codified Ordinances or applicable statutes of the State. A full report of the circumstances of an emergency purchase shall be filed by the City Clerk with Council and shall be entered in the minutes of Council and shall be open to the public inspection.
- (o) The City Clerk and every officer and employee of the City are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money or anything of value whatsoever, except where given for the use and benefit of the City. (Passed 9-2-08)



**ARTICLE 135**  
**City Treasurer**

**135.01 City Treasurer**

**135.03 Fiscal reports.**

**135.02 Disbursement of City funds.**

**CROSS REFERENCES**

Supervision of public officers - see W.Va. Code Art. 6-9

Purchasing; competitive bidding - see W.Va. Code 8-12-10

Collection of moneys - see W.Va. Code 8-13-15 et seq.

Financial statements - see W.Va. Code 8-13-23

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**135.01 CITY TREASURER.**

(a) Pursuant to authority contained in Section 9 of the City Charter, the office of City Treasurer is hereby created, which shall be in lieu of the office of City Collector mentioned in Section 8 of the Charter.

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

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

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

**135.02 DISBURSEMENT OF CITY FUNDS.**

No money shall be disbursed from the City Treasurer except by approval of Council and then only if there be on hand sufficient funds appropriated for the purpose of such disbursement and not otherwise obligated. All checks on City depositories shall be signed by the City Treasurer and countersigned by the Mayor; provided, that Council may by resolution provide alternate officers for such purposes to act when the City Treasurer or Mayor are absent or disabled.

**135.03 FISCAL REPORTS.**

(a) All fiscal reports, settlements, accounts and statements of the City and of City officers shall conform to the fiscal year, which begins on July 1st of each calendar year and terminates at the close of business June 30th of the next succeeding calendar year.

(b) The budgeting system and financial accounts and records of the City shall be as prescribed by Council in conformity with Article 9, Chapter 6 of the Code of West Virginia; and the form and manner of keeping thereof shall be as approved or prescribed by the State Tax commissioner in his ex officio capacity as Chief Inspector and Supervisor of Public Offices.

- (c)
  - (1) The City Treasurer, within four weeks after the beginning of each fiscal year, shall prepare on a form to be prescribed by the State Tax Commissioner and cause to be published a sworn statement revealing the receipts and expenditures of the City during the previous fiscal year arranged under descriptive headings, the name of each person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and all debts of the City, the purposes for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a class 1 legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia, and the publication area for such publication shall be the City.
  - (2) The City Clerk shall transmit to any resident of the City, upon request, a copy of any published statement for the fiscal year designated, supplemented by a document listing the name of each person who received less than fifty dollars from any fund during such fiscal year and showing the amount paid to each and the purpose for which paid.
  - (3) The statement required by subsection (c)(1) hereof shall be sworn to by the City Treasurer, the Mayor and two Councilmen. As soon as practicable following the close of the fiscal year, a copy of any statement herein required shall be filed by the City Clerk with the State Tax Commissioner, and the Clerk of the County Court of the County, and the clerk of the Circuit Court of the County.

(d) As provided in Section 15 of the City Charter, at the end of each fiscal year Council shall cause to be made, by a competent, independent certified public accountant licensed to do business in this state, a full and complete examination of all books and accounts of the City, and the results thereof shall be published as a part of the financial statement.



**ARTICLE 137**  
**City Attorney**

**137.01 Powers and duties.**

**CROSS REFERENCES**

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

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

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**137.01 POWERS AND DUTIES.**

(a) Pursuant to authority contained in Section 9 of the City Charter, the office of City Attorney is hereby created, which shall be in lieu of the office of City Solicitor mentioned in Section 8 of the Charter.

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



## **ARTICLE 139**

### **Police Department**

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| <b>139.01 Property, personnel and organization generally.</b><br><b>139.02 Chief of Police.</b> | <b>139.03 Powers and duties of department and members.</b><br><b>139.04 Reimbursement of training costs.</b> |
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#### **CROSS REFERENCES**

Appointment of special police - see W. Va. Code 8-10-1  
 Powers and duties - see W. Va. Code 8-14-1, 8-14-3  
 Hours of duty; holidays - see W. Va. Code 8-14-2, 8-14-2a  
 School zone officers - see W. Va. Code 8-14-5  
 Parking lot or building officers - see W. Va. Code 8-14-5a  
 Civil service - see W. Va. Code 8-14-6 et seq.  
 Pension and relief fund - see W. Va. Code Art. 8-22  
 Police bonds - see W. Va. Code 61-7-5

#### **139.01 PROPERTY, PERSONNEL AND ORGANIZATION GENERALLY.**

The Police Department shall have such property and equipment, and such personnel, holding such ranks, as may from time to time be authorized by Council. Council is hereby authorized to employ and appoint three (3) special zone police officers pursuant to the terms and authority of Section 8-14-5 of the West Virginia Code, 1931, as amended. Such special zone police officers shall have the duty of controlling and directing traffic upon designated parts of the streets, avenues, roads, alleys or ways at or near schools, and who, in the performance of such duty, shall be vested with all the powers of local police officers, save and except the power to make arrest. Such special school zone police officers shall be in uniform, shall display a badge or other sign of authority and, shall serve at the will and pleasure of Council. The organization and deployment of the Police Department shall be as prescribed in the rules and regulations of the Department. (Passed 11-20-79)

#### **139.02 CHIEF OF POLICE.**

(a) The Chief of Police shall be the commanding officer of the Police Department and, under the general direction of the Mayor, he or she shall be responsible to the Mayor, Superintendent of Public Safety and Council for the administration, training, discipline, morals and effective deployment and utilization of the members of the Department and effective deployment and utilization of the property and equipment of the Police Department.

(b) The Chief of Police shall be a person of good moral character and be at least twenty-one years of age. He or she shall be charged with the enforcement of all City ordinances effective within the City and such other laws which any police officer is entitled to enforce. It shall be his or her duty to see that peace and order is preserved within the limits of the City and he or she shall be subject to the direct orders of the Mayor.  
(Passed 2-16-99)

#### **139.03 POWERS AND DUTIES OF DEPARTMENT AND MEMBERS.**

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

#### **139.04 REIMBURSEMENT OF TRAINING COSTS.**

All employees who are required to attend a law enforcement training academy shall, prior to attending any such law enforcement training academy, execute a written agreement with the City stating, in pertinent part, that if the employee should voluntarily discontinue his or her employment with the City at any time within one (1) year immediately following the completion of the said law enforcement training curriculum, he or she shall repay the City on a pro rata basis, for the costs associated with sending the employee to the law enforcement training academy. The amount to be repaid by an employee for this item shall be calculated by dividing the number of days that the employee is employed following the completion of the said law enforcement training academy by three hundred sixty-five (365) days. This percentage shall then be multiplied by the sum of the compensation paid to the employee while the employee attended the law enforcement training academy plus all expenses, costs and fees incurred by the City as a result of sending the employee to the law enforcement academy.  
(Passed 3-21-95)

**ARTICLE 141  
Fire Department**

**141.01 Volunteer fire company  
recognized as Fire Department.  
141.02 Fire Chief.**

**141.03 Authority to command.**

**CROSS REFERENCES**

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

Volunteer fire companies - see W. Va. Code 8-15-4 to 8-15-8

**141.01 VOLUNTEER FIRE COMPANY RECOGNIZED AS FIRE  
DEPARTMENT.**

The Williamstown Volunteer Fire Company, Inc., is hereby recognized as the Fire Department of the City.  
(Passed 5-20-42.)

**141.02 FIRE CHIEF.**

(a) The Chief of the Fire Department may be known and referred to as the Fire Chief. The Fire Chief shall be the Chief of the Fire Department and the commanding officer thereof, and shall be responsible to the Mayor and Council and to the Superintendent of Public Safety for the administration, training, discipline, morale and effective deployment and utilization of the members of the department and for the maintenance and effective deployment and utilization of the property, equipment and apparatus of the Fire Department.

(b) The Fire Chief shall have all such powers as may be necessary and lawful to meet the responsibilities imposed upon him by this section, including but not limited to the following:

- (1) He shall have absolute command, control, management, assignment to duties and supervision of every officer, member and employee of the fire department during a fire and at all practices and drills, and during all hours when such personnel are on duty.
- (2) He shall have supervision over the engine houses, trucks and all apparatus and equipment belonging to the Fire Department. He shall be responsible for the serviceable condition of all equipment belonging to the Fire Department, and he shall be responsible that every piece of fire apparatus is equipped at all times with the necessary wrenches and all other equipment belonging to that piece of apparatus and necessary in the successful fighting of fire.

- (3) He shall have supervision over all repairs to apparatus and the charge of all supplies, and shall issue them upon his own discretion or upon the authority of Council to the units of the Fire Department, taking from them the receipt of the commanding officer of the unit to which the supplies are issued. He shall have sole control, management and command at fires and alarms of fire over all apparatus and equipment belonging to the Fire Department. Whenever any purchases are to be made, or the fire apparatus used by the Fire Department requires attention or repairs, he shall make a report and recommendation to Council unless the repairs needed are of such character that will require immediate attention.
- (4) He shall have authority to direct the pulling down or destroying of any fence, house, building or other thing, if deemed necessary to prevent the spreading of a fire.
- (5) He shall be responsible for the keeping of necessary records for the Fire Department. Such records shall list and note, inter alia, the state of repair of all property belonging to the Fire Department. He shall record and report annually to the City Council a statement of all fires occurring since the previous report, the units and personnel responding to alarms, the loss and insurance as far as ascertained, the causes of any such fires, together with such suggestions as he may deem advisable to bring the number of fires to a minimum. He shall also keep at this office such books or other records as Council may prescribe. (Passed 3-6-45.)

#### **141.03 AUTHORITY TO COMMAND.**

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

**ARTICLE 143**  
**Emergency Ambulance and Medical Services**

**143.01 Definitions.****143.02 Service charge.**

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**143.01 DEFINITIONS.**

The following definitions will be used in interpreting this article.

- (a) CITY: The residents of the City of Williamstown.
- (b) OWNER: One who owns and utilizes a residential unit.
- (c) RESIDENTIAL UNIT: One room or a suite of two or more rooms in a building designated and/or used by one or more persons for living and sleeping purposes and having at least one kitchen or kitchenette, which unit is located within the confines and the boundaries of the City of Williamstown, West Virginia.
- (d) TENANT: One who leases and/or utilizes a residential unit for one or more persons. (Ord. 9-4-84; 8-29-95.)

**142.02 SERVICE CHARGE.**

There shall be charged to the owner and/or tenant of each residential unit as heretofore described, the charge of two dollars (\$2.00) per month for said emergency ambulance and medical service.

- (a) Collection of Service Charge. The above charge will be collected by the Clerk by including the service charge to the water bills of each owner and/or tenant of the aforescribed units. In the event that the aforesaid owner and/or tenant does not receive a monthly water bill from the City, the said owner and/or tenant shall be billed monthly by the Clerk for the aforesaid service charge.
- (b) The City Clerk, with the approval of the Mayor and Council, may make such other provisions as they may deem necessary or proper, consistent with this section, for the collection and periodic collection for the charges for the service as provided herein. (Passed 9-4-84; 8-29-95)





**ARTICLE 145**  
**Planning Commission**

<b>145.01</b>	<b>Creation.</b>	<b>145.05</b>	<b>Duties.</b>
<b>145.02</b>	<b>Purposes.</b>	<b>145.06</b>	<b>Approval and recording of</b>
<b>145.03</b>	<b>Quorum.</b>		<b>subdivision plats.</b>
<b>145.04</b>	<b>Office; records.</b>	<b>145.07</b>	<b>Additional powers and duties.</b>

**CROSS REFERENCES**

Authority to establish - see W.Va. Code 8A-2-1, 8A-2-3  
 Meetings - see W.Va. Code 8A-2-7  
 Quorum - see W.Va. Code 8A-2-8  
 Officers - see W.Va. Code 8A-2-9  
 Powers and duties - see W.Va. Code 8A-2-10, 8A-2-11

**145.01 CREATION.**

(a) There is hereby created a Planning Commission for the City, consisting of one Councilman as designated by the Mayor and four other members, who may be referred to as "citizen members," who shall be appointed by the Mayor with the approval of Council. The Councilman member of the Planning Commission shall serve for a term concurrent with his respective term as Councilman. The citizen members shall serve for a term of two years commencing on May 1 and until their respective successors have been duly appointed and qualified.

(b) Vacancies in the citizen membership other than by reason of termination of a term of office shall be filled for the unexpired term only. Members of the Commission shall serve without compensation. (undated, § 1.)

**145.02 PURPOSES.**

The purpose of the Planning Commission shall be to make careful and comprehensive surveys and studies of present conditions and future growth of the City, with due regard to its relation to neighboring territory, with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the City and its environs which will, in accordance with present and future needs, best promote the public health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements. (Undated, § 2.)

**145.03 QUORUM.**

At all meetings of the Planning Commission a quorum shall consist of a majority of the members, and a quorum shall be necessarily present for the conduct of its legal business. No action of the commission shall be official, however, unless authorized by a majority of all the members of the Commission at a regular or properly called special meeting. (Undated, second § 4.)

**145.04 OFFICE; RECORDS.**

The office and place of business of the Planning Commission shall be the City building, and all records of the Commission shall be kept thereat. (Undated, § 5.)

**145.05 DUTIES.**

(a) The duties of the Planning Commission shall include the preparing of plans for the development of the whole or any portion of the City and any land outside thereof which, in the opinion of the Commission, bears relation to the planning of the City; provided, that the power of the Planning Commission shall not extend beyond the territorial limits of the City except to cooperate with, and seek the cooperation of, county and neighboring municipal planning commissions so far as is reasonably necessary to protect the community, both within and without the corporate limits, against inadequate streets, highways and sewers, and inadequately planned and zoned territory. Such plans shall show recommendations for new streets, bridges, parks, parkways and other public areas or public improvements and matters properly pertaining to the purposes of the Commission.

(b) Before final action shall be taken by the City or any department thereof on the location and design of any public building, public memorial, street, alleyway, park, parkway, playground or other public area, such question shall be submitted to the Planning Commission for investigation and report. (Undated, § 3.)

**145.06 APPROVAL AND RECORDING OF SUBDIVISION PLATS.**

(a) All plans, plats or re-plats of land laid out in building lots, and the streets intended to be dedicated to public use, shall be submitted to the Planning Commission for its consideration, and no such plat or re-plat shall be filed in the office of the Clerk of the County Court, as provided by law in other cases, until such plat or re-plat shall have endorsed upon it the fact that it has first been submitted to the Planning Commission and, by the Commission, to Council and duly approved by Council.

(b) In no event shall the Planning Commission keep any such plans, plats or re-plats under consideration for a period longer than two months; in the event that such matters are retained by the Commission for this period, the matters shall automatically become transferred from this Commission to Council for consideration and disposition.  
(Undated, § 4.)

**145.07 ADDITIONAL POWERS AND DUTIES.**

In addition to the powers and duties provided in this article, the Planning Commission shall have the powers and perform the duties prescribed for Planning Commissions in Article 8A of the Code of West Virginia.



**ARTICLE 146**  
**Sanitary Board**

- |   |  |
|---|--|
| <b>146.01 Created; composition; appointment and terms of members.</b> | <b>146.03 Officers; bylaws, rules and regulations.</b> |
| <b>146.02 Eligibility.</b>  | <b>146.04 Compensation and expenses; bond.</b>         |
|   | <b>146.05 Powers and duties.</b>                       |

**CROSS REFERENCES**

Composition of board - see W.Va. Code 16-13-18  
 Publication of financial statement - see W.Va. Code 16-13-18A  
 Powers and duties - see W.Va. Code 16-13-3 et seq.

**146.01 CREATED; COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS.**

There is hereby created the Sanitary Board of the City, which shall be composed of the Mayor and four persons appointed by the City Council, one of whom must be registered professional engineer. The engineer member of the Board need not be a resident of the City. Members of the Board who were appointees at the time of the adoption of this amendment shall continue to serve for terms of three years from the date of their appointment, and appointment of successors shall be made in the like manner for terms of three years. The two additional members appointed subsequent to the adoption of this amendment shall serve for initial terms of two years, and upon the expiration of such terms, appointment of successors shall be made in like manner for terms of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. (Passed 3-16-04.)

**146.02 ELIGIBILITY.**

No City officer or employee, whether holding a paid or unpaid position, shall be eligible to appointment on the sanitary board until at least one year after the expiration of the term of his public office or position.  
 (Passed 6-3-58.)

**146.03 OFFICERS; BYLAWS, RULES AND REGULATIONS.**

The Mayor shall act as Chairman of the Sanitary Board, which shall elect a Vice-Chairman from its members and shall designate a Secretary and a Treasurer (but the Secretary and the Treasurer may be one and the same person), who need not be a member or members of the Sanitary Board. The Vice Chairman, Secretary and Treasurer shall hold office as such at the will of the Sanitary Board. The Sanitary Board shall have power to establish bylaws, rules and regulations for its own government.

(Passed 6-3-58.)

**146.04 COMPENSATION AND EXPENSES; BOND.**

(a) Each member of the Sanitary Board shall receive such compensation as shall be provided by Council, which shall not be less than five dollars (\$5.00) per meeting not to exceed thirty-six meetings per fiscal year, and shall be entitled to payment for his reasonable expenses incurred in the performance of his duties.

(b) The Treasurer of the Sanitary Board shall give bond with corporate surety, payable to the City and in such amount as shall be fixed by Council, conditioned upon the faithful performance of his duty, a true accounting to give of all City funds, negotiable instruments and securities received or handled by him or coming within his custody or under his control, and payment thereof to the City.

(c) All expenses incurred by the Sanitary Board, including compensation of its members, shall be paid solely from funds derived under authority of chapter 16, article 13 of the Code of West Virginia.

(Passed 6-3-58.)

**146.05 POWERS AND DUTIES.**

The construction, acquisition, improvements, equipment, custody, operation and maintenance of all works for the collection, treatment or disposal of sewage within or without the corporate limits of the City, the collection of revenues therefrom for the services rendered thereby, and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other employees, as in the judgment of the Sanitary Board may be necessary in the execution of its powers and duties, shall be under the supervision and control of the Sanitary Board. The Sanitary Board created by this article shall have, in addition to the powers enumerated herein, all other powers provided for such boards in chapters 8, article 13, of the Code of West Virginia, and the Sanitary Board shall conform to all applicable provisions thereof.

(Passed 6-3-58.)

**ARTICLE 147**  
**Tree Commission**

**147.01 Composition; appointment.**  
**147.02 Organization; meeting; rules.**

**147.03 Recommendations.**

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**147.01 COMPOSITION; APPOINTMENT.**

(a) The Tree Commission shall consist of five persons, all of whom shall be electors of the City; four shall be appointed by Council; and one member of Council, who shall be appointed by the Mayor.

(b) The members of the Commission shall serve without compensation and the four members appointed by Council shall serve for a term of three years or until their successors are appointed, provided, however, the first appointments of the members of the Commission shall be for terms of one, two or three years, respectively. The members of Council shall serve on the Commission during his or her continuance in office. (Passed 12-7-82)

**147.02 ORGANIZATION; MEETING; RULES.**

The Tree Commission shall organize by electing a Chairman and Secretary and any other officers which the Commission may deem necessary. Meetings of the Commission shall be held at the call of the Chairman and at such other times as the Commission may determine. The Commission shall adopt rules for its own procedure and shall keep a record of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. (Passed 12-7-82.)

**147.03 RECOMMENDATIONS.**

The Commission shall make recommendations deemed by it necessary to provide for the proper care, planting, removal and for the replacement of trees in the public streets, avenues, highways and public places of the City.  
(Passed 12-7-82.)





## **ARTICLE 149**

### **Employment Provisions**

- |  |   |
|--|---|
| <b>149.01 Discrimination, work place harassment and grievance procedures.</b><br><b>149.02 Hours of work.</b><br><b>149.03 Holidays.</b> | <b>149.04 Vacations.</b><br><b>149.05 Sick pay.</b><br><b>149.06 Disciplinary action.</b><br><b>149.07 Medical insurance.</b> |
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#### **CROSS REFERENCES**

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

#### **149.01 DISCRIMINATION, WORK PLACE HARASSMENT AND GRIEVANCE PROCEDURES.**

(a) Equal Employment Opportunity. The City of Williamstown is committed to the maximum utilization of its employee's abilities and to the principles of equal employment opportunity. The opportunities afforded throughout the organization are available equally to all. Applicants and employees are evaluated solely on the basis of job qualifications. The City of Williamstown does not, and shall not, discriminate against any person on the basis of race, color, religion, sex or sexual orientation, national origin, age or disability that does not prevent a person from performing the essential functions of his or her job, veteran status, citizenship, or any other characteristic covered by federal, state or local law.

- (1) Equal Employment Opportunity takes place in all employment practices: hiring, promotion, demotion, transfer, recruitment, termination, rates of pay or other forms of compensation, and selection for training.

- (2) The City of Williamstown intends to provide every employee with a working environment free from harassment. Individually and collectively, to share the responsibility for understanding the great importance of a pleasant work environment, and for assuring that every employee is welcomed, accepted and rewarded according to his or her contributions to the attainment of those objectives and purposes of municipal government.

(b) Policy against Sexual Harassment. It is the policy of the City of Williamstown to prohibit harassment of employees and/or prospective employees on the basis of sex. All employees who have supervisory responsibility are jointly responsible with the City of Williamstown for the effective administration of this policy.

- (1) Unwelcome sexual advances, requests for sexual favor and/or other verbal or physical contact of a sexual nature constitutes sexual harassment when:
  - A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - B. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or
  - C. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (2) Actual harassment includes, but is not limited to, repeated offensive sexual flirtations; advances or propositions; continued or repeated commentaries about an individual's body; offensive sexual language; and the display in the work place of sexually suggestive pictures or objectives.
- (3) All forms of sexual harassment as herein defined and described are prohibited, whether verbal, non-verbal or physical.
- (4) Employees who believe that have been sexually harassed should follow the steps outlined in the Problem Solving Procedure described in the following section.

(c) Problem Solving Procedures. It is the goal of the City of Williamstown to treat employees fairly and equally. The City encourages employees to make supervisors and management aware of their concerns. Complaints and disagreements should be dealt with promptly and as near to the point of origin as possible. Under no circumstances will an employee be penalized for presenting a complaint to his or her supervisor. It is the policy of the City that all employees have a right to work in an environment free of discrimination, which includes freedom from sexual or any other form of harassment. If an employee believes he or she has been discriminated against or sexually harassed, the employee should report the same immediately to his or her supervisor. If for some reason the supervisor is not immediately available, or the employee does not feel comfortable talking to the supervisor, the employee should talk to his or her department head. If the department head is the same individual as the employee's supervisor, or if the employee likewise feels uncomfortable talking to the department head, the employee should contact the Mayor. The City will make every effort to resolve the complaint and protect the confidence of the employee. In addition, the employee will not suffer retaliation for initiating investigations or lodging complaints.

- (1) If wrongdoing is established, appropriate corrective action will be taken. This corrective action may include discipline, up to and including termination, of any employee whose actions have been contrary to the policies of the City of Williamstown as herein set forth.
- (2) If the matter is not resolved to the employee's satisfaction, the employee may contact the Mayor or request executive session with City Council to discuss the matter. (Passed 9-20-05.)

#### **149.02 HOURS OF WORK.**

(a) All hourly employees are expected to be at their job assignment location ready for work at 8 a.m. and will work an eight(8) hour day, commencing from 7:30 a.m. until 4:00 p.m., with an allowance of one-half (½) of an hour for lunch.

(b) All hours worked over forty (40) in one (1) week, will be paid for at one and one-half (1 ½) times the regular rate of pay for the job.

(c) All sewer and/or water line work performed between the hours of 12:00 a.m., midnight and 6:30 a.m., will be paid for at one and one-half (1 ½) times the regular rate of pay for the job.

(d) All employees hired on the hourly wage-roll will be considered probationary employees for a period of ninety (90) days. At the end of the ninety (90) day period, they become regular employees, accruing to them the benefits that are inherent in our City benefit program.

- (1) During the probationary period, they may be terminated on the recommendation of their Supervisor, and with the authority of the Mayor.
- (2) After the probationary period, termination of any employee will be at the discretion of the Mayor and Council .  
(Passed 2-21-84.)

#### **149.03 HOLIDAYS.**

(a) Any holiday falling on Saturday will be observed on Friday.

(b) Any holiday falling on Sunday will be observed on Monday.

(c) Any employee required to work on any of the below listed holidays will be paid, in addition to their paid holiday, one and one-half (1 ½) times for all hours worked.

(d) Any holiday falling during an employee's vacation will add one day of vacation time to his/her scheduled vacation. (Passed 12-5-95.)

(e) City employees shall be entitled to holidays on all holidays designated by the State of West Virginia or declared by the Governor.

**149.04 VACATIONS.**

(a) The amount of vacation for all hourly employees is based on the months at work, in the preceding calendar year.

- (1) Two (2) months: No vacation
- (2) Four (4) months: ½ allowed vacation
- (3) Six (6) months: Full vacation

(b) Employees with one (1) year of continuous service will be eligible for two weeks of vacation, at his regular rate of pay (40 hrs. X rate) on his anniversary date.

- (1) On his fifth (5th) anniversary he will be eligible for three (3) weeks at his regular rate of pay (120 hrs. X rate).
- (2) On his fifteenth (15th) anniversary he will be eligible for four (4) weeks, at his regular rate of pay (160 hrs. X rate).

(c) After the first (1st) anniversary vacation, the vacation period will be determined by January of subsequent year. However, increases in vacation allowance will not be paid for until anniversary date establishing the increase.

(d) All hourly vacations shall be taken or paid for before year end; none will be carried into subsequent year.

(e) All salaried vacations must be taken, no carry over will be considered, until employee has at least fifteen years of service. Then it will take a majority vote of Council to allow the exception to the regular policy. No more than one (1) week of vacation carry over will be allowed, at any time.

(f) Employees will be given their choice of the vacation period whenever possible, based on work requirements, availability of replacements and Seniority.  
(Passed 2-21-84.)

**149.05 SICK PAY.**

Regular permanent employees, after six (6) months of service may be considered for sick leave, based on the following:

An employee absent from work because of illness or bodily injury, not job related, shall be given a credit on one (1) work day, per month, sick leave, with pay for each calendar month of employment, up to a total of ninety (90) days. A doctor's certificate must be submitted to the employee's Supervisor, or to the City Clerk, before paid sick leave can be approved.

Employees are not entitled to payment for accrued sick leave from separation from employment.  
(Passed 2-21-84.)

**149.06 DISCIPLINARY ACTION.**

(a) First offense or violation of City Personnel policy, or City Safety Regulations, etc. Employee will be talked to, by his Supervisor and told what he/she has to do, in order to be in conformance. Both the discussion and comments will be written up and posted in employee's personnel file, in the Clerk's office.

(b) Second offense or violation.

Employee will be talked to as in step one (a), above and given one (1)-two (2) days off, to think about his position and attitude toward his job.

(c) Third offense or violation.

Termination.

(Passed 2-21-84.)

**149.07 MEDICAL INSURANCE.**

The City of Williamstown will provide the employees of the City with a medical and hospitalization insurance policy at no cost to the employees of the City.

(Passed 11-17-87.)



**CHAPTER SEVEN - Judicial**  
**Art. 171. Municipal Court.**

**ARTICLE 171**  
**Municipal Court**

<b>171.01</b>	<b>Created.</b>	<b>171.05</b>	<b>Costs.</b>
<b>171.02</b>	<b>Municipal Judge.</b>	<b>171.06</b>	<b>Appeals.</b>
<b>171.03</b>	<b>Docket; disposition of fees, fines and costs.</b>	<b>171.07</b>	<b>Acting Municipal Judge.</b>
<b>171.04</b>	<b>Record of traffic cases; Traffic Violations Bureau.</b>	<b>171.08</b>	<b>Fines and costs when defendants unable to pay forthwith.</b>

**CROSS REFERENCES**

Establishment - see W.Va. Code 8-10-2  
 General rights of appeal - see W.Va. Code 8-34-1  
 Costs for crime victims reparation fund - see W.Va. Code 14-2A-4  
 Costs for funding law enforcement training academies - see W.Va. Code  
 30-29-4  
 Search warrant - see W.Va. Code 62-1A-1  
 Payment of fine by credit card - see W.Va. Code 8-10-2a

**171.01 CREATED.**

There is hereby created a Municipal Court for the City, which shall be presided over by a Municipal Judge. (Passed 7-16-74.)

**171.02 MUNICIPAL JUDGE.**

(a) There shall be a Municipal Judge who shall be nominated by the Mayor and appointed by Council by resolution, who shall hold his office at the pleasure of Council and who shall receive such compensation as may be fixed by Council. The person so appointed as Municipal Judge shall qualify by taking the oath of office as such and shall give bond in an amount fixed by Council, under which bond he shall be responsible for all funds coming into his hands by virtue of such appointment.

(b) The Municipal Judge shall be a Conservator of the Peace within the City, and insofar as any ordinance of the City is concerned, shall have and exercise all such powers and duties in criminal cases as a magistrate may lawfully exercise under the statutes of the State, and he shall also be ex officio a magistrate within the City, and shall, within the City, have and exercise all of the criminal powers and perform all duties fixed by law in a magistrate, except that he shall have no jurisdiction in civil cases, and shall have such further powers and perform such other duties as may be from time to time prescribed or conferred by any law of the State or by ordinance of the City. (Passed 7-16-74)

#### **171.03 DOCKET; DISPOSITION OF FEES, FINES AND COSTS.**

There shall be a docket of the Municipal Court and it shall be the duty of the Municipal Judge to docket fully thereon all cases in the court, and shall shown thereon all fees, fines and costs adjudged and collected. The Municipal Judge shall, at least once a month, make a written report to the City Clerk showing all receipts for the previous month and shall pay over and deliver to the City Clerk all such money so received and to which the City is entitled, which money shall be deposited in the City General Fund. Each such report shall be presented to Council at its next regular meeting.

(Passed 7-16-74.)

#### **171.04 RECORD OF TRAFFIC CASES; TRAFFIC VIOLATIONS BUREAU.**

The Municipal Judge shall keep or cause to be kept a record of every traffic complaint, or other legal form of traffic charge deposited with or presented to the Municipal Court or its Traffic Violations Bureau, if and when he shall establish such bureau, and shall keep a record of every official action by the Court or its Traffic Violations Bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint deposited with or presented to the Court or Traffic Violations Bureau. (Passed 7-16-74.)

#### **171.05 COSTS.**

There should be assessed against all defendants that come before the Municipal Court for a moving traffic violation. Such charges as are mandated by the State of West Virginia.

#### **171.06 APPEALS.**

Every person convicted of any violation by the Judge of the Municipal Court shall be allowed to appeal such conviction to the Circuit Court of Wood County. The procedure upon appeal from the Municipal Court shall be the same as appeals from a Magistrate's Court.



**171.07 ACTING MUNICIPAL JUDGE.**

In the event of the temporary absence of the Municipal Judge from the duties, the Mayor shall appoint a person similarly qualified to serve as Municipal Judge during such absence without the necessity of City Council approval.  
(Passed 7-16-74.)

**171.08 FINES AND COSTS WHEN DEFENDANTS UNABLE TO PAY FORTHWITH.**

(a) Installment Method. Whenever a person is convicted in the municipal court of a violation of this Code or other ordinance or any rules, regulation, notice or order promulgated pursuant to authority thereof, and such person is sentenced to pay a fine, and it shall appear to the court on its own motion or on motion of the defendant that such a defendant is unable to pay such fine forthwith, the court may order the defendant to pay such fine and any costs which the defendant may be required to pay in installments or upon such other terms and conditions or within such period of time as may enable the defendant to pay such fine and costs.

(b) Determination of Ability to Pay.

- (1) In determining whether a defendant is unable to pay a fine forthwith, the court may require such defendant to file a petition, under oath, with the court, upon a form provided by the court, setting forth the financial condition of the defendant.
- (2) Such form shall be a questionnaire, and shall include, but shall not be limited to: The name and residence of the defendant; his occupation, if any; his family status and the number of persons dependent upon him; his monthly income; whether or not his dependents are employed and, if so, their approximate month income; his banking accounts, if any; real estate owned by the defendant, or any interest he may have in real estate; income produced therefrom; any independent income accruing to the defendant; tangible and intangible personal property owned by the defendant, or in which he may have an interest; and a statement listing the approximate indebtedness of the defendant to other persons. Such form shall also include a payment plan of the defendant, if the court should exercise its discretion in permitting the payment of such fine and costs in installments or other conditions to be fixed by the court. At the end of such form there shall be printed in bold face type, in a distinctive color the following: "THIS STATEMENT IS MADE UNDER OATH. ANY FALSE STATEMENT OF A MATERIAL FACT TO ANY QUESTION CONTAINED HEREIN SHALL CONSTITUTE FALSE SWEARING AND SHALL BE AN OFFENSE AGAINST THIS SECTION. THE MAXIMUM PENALTY IS \$100 FINE OR THIRTY DAYS IN JAIL, OR BOTH." A copy of the petition shall be retained by the defendant.
- (3) If the defendant is unable to read or write, the court, or the clerk, may assist the defendant in completing the petition and require him to affix his mark thereto. The consequences of the making of a false statement shall be explained to such defendant.

- (4) Any defendant who shall knowingly make a false statement of a material fact to any question contained in the questionnaire authorized by this section shall be guilty of false swearing and, upon conviction, shall be subject to a fine not exceeding one hundred dollars or thirty days imprisonment, or both.

(c) Good behavior. If a defendant is permitted to pay a fine or fine and costs on an installment basis, or under such other conditions as the court shall fix under the provisions of subsection (a) hereof, the court may require as a condition that the defendant be of peace and good behavior until the fine and costs are paid.

(d) Default. When any person sentenced to pay a fine defaults in the payment of any such fine or of any installment thereof, the court may issue a summons for such person to appear before the court for a hearing on the question of whether such person's failure to pay the fine or any installment was attributable to intentional refusal to comply with the prior order of the court or to a lack of a good faith effort to comply therewith. The court may, after hearing, order that the person in default be allowed additional time for payment, may reduce or remit the amount of the fine or the unpaid portion thereof in whole or in part, or upon a finding that the default was intentional or due to the lack of a good faith effort to comply with the prior order of the court, may order such person confined for such period up to thirty days, as the court in its discretion shall determine. (Passed 7-16-74.)

## **CODIFIED ORDINANCES OF WILLIAMSTOWN**

### **PART THREE - TRAFFIC CODE**

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#### **CHAPTER ONE - Administration**

- Art. 301. Definitions.
- Art. 303. Enforcement, Impounding and Penalty.
- Art. 305. Traffic Control.

#### **CHAPTER THREE - Streets and Traffic Control Devices**

- Art. 311. Street Obstructions and Special Uses.
- Art. 313. Traffic Control Devices.

#### **CHAPTER FIVE - Vehicular Operation**

- Art. 331. Crashes.
- Art. 333. Driving Under the Influence; Reckless Driving.
- Art. 335. Speed Restrictions.
- Art. 337. Driving on Right; Passing.
- Art. 339. Turning and Starting; Signals.
- Art. 341. Right of Way.
- Art. 343. Special Stops Required.
- Art. 345. Safety and Equipment.
- Art. 347. Commercial and Heavy Vehicles.
- Art. 349. Miscellaneous Rules.
- Art. 351. Licensing Generally.
- Art. 353. Commercial Drivers.
- Art. 355. All-Terrain Vehicles.

#### **CHAPTER SEVEN - Parking**

- Art. 361. Parking Generally.

#### **CHAPTER NINE - Pedestrians and Bicycles**

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



## CODIFIED ORDINANCES OF WILLIAMSTOWN

### PART THREE - TRAFFIC CODE

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#### CHAPTER ONE - Administration

- Art. 301. Definitions.  
 Art. 303. Enforcement, Impounding and Penalty.  
 Art. 305. Traffic Control.

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#### ARTICLE 301 Definitions

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| <p>301.01 Meaning of words and phrases.<br/>           301.02 Authorized emergency vehicle.<br/>           301.03 Bicycle.<br/>           301.04 Bus.<br/>           301.05 Business district.<br/>           301.06 Controlled-access highway.<br/>           301.07 Crosswalk.<br/>           301.08 Driver.<br/>           301.081 Electric personal assistive mobility device.<br/>           301.09 Explosives.<br/>           301.10 Flammable liquid.<br/>           301.11 Gross weight.<br/>           301.12 Intersection.<br/>           301.13 Laned roadway.<br/>           301.14 Moped.<br/>           301.15 Motorcycle.<br/>           301.16 Motor-driven cycle.<br/>           301.17 Motor vehicle.<br/>           301.18 Owner.<br/>           301.19 Park.<br/>           301.20 Parking area.<br/>           301.201 Passenger van.<br/>           301.21 Pedestrian.<br/>           301.22 Person.<br/>           301.23 Pole trailer.<br/>           301.24 Police officer.<br/>           301.25 Private road or driveway; private property.<br/>           301.26 Railroad.</p> | <p>301.27 Railroad sign or signal.<br/>           301.28 Railroad train.<br/>           301.29 Residence district.<br/>           301.30 Residential street.<br/>           301.31 Right of way.<br/>           301.32 Roadway.<br/>           301.33 Safety zone.<br/>           301.34 School bus.<br/>           301.35 School grounds.<br/>           301.36 Semitrailer.<br/>           301.37 Sidewalk.<br/>           301.38 Stop.<br/>           301.39 Stop, stopping or standing.<br/>           301.40 Street or highway; alley.<br/>           301.41 Through street or through highway.<br/>           301.42 Traffic.<br/>           301.43 Traffic control devices.<br/>           301.44 Traffic control signal.<br/>           301.45 Trailer.<br/>           301.46 Truck.<br/>           301.47 Vehicle.<br/>           301.48 Wheelchair.</p> |
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**CROSS REFERENCES**

See sectional histories for similar State law  
Speed race defined - see TRAF. 335.04

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**301.01 MEANING OF WORDS AND PHRASES.**

The following words and phrases when used in this Traffic Code shall, for the purpose of this Traffic Code, have the meanings respectively ascribed to them in this article.  
(WVaC 17C-1-1)

**301.02 AUTHORIZED EMERGENCY VEHICLE.**

"Authorized emergency vehicle" means vehicles of the Fire Department, duly chartered rescue squad, Police Department, ambulance service, state, county or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, and Class A vehicles of members of duly chartered rescue squads, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by West Virginia Code 17A-10-1. Agency authorization and emergency equipment are defined in West Virginia Code 17C-15-26. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles.  
(WVaC 17C-1-6)

**301.03 BICYCLE.**

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.  
(WVaC 17C-1-8)

**301.04 BUS.**

"Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (WVaC 17C-1-13)

**301.05 BUSINESS DISTRICT.**

"Business district" means the territory contiguous to and including a street or highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the street or highway.  
(WVaC 17C-1-45)

**301.06 CONTROLLED-ACCESS HIGHWAY.**

"Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.  
(WVaC 17C-1-41)

**301.07 CROSSWALK.**

"Crosswalk" includes:

- (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and
- (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (WVaC 17C-1-43)

**301.08 DRIVER.**

"Driver" means every person who drives or is in actual physical control of a vehicle. (WVaC 17C-1-31)

**301.081 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.**

"Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour. (WVaC 17C-1-66)

**301.09 EXPLOSIVES.**

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combusive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. (WVaC 17C-1-24)

**301.10 FLAMMABLE LIQUID.**

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

**301.11 GROSS WEIGHT.**

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

**301.12 INTERSECTION.**

"Intersection" includes:

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

**301.13 LANED ROADWAY.**

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

(WVaC 17C-1-39)

**301.14 MOPED.**

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

(WVaC 17C-1-5a)

**301.15 MOTORCYCLE.**

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

(WVaC 17C-1-4)

**301.16 MOTOR-DRIVEN CYCLE.**

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

(WVaC 17C-1-5)

**301.17 MOTOR VEHICLE.**

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheelchairs. (WVaC 17C-1-3)

**301.18 OWNER.**

"Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Traffic Code.

(WVaC 17C-1-32)

**301.19 PARK.**

"Park" when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

(WVaC 17C-1-54)



**301.20 PARKING AREA.**

"Parking area" means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge. (WVaC 17C-1-60)

**301.201 PASSENGER VAN.**

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by daycare centers, after-school centers and nursery schools: provided, that the term "passenger van" does not include any van or other motor vehicle which is utilized for the specific purpose of transporting children to medical facilities for the purpose of medical or dental treatment and which loads and unloads the children on private property, making no stops for loading or unloading along public roads or highways. (WVaC 17C-1-64)

**301.21 PEDESTRIAN.**

"Pedestrian" means any person afoot or any person using a wheelchair. (WVaC 17C-1-30)

**301.22 PERSON.**

"Person" means every natural person, firm, copartnership, association or corporation. (WVaC 17C-1-29)

**301.23 POLE TRAILER.**

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, trusses or structural members capable, generally, of sustaining themselves as beams between the supporting connections. (WVaC 17C-1-17)

**301.24 POLICE OFFICER.**

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. (WVaC 17C-1-33)

**301.25 PRIVATE ROAD OR DRIVEWAY; PRIVATE PROPERTY.**

(a) "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(b) "Private property" means real estate in private ownership without regard to the manner in which it is used. (WVaC 17C-1-36)

**301.26 RAILROAD.**

"Railroad" means a carrier of persons or property, upon cars, other than streetcars, operated upon stationary rails. (WVaC 17C-1-21)

**301.27 RAILROAD SIGN OR SIGNAL.**

"Railroad sign" or "signal" means any sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. (WVaC 17C-1-49)

**301.28 RAILROAD TRAIN.**

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

(WVaC 17C-1-22)

**301.29 RESIDENCE DISTRICT.**

"Residence district" means the territory contiguous to and including a street or highway not comprising a business district when the property on such street or highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

(WVaC 17C-1-46)

**301.30 RESIDENTIAL STREET.**

"Residential street" means the entire width between the boundary lines of every way, whether publicly or privately maintained, located within any subdivision, development or other similar area used primarily for residential purposes when any part thereof is open to the common use of those living in such area for the purpose of vehicular travel.

(WVaC 17C-1-62)

**301.31 RIGHT OF WAY.**

"Right of way" means the privilege of the immediate use of the street or highway.

(WVaC 17C-1-51)

**301.32 ROADWAY.**

"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street or highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(WVaC 17C-1-37)

**301.33 SAFETY ZONE.**

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

(WVaC 17C-1-44)

**301.34 SCHOOL BUS.**

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school.

(WVaC 17C-1-7)

**301.35 SCHOOL GROUNDS.**

"School grounds" includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school.

(WVaC 17C-1-55)

**301.36 SEMITRAILER.**

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. (WVaC 17C-1-16)

**301.37 SIDEWALK.**

"Sidewalk" means that portion of a street or highway between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.  
(WVaC 17C-1-38)

**301.38 STOP.**

"Stop" when required, means complete cessation from movement.  
(WVaC 17C-1-52)

**301.39 STOP, STOPPING OR STANDING.**

"Stop", "stopping," or "standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.  
(WVaC 17C-1-53)

**301.40 STREET OR HIGHWAY; ALLEY.**

(a) "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.  
(WVaC 17C-1-35)

(b) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

**301.41 THROUGH STREET OR THROUGH HIGHWAY.**

"Through street" or "through highway" means every street or highway or portion thereof at the entrances to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this Traffic Code.  
(WVaC 17C-1-40)

**301.42 TRAFFIC.**

"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any street or highway for purposes of travel.  
(WVaC 17C-1-50)

**301.43 TRAFFIC CONTROL DEVICES.**

"Traffic control device" means any sign, signal, marking and device not inconsistent with this Traffic Code placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.  
(WVaC 17C-1-47)

**301.44 TRAFFIC CONTROL SIGNAL.**

"Traffic control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.  
(WVaC 17C-1-48)

**301.45 TRAILER.**

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.  
(WVaC 17C-1-15)

**301.46 TRUCK.**

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.  
(WVaC 17C-1-12)

**301.47 VEHICLE.**

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs.  
(WVaC 17C-1-2)

**301.48 WHEELCHAIR.**

"Wheelchair" means a motorized or nonmotorized wheeled device designed for, and used by, a person with disabilities that is incapable of a speed in excess of eight miles per hour.  
(WVaC 17C-1-65)

**ARTICLE 303**  
**Enforcement, Impounding and Penalty**

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

**CROSS REFERENCES**

See sectional histories for similar State law  
Disposition of abandoned vehicles - see W. Va. Code 17-24-5 et seq.  
Uniform application of West Virginia traffic law - see W. Va. Code 17C-2-7  
Power of local authorities - see W. Va. Code 17C-2-8

**303.01 AUTHORITY OF POLICE AND FIRE DEPARTMENT OFFICIALS.**

(a) It shall be the duty of the officers of the Police Department to enforce all street traffic laws of this Municipality and all of the State vehicle laws applicable to street traffic in this Municipality.

(b) Officers of the Police Department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws; provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the Fire Department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

**303.02 APPLICATION TO VEHICLES UPON STREETS AND HIGHWAYS; EXCEPTIONS.**

The provisions of this Traffic Code relating to the operation of vehicles refer exclusively to the operation of vehicles upon streets and highways except:

- (a) Where a different place is specifically referred to in a given section.
- (b) The provisions of this Traffic Code except Article 347 shall apply upon streets and highways as defined in Section 351.06.  
(WVaC 17C-2-1)

**303.03 OBEDIENCE TO POLICE OFFICERS; FLEEING.**

(a) No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.

(WVaC 17C-2-3(c))

(b) No person shall operate a vehicle so as to willfully elude or flee a police officer or designated special officer after receiving a visible or audible signal from such an officer to bring his vehicle to a stop.

**303.04 APPLICATION TO GOVERNMENT VEHICLES; EXCEPTION.**

(a) The provisions of this Traffic Code applicable to the drivers of vehicles upon the streets or highways shall apply to the drivers of all vehicles owned or operated by the United States, this State, or any county, Municipality, town, district or any other political subdivision of the State, except as provided in this section and subject to such specific exceptions as are set forth in this Traffic Code with reference to authorized emergency vehicles.

(b) Unless specifically made applicable, the provisions of this Traffic Code shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a street or highway but shall apply to such persons and vehicles when traveling to or from such work.

(WVaC 17C-2-4)

**303.05 AUTHORIZED EMERGENCY VEHICLES.**

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

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

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by Section 345.18 which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(WVaC 17C-2-5)

### **303.06 APPLICATION TO PERSONS RIDING ANIMALS OR DRIVING ANIMAL-DRAWN VEHICLES.**

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Traffic Code, except those provisions of this Traffic Code which by their very nature can have no application.

(WVaC 17C-2-6)

### **303.07 IMPOUNDING OF VEHICLES; REDEMPTION.**

Police officers are authorized to provide for the removal and impounding of a vehicle under the following circumstances:

- (a) When any vehicle is left unattended upon any street, bridge or causeway and is so illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic, or so as to unreasonably interfere with street cleaning or snow removal operations.
- (b) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Article 17-24.
- (c) When any vehicle has been stolen or operated without the consent of the owner.
- (d) When any vehicle displays illegal license plates or fails to display the current lawfully required license plates.
- (e) When any vehicle has been used in or connected with the commission of a felony.
- (f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code or West Virginia Code Article 17C-15 whereby its continued operation would constitute a condition hazardous to life, limb or property.
- (g) When any vehicle is left unattended due to the removal of an ill, injured or arrested operator.
- (h) When any vehicle has been operated by any person who has failed to stop in case of a crash or collision.
- (i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked.

- (j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required.

Any vehicle removed under authority of subsection (b) hereof shall be disposed of as provided under West Virginia Code Article 17-24. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Department shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, reasons therefor and the place of storage. Any person desiring to redeem an impounded vehicle shall appear at the Police Department to furnish satisfactory evidence of identity and ownership or right to possession. Prior to issuance of a release form, the claimant, owner or operator shall either pay the amount due for any fines for violations on account of which such vehicle was impounded or, as the court may require, post a bond in an amount set by the court, to appear to answer to such violations. The pound operator shall release such vehicle upon the receipt of the release form and payment of all towage and storage charges.

### **303.08 RIGHTS OF OWNERS OF REAL PROPERTY.**

Nothing in this Traffic Code shall be construed to prevent an owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this Traffic Code, or otherwise regulating such use as may seem best to such owner. (WVaC 17C-2-9)

### **303.99 PENALTY.**

Whoever violates any provision of this Traffic Code for which another penalty is not provided shall, for a first conviction thereof, be fined not more than one hundred dollars (\$100.00); for a second such conviction within one year thereafter such person shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction such person shall be fined not more than five hundred dollars (\$500.00).



**ARTICLE 305**  
**Traffic Control**

**CROSS REFERENCES**

Uniformity with State law required - see W. Va. Code  
17C-2-7  
Powers of Municipality - see W. Va. Code 17C-2-8



CHAPTER THREE - Streets and Traffic Control Devices  
 Art. 311. Street Obstructions and Special Uses.  
 Art. 313. Traffic Control Devices.

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ARTICLE 311  
 Street Obstructions and Special Uses

- |               |  |               |                                 |
|---------------|--|---------------|---------------------------------|
| <b>311.01</b> | <b>Placing injurious material in street.</b> | <b>311.04</b> | <b>Parades and assemblages.</b> |
| <b>311.02</b> | <b>Play streets.</b>                         | <b>311.99</b> | <b>Penalty.</b>                 |
| <b>311.03</b> | <b>Toy vehicles on streets.</b>              |               |                                 |

CROSS REFERENCES

See sectional histories for similar State law  
 Authority to prohibit littering in streets - see  
     W. Va. Code 8-12-5(3)  
 Authority to regulate processions or assemblages -  
     see W. Va. Code 17C-2-8(a)(3)  
 Dropping, leaking loads - see TRAF. 347.04

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**311.01 PLACING INJURIOUS MATERIAL IN STREET.**

(a) No person shall throw or deposit upon any street or highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street or highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any street or highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the street or highway from such vehicle.  
 (WVaC 17C-14-11)

(d) No person shall throw, place or deposit upon any street or highway any material, article or substance which injures or damages, or is likely to injure or damage, the street or highway.

**311.02 PLAY STREETS.**

(a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Municipality for the purpose of engaging in or playing any games or athletic activities, except public ways specifically set aside for such purposes.

(b) When authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or highway or portion thereof except drivers of vehicles having business or whose residence is within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or highway or portion thereof.

**311.03 TOY VEHICLES ON STREETS.**

No person on roller skates or riding in or by means of any sled, toy vehicle, skateboard or similar device shall go upon any roadway except while crossing a street on a crosswalk and except on streets set aside as play streets.

**311.04 PARADES AND ASSEMBLAGES.**

No person, group of persons or organization shall conduct or participate in any parade, assemblage or procession other than a funeral procession upon any street or highway, or block off any street or highway area, without first obtaining a permit from the Police Chief.

Applications for such permit shall be made on such forms as may be prescribed and shall contain such information as is reasonably necessary to a fair determination of whether a permit should be issued. Applications shall be filed not less than five days before the time intended for such parade, procession or assemblage.

The permit may be refused or canceled if:

- (a) The time, place, size or conduct of the parade including the assembly areas and route of march would unreasonably interfere with the public convenience and safe use of the streets and highways.
- (b) The parade would require the diversion of so great a number of police officers to properly police the line of movement, assembly area and areas contiguous thereto so as to deny normal police protection to the Municipality.
- (c) The parade route of march or assembly areas would unreasonably interfere with the movement of police vehicles, fire-fighting equipment or ambulance service to other areas of the Municipality.
- (d) The parade would unreasonably interfere with another parade for which a permit has been issued.
- (e) The information contained in the application is found to be false, misleading or incomplete in any material detail.
- (f) An emergency such as a fire or storm would prevent the proper conduct of the parade.

The permit or any order accompanying it may limit or prescribe reasonable conditions, including the hours, the places of assembly and of dispersal, the route of march or travel and the streets, highways or portions thereof which may be used or occupied.

**311.99 PENALTY.**

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



### ARTICLE 313 Traffic Control Devices

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

#### CROSS REFERENCES

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

#### **313.01 OBEDIENCE TO TRAFFIC CONTROL DEVICES.**

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

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

### **313.02 OBEDIENCE TO TRAFFIC CONTROL INSTRUCTIONS AT STREET CONSTRUCTION.**

The driver of any vehicle shall obey the traffic-control instructions of any law enforcement officer or persons authorized by the Commissioner of Highways or by proper local authorities to operate traffic control devices, act as flagmen or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this Traffic Code.  
(WVaC 17C-3-4a)

### **313.03 TRAFFIC CONTROL SIGNAL TERMS AND LIGHTS.**

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

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



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

#### **313.04 PEDESTRIAN CONTROL SIGNALS.**

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

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

#### **313.05 FLASHING TRAFFIC SIGNALS.**

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

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

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

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

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

### **313.07 ALTERATION, INJURY, REMOVAL OF TRAFFIC CONTROL DEVICES.**

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

### **313.08 TRAFFIC VIOLATIONS IN CONSTRUCTION ZONES.**

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in West Virginia Code 17C-3-1, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) No person shall violate any posted speed restriction or traffic restriction at such construction site referred to in subsection (a) of this section.

(c) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this Traffic Code for such violation.  
(WVaC 17C-3-4b)

**313.99 PENALTY.**

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

- (a) General Penalty. Whoever violates Section 313.01, 313.02 or 313.04 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).
- (b) Construction Zones.
  - (1) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by less than fifteen miles per hour shall be fined not more than two hundred dollars (\$200.00).
  - (2) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in Section 313.08 by fifteen miles per hour or more shall be fined not more than two hundred dollars (\$200.00).



## CHAPTER FIVE - Vehicular Operation

- Art. 331. Crashes.
- Art. 333. Driving Under the Influence; Reckless Driving.
- Art. 335. Speed Restrictions.
- Art. 337. Driving on Right; Passing.
- Art. 339. Turning and Starting; Signals.
- Art. 341. Right of Way.
- Art. 343. Special Stops Required.
- Art. 345. Safety and Equipment.
- Art. 347. Commercial and Heavy Vehicles.
- Art. 349. Miscellaneous Rules.
- Art. 351. Licensing Generally.
- Art. 353. Commercial Drivers.
- Art. 355. All-Terrain Vehicles.

### ARTICLE 331 Crashes

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

### CROSS REFERENCES

See sectional histories for similar State law  
 Authority to require local crash report - see  
     W. Va. Code 17C-4-15  
 Impounding wrecked vehicles - see TRAF. 303.07  
 Removal of glass, etc. from highway - see TRAF. 311.01

**331.01 CRASHES INVOLVING DEATH OR PERSONAL INJURIES.**

(a) The driver of any vehicle involved in a crash resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close thereto as possible but shall then forthwith return to and shall remain at the scene of the crash until he or she has complied with the requirements of Section 331.03; provided, that the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to an injured person as required by Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary.

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

(c) Any person violating the provisions of subsection (a) of this section after being involved in a crash resulting in physical injury to any person is guilty of a misdemeanor, and subject to the penalty provided in this Traffic Code.  
(WVaC 17C-4-1)

**331.02 CRASHES INVOLVING DAMAGE TO VEHICLE.**

The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements of Section 331.03. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with such requirements under such circumstances shall be guilty of a misdemeanor.  
(WVaC 17C-4-2)

**331.03 DUTY TO GIVE INFORMATION AND RENDER AID.**

The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his or her name, address and the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.  
(WVaC 17C-4-3)

**331.04 COLLISION WITH UNATTENDED VEHICLE.**

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. (WVaC 17C-4-4)

**331.05 COLLISION WITH FIXTURES UPON A STREET OR HIGHWAY.**

The driver of any vehicle involved in a crash resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license and shall make report of such crash when and as required. (WVaC 17C-4-5)

**331.06 IMMEDIATE REPORTS OF CRASHES.**

The driver of a vehicle involved in a crash resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars (\$1,000) or more shall immediately by the quickest means of communication, give notice of such crash to the Police Department. (WVaC 17C-4-6)

**331.07 WHEN DRIVER UNABLE TO REPORT.**

Whenever the driver of a vehicle is physically incapable of making an immediate notification of a crash as required in Section 331.06 and there was another occupant in the vehicle at the time of the crash capable of making a notification, such occupant shall make or cause to be made such notification not made by the driver.  
(WVaC 17C-4-8)

**331.08 GARAGES TO REPORT BULLET DAMAGE.**

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the Police Department within twenty-four hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.  
(WVaC 17C-4-12)

**331.99 PENALTY.**

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





**ARTICLE 333**  
**Driving Under the Influence; Reckless Driving**

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

**CROSS REFERENCES**

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

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**333.01 DRIVING UNDER THE INFLUENCE.**

- (a) Any person who:
- (1) Drives a vehicle in this Municipality while he or she:
    - A. Is under the influence of alcohol;
    - B. Is under the influence of any controlled substance;
    - C. Is under the influence of any other drug;
    - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
    - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
  - (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000).
- (b) Any person who:
- (1) Drives a vehicle in this Municipality while he or she:
    - A. Is under the influence of alcohol;
    - B. Is under the influence of any controlled substance;
    - C. Is under the influence of any other drug;
    - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
    - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

- (2) While driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor, and shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).
- (c) Any person who:
  - (1) Drives a vehicle in this Municipality while he or she:
    - A. Is under the influence of alcohol;
    - B. Is under the influence of any controlled substance;
    - C. Is under the influence of any other drug;
    - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
    - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent, by weight;
  - (2) Is guilty of a misdemeanor, and, except as provided in West Virginia Code 17C-5-2(b), shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (d) Any person who drives a vehicle in this Municipality while he or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).
- (e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this Municipality, is guilty of a misdemeanor, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).
- (f) Any person who:
  - (1) Knowingly permits his or her vehicle to be driven in this Municipality by any other person who:
    - A. Is under the influence of alcohol;
    - B. Is under the influence of any controlled substance;
    - C. Is under the influence of any other drug;
    - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
    - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

- (2) Is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

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

(h) Any person under the age of twenty-one years who drives a vehicle in this Municipality while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as provided for in West Virginia Code 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e), (f) or (g) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

- (i) Any person who:

- (1) Drives a vehicle in this Municipality while he or she:
  - A. Is under the influence of alcohol;
  - B. Is under the influence of any controlled substance;
  - C. Is under the influence of any other drug;
  - D. Is under the combined influence of alcohol and any controlled substance or any other drug; or
  - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
- (2) The person while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor, and, shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000).

(j) A person violating any provision of subsection (a), (b), (c), (d), (e), (f) or (h) of this section, for the second offense under this section, is guilty of a misdemeanor and shall be fined not less than one thousand dollars nor more than three thousand dollars.

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

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

- (1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
- (2) Any conviction under a municipal ordinance of this State or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.
- (3) Any period of conditional probation imposed pursuant to West Virginia Code 17C-5-2(b) for violation of subsection (c) of this section, which violation occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section, if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to West Virginia Code 17C-5-2(b).

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

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

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

(q) When used in this section, the terms or phrases "driving under the influence of intoxicating liquor," "driving or operating a motor vehicle while intoxicated," "for any person who is under the influence of intoxicating liquor to drive any vehicle," or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase "while under the influence of alcohol...drives a vehicle" as the latter term or phrase is used in this section.

(r) A warrant or indictment which charges or alleges an offense, prohibited by the provisions of this section, and which warrant or indictment uses any of the terms or phrases set forth in subsection (r) hereof, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him. (WVaC 17C-5-2a)

### **333.011 PARTICIPATION IN MOTOR VEHICLE ALCOHOL TEST AND LOCK PROGRAM.**

(a) Except as provided in subsection (g) hereof, whenever any person who has not previously been convicted of any offense under Section 333.01 or any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug:

- (1) Notifies the court within thirty days of his or her arrest of his or her intention to participate in a deferral pursuant to this section; and
- (2) Pleads guilty to or is found guilty of driving under the influence of alcohol under subsection (c) of Section 333.01, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and, notwithstanding any provisions of this code to the contrary, place him or her on probation, which conditions shall include, that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in West Virginia Code 17C-5A-3a. Participation therein shall be for a period of at least 165 days after he or she has served the fifteen days of license suspension imposed pursuant to West Virginia Code 17C-5A-2.

(b) A defendant's election to participate in deferral under this section shall constitute a waiver of his or her right to an administrative hearing as provided in West Virginia Code 17C-5A-2.

- (c)
  - (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (d) hereof, the court may issue such process as is necessary to bring the defendant before the court.
  - (2) A motion alleging such violation filed pursuant to subsection (c)(1) hereof must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program, or if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

- (3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.
- (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable Federal or State constitutional provision, statutes or rules of court during the period of enrollment in the program.

(d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objection on the defendant or the defendant's attorney. If there are no objections filed within the thirty day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (c) hereof.

(e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection be convicted of a subsequent violation of Section 333.01 or West Virginia Code 17C-5, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime except for those provided in West Virginia Code 17C-5A-1, et seq. Except as provided in subsection (j), (k) and (l) of Section 333.01 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing or otherwise giving false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as that term is defined in subsection (l) of Section 333.01.

(f) There may be only one discharge and dismissal under this section with respect to any person.

- (g) No person shall be eligible for dismissal and discharge under this section:
- (1) In any prosecution in which any violation of any other provision of Section 333.01 or West Virginia Code 17C-5 has been charged;
  - (2) If the person holds a commercial driver's license or operates commercial motor vehicle(s); or
  - (3) The person has previously had his or her driver's license revoked under West Virginia Code 17C-5-2(a) or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance or any other drug.

- (h) (1) After a period of not less than one year which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles; provided, that any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.
- (2) If the prosecuting attorney objects to the expungement, the objections shall be filed with the court within thirty days after service of a motion for expungement and copies of the objections shall be served on the defendant or the defendant's attorney.
- (3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a violation of subsection (c) of Section 333.01, whose case is disposed of pursuant to the provisions of this section shall be liable for any court cost assessable against a person convicted of the offense. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with relevant municipal ordinances and state statutes.  
(WVaC 17C-5-2b)

### **333.02 RECKLESS DRIVING.**

(a) No person shall drive any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private or upon the property of the Board of Education, or upon any property within the Municipal park and public recreation system, in willful or wanton disregard for the safety of persons or property.

(b) The provisions of subsection (a) hereof shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Municipality within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WVaC 17C-5-3)

### **333.03 HAZARDOUS DRIVING.**

(a) No person shall operate a motor vehicle or motorcycle without exercising reasonable and ordinary control over such vehicle.

(b) No person shall operate a motor vehicle or motorcycle in a weaving or zigzag course unless such irregular course is necessary for safe operation or in compliance with law.

(c) No person shall operate a motor vehicle or motorcycle without giving his full time and attention to the operation of such vehicle.

**333.99 PENALTY.**

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

- (a) Whoever violates Section 333.02 shall for a first offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).
- (b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of Section 333.02 who in doing so proximately causes another to suffer serious bodily injury shall be fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) or both.
- (c) For purposes of subsection (b) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.



## ARTICLE 335 Speed Restrictions

335.01	Maximum speed limits.	335.05	Prima facie evidence of speed by radar.
335.02	Slow speed.	335.06	Special speed limitations when meeting or overtaking waste service vehicles.
335.03	Special speed limitations.	335.99	Penalty.
335.04	Racing on streets and highways prohibited.		

### CROSS REFERENCES

See sectional histories for similar State law

Authority to regulate speed - see W. Va. Code 17C-2-8,  
17C-6-3

Minimum speed regulations - see W. Va. Code 17C-6-3(a)

Special speed limitations - see W. Va. Code 17C-6-4  
et seq.

Use of radar - see W. Va. Code 17C-6-7

### **335.01 MAXIMUM SPEED LIMITS.**

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

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

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

- (2) Twenty-five miles per hour in any business or residence district;

The speeds set forth in this section may be altered as authorized in West Virginia Code Article 17C-6.

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled-access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour and the speed limits specified in subsection (b) of this section do not apply.  
(WVaC 17C-6-1)

### **335.02 SLOW SPEED.**

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.  
(WVaC 17C-6-3a(a))

### **335.03 SPECIAL SPEED LIMITATIONS.**

(a) Subject to all other speed restrictions of this Traffic Code no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:

- (1) Twenty miles per hour in any business district;
- (2) Twenty-five miles per hour in any residence district;
- (3) Trucks licensed at 8,000 pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.  
(WVaC 17C-6-4)

(b) No person shall drive any vehicle equipped with other than pneumatic tires at a speed greater than a maximum of ten miles per hour.

No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street or highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is so signposted.  
(WVaC 17C-6-5)

**335.04 RACING ON STREETS AND HIGHWAYS PROHIBITED.**

No person shall engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this Municipality. For the purposes of this section, "speed race" means:

- (a) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or
  - (b) The operation of a motor vehicle in speed acceleration competition against time; or
  - (c) The operation of a motor vehicle in speed competition with another motor vehicle or motor vehicles where the speed exceeds the lawful speed limit.
- (WVaC 17C-6-8(a))

**335.05 PRIMA FACIE EVIDENCE OF SPEED BY RADAR.**

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the Police Department. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

(WVaC 17C-6-7)

**335.06 SPECIAL SPEED LIMITATIONS WHEN MEETING OR OVERTAKING WASTE SERVICE VEHICLES.**

(a) No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

(b) For purposes of this section, "waste service vehicle" means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

(c) The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:

- (1) The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;
  - (2) The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and
  - (3) The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes.
- (WVaC 17C-6-11)

**335.99 PENALTY.**

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

(b) Speeding.

(1) Unless otherwise provided in this subsection (b) hereof, any person who violates the provisions of Section 335.01 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00); and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars (\$500.00); provided, that if such third or subsequent conviction is based upon a violation of the provisions of Section 335.01 where the offender exceeded the speed limit by fifteen miles per hour or more, then the person shall be fined not more than five hundred dollars (\$500.00).

(2) Any person who violates the provisions of Section 335.01(b)(1) shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); provided, that if such conviction is based upon a violation of the provisions of Section 335.01(b)(1) where the offender exceeded the speed limit by fifteen miles per hour or more in the presence of one or more children, then the person shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

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

(d) Waste Service Vehicles. Any person who violates the provisions of Section 335.06 shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00). If the person convicted of violating Section 335.06 exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall be fined not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000).

(WVaC 17C-6-11)

**ARTICLE 337**  
**Driving on Right; Passing**

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

**CROSS REFERENCES**

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

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**337.01 DRIVING UPON RIGHT SIDE OF ROADWAY; EXCEPTIONS.**

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

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

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

**337.02 PASSING TO RIGHT WHEN PROCEEDING IN OPPOSITE DIRECTIONS.**

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

(WVaC 17C-7-2)

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

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

- (a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (b) The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.
- (c) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle. (WVaC 17C-7-3)

**337.04 OVERTAKING AND PASSING UPON RIGHT.**

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

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

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

(WVaC 17C-7-4)

**337.05 OVERTAKING, PASSING TO LEFT OF CENTER.**

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

(WVaC 17C-7-5)

**337.06 ADDITIONAL RESTRICTIONS ON DRIVING UPON LEFT SIDE OF ROADWAY.**

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

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

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

**337.07 HAZARDOUS OR NO PASSING ZONES.**

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

**337.08 ONE-WAY ROADWAYS AND ROTARY TRAFFIC ISLANDS.**

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

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

**337.09 DRIVING IN MARKED LANES OR CONTINUOUS LINES OF TRAFFIC.**

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

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

(WVaC 17C-7-9)

**337.10 FOLLOWING TOO CLOSELY.**

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

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

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

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

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

(WVaC 17C-7-10)

**337.11 DRIVING UPON DIVIDED ROADWAYS.**

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

(WVaC 17C-7-11)

**337.12 ENTERING AND EXITING CONTROLLED-ACCESS HIGHWAY.**

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

(WVaC 17C-7-12)

**337.99 PENALTY.**

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



**ARTICLE 339**  
**Turning and Starting; Signals**

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

**CROSS REFERENCES**

See sectional histories for similar State law  
Authority to regulate the turning of vehicles - see  
W. Va. Code 17C-2-8(a)(9)  
Authority to specify different courses for turns -  
see W. Va. Code 17C-8-5

**339.01 CONFORMITY WITH PROVISIONS REQUIRED.**

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article.  
(WVaC 17C-8-1)

**339.02 RIGHT TURNS.**

Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.  
(WVaC 17C-8-2)

**339.03 LEFT TURNS ON TWO-WAY ROADWAYS.**

At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.  
(WVaC 17C-8-3)

**339.04 LEFT TURNS ON OTHER THAN TWO-WAY ROADWAYS.**

At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(WVaC 17C-8-4)

**339.05 SPECIFIED TURNS AT INTERSECTIONS.**

Council or other designated traffic authority may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons or signs. (WVaC 17C-8-5)

**339.06 "U" TURNS RESTRICTED.**

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

(WVaC 17C-8-6)

(b) No vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, or upon a freeway, expressway or controlled-access highway, or where authorized signs are erected to prohibit such movement, or at any other location unless such movement can be made with reasonable safety to other users of the street and without interfering with the safe operation of any traffic that may be affected by such movement.

**339.07 STARTING VEHICLE.**

No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(WVaC 17C-8-7)

**339.08 SIGNALS BEFORE CHANGING COURSE, TURNING OR STOPPING.**

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Sections 339.02 to 339.05, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.  
(WVaC 17C-8-8)

### **339.09 SIGNALS TO BE GIVEN BY HAND AND ARM OR SIGNAL DEVICE.**

Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then such signals must be given by such a lamp or lamps or signal device.  
(WVaC 17C-8-9)

### **339.10 HAND AND ARM SIGNALS.**

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (a) Left Turn: Hand and arm extended horizontally.
  - (b) Right Turn: Hand and arm extended upward.
  - (c) Stop or Decrease Speed: Hand and arm extended downward.
- (WVaC 17C-8-10)

### **339.99 PENALTY.**

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



**ARTICLE 341**  
**Right of Way**

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

**CROSS REFERENCES**

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

**341.01 RIGHT OF WAY AT INTERSECTIONS.**

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

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

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

**341.02 RIGHT OF WAY WHEN TURNING LEFT.**

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

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

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

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

(WVaC 17C-9-3)

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

The driver of a vehicle about to enter or cross a street or highway from a private road or driveway shall yield the right of way to all vehicles approaching on the street or highway.

(WVaC 17C-9-4)

**341.05 RIGHT OF WAY OF EMERGENCY VEHICLE.**

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

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

(WVaC 17C-9-5)

**341.06 TURNING INTO PRIVATE DRIVEWAY, ALLEY OR BUILDING.**

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

(a) Approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Upon a roadway where traffic is proceeding in opposite directions, approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the center line thereof.

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

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

**341.99 PENALTY.**

Whoever violates any provision of this article shall be fined not more than two hundred dollars (\$200.00); upon a second conviction within one year thereafter shall be fined not more than three hundred dollars (\$300.00); and upon a third or subsequent conviction, shall be fined not more than one thousand dollars (\$1,000).

(WVaC 17C-9-6)





**ARTICLE 343**  
**Special Stops Required**

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

**CROSS REFERENCES**

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

**343.01 DRIVING ACROSS GRADE CROSSING.**

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

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

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

### **343.02 STOPS AT DANGEROUS GRADE CROSSINGS.**

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

### **343.03 STOPPING AT GRADE CROSSING.**

(a) Except as provided in subsection (f) of this section, the driver of a commercial motor vehicle specified in subsection (b) of this section shall not cross a railroad track or tracks at grade unless he or she first:

- (1) Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks;
- (2) Thereafter, listens and looks in each direction along the tracks for an approaching train; and
- (3) Ascertains that no train is approaching.

When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without change of gears. The driver shall not shift gears while crossing the tracks.

(b) The following commercial vehicles are required to stop at railroad tracks or tracks at grade:

- (1) Every bus transporting passengers;
- (2) Every commercial motor vehicle transporting any quantity of a United States Department of Transportation defined division 2.3 chlorine;
- (3) Every commercial motor vehicle which, in accordance with United States Department of Transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part §392.10(a)(3)(2001);
- (4) Every cargo tank motor vehicle, loaded or empty, used for the transportation of any hazardous material, as defined in Federal Department of Transportation hazardous materials rules, 49 C.F.R. parts §107 through §180 (2001);
- (5) Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. §173.120 (2001); and
- (6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity exemption in accordance with 49 C.F.R. part §107 subpart B (2001).

(c) Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees of the employer is required to stop at all railroad tracks or tracks at grade, in accordance with subsection (a) of this section.

(d) All drivers of commercial motor vehicles not required to stop at railroad tracks or tracks at grade as provided in subsection (a) of this section may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

(e) All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

(f) No stop need be made at:

- (1) Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;
- (2) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes within a business district, as defined in 49 C.F.R. §390.5 (2000);
- (3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law permits the commercial motor vehicle to proceed across the track without slowing or stopping; or
- (4) A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

(g) Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor. Provided, that if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.  
(WVaC 17C-12-3)

#### **343.04 MOVING HEAVY EQUIPMENT ACROSS GRADE CROSSINGS.**

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event, of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction. (WVaC 17C-12-4)

#### **343.05 THROUGH STREETS AND STOP INTERSECTIONS.**

(a) Council or other designated traffic authority may designate through streets or highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(b) Every such sign shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

(d) Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street or highway where the driver has a view of approaching traffic on the intersecting street or highway before entering the intersection except when directed to proceed by a police officer or traffic control signal. (WVaC 17C-12-5)

#### **343.06 DRIVING ONTO ROADWAY FROM PLACE OTHER THAN ROADWAY; STOPPING AT SIDEWALK.**

The driver of a vehicle within a business or residence district emerging from any alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on such roadway. (WVaC 17C-12-6)

#### **343.07 STOPPING FOR SCHOOL BUS; SIGNS AND WARNING LIGHTS; SALE OF SCHOOL BUS.**

(a) The driver of a vehicle upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on such school bus flashing warning signal lights, as referred to in West Virginia Code 17C-12-8 and such driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children, including, but not limited to, any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a street or highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual, shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children. (WVaC 17C-12-7)

### **343.08 STOPPING FOR PASSENGER VAN; SIGNS AND WARNING LIGHTS.**

(a) Every passenger van used for the transportation of children shall bear upon the front and rear thereof a plainly visible sign containing the warning "Caution: Loading and Unloading Passengers" in letters not less than six inches in height. Every such passenger van shall be equipped with either flashing warning signal lights as are contemplated and referred to in West Virginia Code 17C-12-8, or a red caution flag which the driver or some other adult must use by exiting the passenger van and displaying while assisting in the loading or unloading of passengers. Such vehicles may also be equipped with a white flashing strobotron warning light that meets the requirements set forth in West Virginia Code 17C-15-26(e).

(b) The driver of a vehicle upon meeting or overtaking from any direction any passenger van which has stopped for the purpose of loading or unloading passengers shall stop his or her vehicle before reaching the passenger van when there is in operation on the passenger van flashing warning signal lights or when an adult is outside the passenger van with a red caution flag and assisting with the loading or unloading of passengers. The driver of a vehicle may not proceed until he or she is signaled by the passenger van driver to proceed, the passenger van flashing signal lights are no longer actuated, or the passenger resumes motion. This section applies whenever the passenger van is loading or unloading children on any street, highway, parking lot, private road or driveway: provided, that the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a passenger van which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway. (WVaC 17C-12-17a)

### **343.09 OBSTRUCTING INTERSECTION OR CROSSWALK.**

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

### **343.99 PENALTY.**

(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty if no specific penalty is provided.)

(a) Driving Onto Roadway From Place Other Than Roadway. Whoever violates Section 343.06 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

- (b) Stopping for School Bus. Any driver acting in violation of Section 343.07(a) for a first offense, shall be fined not less than one hundred fifty dollars (\$150.00) or more than five hundred dollars (\$500.00). Upon conviction of a second violation of Section 343.07(a), the driver shall be fined five hundred dollars (\$500.00). Upon conviction of a third or subsequent violation of Section 343.07(a), the driver shall be fined five hundred dollars (\$500.00).
- (c) Stopping For Passenger Van. Any driver acting in violation of Section 343.08(b) shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00). If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of Section 343.08(b) shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00): provided, however, that such conviction shall not subject such owner or lessee to further administrative or other penalties for such offense, notwithstanding other provisions of this Traffic Code to the contrary.

**ARTICLE 345**  
**Safety and Equipment**

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

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

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

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

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

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

**345.02 WHEN LIGHTED LIGHTS REQUIRED.**

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

**345.03 MEASUREMENT OF DISTANCES AND HEIGHTS.**

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



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

(WVaC 17C-15-3)

#### **345.04 HEADLIGHTS ON MOTOR VEHICLES AND MOTORCYCLES.**

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

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

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

(WVaC 17C-15-4)

#### **345.05 TAIL LIGHT; ILLUMINATION OF REAR LICENSE PLATE.**

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

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

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

(WVaC 17C-15-5)

#### **345.06 RED LIGHT OR RED FLAG ON EXTENDED LOADS.**

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

(WVaC 17C-15-14)

**345.07 LIGHTS ON PARKED OR STOPPED VEHICLES.**

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

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

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

**345.08 LIGHTS ON SLOW-MOVING VEHICLES.**

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

**345.09 SPOTLIGHTS AND AUXILIARY LIGHTS.**

(a) Spot Lamps. Any motor vehicle except a public utility company maintenance vehicle may be equipped with not more than one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than 100 feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) Fog Lamps. Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

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

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

(e) Roof-Mounted Off-Road Light Bar Lighting Device. Any motor vehicle may be equipped with a roof-mounted off-road light bar lighting device comprised of multiple lamps: provided, that whenever the vehicle is operated or driven upon any road or highway, the roof-mounted off-road light bar lighting device shall be turned off and covered with an opaque covering that prohibits light from being emitted while the vehicle is being operated on any road or highway. (WVaC 17C-15-17)

#### **345.10 SIGNAL LAMPS AND SIGNAL DEVICES.**

(a) Any motor vehicle may be equipped and when required under this Traffic Code shall be equipped with the following signal lamps or devices:

- (1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.
- (2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

(b) A stop lamp shall be plainly visible and understandable from a distance of 100 feet to the rear both during normal sunlight and at nighttime and signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 100 feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 345.02. (WVaC 17C-15-18)

#### **345.11 COWL, FENDER AND BACK-UP LIGHTS; FLASHING HAZARD LIGHTS.**

(a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

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

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

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

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

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

#### **345.12 MULTIPLE-BEAM ROAD-LIGHTING EQUIPMENT REQUIREMENTS.**

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

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

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

#### **345.13 USE OF HEADLIGHT BEAMS.**

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

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

#### **345.14 SINGLE-BEAM ROAD-LIGHTING EQUIPMENT.**

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

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

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

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

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

- (c) If the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.
- (d) (1) Subject to subsection (d)(2) hereof, a motorcycle may be equipped with, and an operator of a motorcycle may use, the following auxiliary lighting:
  - A. Amber and white illumination;
  - B. Standard bulb running lights; or
  - C. Light-emitting diode pods and strips.
- (2) Lighting under this subsection shall be:
  - A. Nonblinking;
  - B. Nonflashing;
  - C. Nonoscillating; and
  - D. Directed toward the engine and the drive train of the motorcycle to prevent interference with the driver's operation of the vehicle.(WVaC 17C-15-23)

#### **345.16 ALTERNATE ROAD-LIGHTING EQUIPMENT.**

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

#### **345.17 NUMBER OF DRIVING LIGHTS REQUIRED OR PERMITTED.**

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

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

#### **345.18 SPECIAL RESTRICTIONS ON LIGHTS.**

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

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

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

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

- (1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.
- (2) Except for standard vehicle equipment authorized by Section 345.11, red flashing warning lights are restricted to the following:
  - A. Ambulances;
  - B. Fire-fighting vehicles;
  - C. Hazardous material response vehicles;
  - D. Industrial fire brigade vehicles;
  - E. Rescue squad vehicles not operating out of a fire department;
  - F. School buses;
  - G. Class A vehicles, as defined by West Virginia Code 17A-10-1 of those firefighters who are authorized by their fire chiefs to have the lights;
  - H. Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;
  - I. Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
  - J. Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
  - K. West Virginia Department of Agriculture emergency response vehicles.
  - L. Vehicles designated by the Secretary of the Department of Military Affairs and Public Safety for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management; and
  - M. Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.

Red flashing warning lights attached to a Class A vehicle shall be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services or chartered rescue squads.

- (3) The use of red flashing warning lights is authorized as follows:
  - A. Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.
  - B. Authorization for all fire department vehicles shall be designated by the Fire Chief and the State Fire Marshal's Office.
  - C. Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the Chief of the Fire Department and the State Fire Marshal's Office.
  - D. Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

- E. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.
  - F. Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.
  - G. Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources and the sheriff of the county of residence.
  - H. Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the Department of Health and Human Resources.
  - I. Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.
  - J. Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.
  - K. Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Military Affairs and Public Safety.
  - L. Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.
- (4) Yellow or amber flashing warning lights are restricted to the following:
- A. All other emergency vehicles, including tow trucks and wreckers, authorized by the West Virginia Code Chapter 17C and 17C-15-27;
  - B. Postal service vehicles and rural mail carriers, as authorized in Section 345.11;
  - C. Rural newspaper delivery vehicles;
  - D. Flag car services;
  - E. Vehicles providing road service to disabled vehicles;
  - F. Service vehicles of a public service corporation;
  - G. Snow removal equipment;
  - H. School buses; and
  - I. Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department or by an industrial fire brigade.
- (5) The use of yellow or amber flashing warning lights shall be authorized as follows:
- A. Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.
  - B. Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.
  - C. Authorization for school buses shall be designated as set out in West Virginia Code 17C-14-12.



- D. Authorization for automotive fire apparatus shall be designated by the Fire Chief in conformity with the NFPA 1901 standard for automotive fire apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the State Fire Commission by legislative rule (87 CSR 1, et seq.), except as follows:
1. With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard, and
  2. Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in West Virginia Code Chapter 17C-6-11 may be equipped with yellow or amber flashing warning lights.

(g) No person shall install or use flashing warning lights of an unauthorized color on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights. (WVaC 17C-15-26)

### **345.19 MOTOR VEHICLE OR MOTORCYCLE BRAKES.**

#### **(a) Brake Equipment Required.**

- (1) Every motor vehicle, other than a motorcycle, motor-driven cycle or moped, when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.
- (2) Every motorcycle, motor-driven cycle and moped, when operated upon a street or highway, shall be equipped with at least one brake which may be operated by hand or foot.
- (3) Every trailer or semitrailer of a gross weight of 3,000 pounds or more when operated upon a street or highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and such brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

- (4) Every new motor vehicle, trailer or semitrailer hereinafter sold in this State and operated upon the streets or highways shall be equipped with service brakes upon all wheels, with the following exceptions:
  - A. Trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, and
  - B. Any motorcycle, motor-driven cycle or moped and any semitrailer of less than 1,500 pounds gross weight need not be equipped with brakes.
- (5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.
- (6) Every such vehicle and combination of vehicles, except motorcycles, motor-driven cycles and mopeds, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.
- (7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance Ability of Brakes. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

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

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

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

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

**345.21 HORN, SIREN AND THEFT ALARM SIGNAL.**

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

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

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

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

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

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

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

**345.23 REAR-VIEW MIRROR.**

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

**345.24 WINDSHIELD TO BE UNOBSTRUCTED; WINDSHIELD WIPER.**

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

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

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

**345.25 TIRE EQUIPMENT RESTRICTIONS.**

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

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

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

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

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

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

**345.26 SAFETY GLASS IN MOTOR VEHICLES.**

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

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

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

#### **345.27 VEHICLES TRANSPORTING EXPLOSIVES.**

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

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

#### **345.28 VIDEO SCREENS AND MONITORS, TELEVISION RECEIVERS IN VIEW OF DRIVER PROHIBITED.**

(a) No motor vehicle may be operated on a street or highway when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or if falls within one or more of the categories set forth in subsection (b) or (c) of this section.

- (b) This prohibition does not apply to the following equipment installed in a vehicle:
  - (1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;
  - (2) A global positioning device;
  - (3) A mapping display;
  - (4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;
  - (5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or
  - (6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subsection (b)(1) to (6) of this section. (WVaC 17-C-15-42)

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

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

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

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

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

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

**345.30 CERTIFICATION LABELS ON MOPEDS.**

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

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

**345.31 CHILD PASSENGER SAFETY DEVICES REQUIRED; CHILD SAFETY SEATS AND BOOSTER SEATS.**

Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, while the motor vehicle is in motion and operated on a street or highway, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety device system meeting applicable federal motor vehicle safety standards; provided, that if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section shall be fined not less than ten dollars (\$10.00) nor more than twenty dollars (\$20.00).

A violation of this section does not by virtue of the violation constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section. (WVaC 17C-15-46)

**345.32 CERTIFICATE OF INSPECTION AND APPROVAL.**

No owner or operator of any vehicle required to be inspected under West Virginia Code Article 17C-16 shall operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as therein designated. (WVaC 17C-16-9)

**345.33 ALTERATION OF MOTOR VEHICLES; BUMPER HEIGHT LIMITS.**

(a) No person shall operate upon a public street or highway any motor vehicle registered or required to be registered in this State if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is 10,000 pounds or less shall be no less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of 10,000 pounds. For the purpose of this subsection, the term "gross vehicle weight ratings" means the manufacturer's gross vehicle weight ratings established for that vehicle.

(b) The maximum distance between the vehicle body to the vehicle frame shall not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat: provided, that the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer's original spacer between the body and the frame. No vehicle shall be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to

damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Modification of the front end suspension by the use of lift blocks is expressly prohibited.

(c) Nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs.

(d) Nothing contained in this section prohibits the operation on a public street or highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(e) This section does not apply to specially designed or modified motor vehicles when operated off the public streets and highways in races and similar events. Such motor vehicles may be lawfully towed on the streets and highways of this Municipality.

(f) Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection as provided in subsection (h) hereof.

(g) Nothing contained in this section shall subject a vehicle modified solely by the installation of tires not larger than two sizes beyond the maximum specified by the manufacturer to inspection as provided in subsection (h) hereof.

(h) Any motor vehicle which has been altered from the manufacturer's specification with respect to bumper height for that vehicle make and model but within the allowable limits of subsection (a) hereof or any motor vehicle which has been altered from the manufacturer's specification for that vehicle make and model with respect to the distance from the vehicle body to vehicle frame but within the allowable limits of subsection (b) hereof may be operated upon a public street or highway in this Municipality, subject to inspection under West Virginia Code 17C-15-48: provided, that any motor vehicle which has been altered from the manufacturer's specification by lowering the bumper height for that vehicle make and model within the allowable limits of subsection (a) hereof shall be exempt from the inspection requirements hereunder and may be operated upon a public street or highway in this Municipality subject to provisions of West Virginia Code Chapter 17C-16. Each municipal law-enforcement agency must record on crash report forms whether a modified vehicle was involved in the crash.  
(WVaC 17C-15-48)

#### **345.34 SUN SCREENING DEVICES.**

(a) No person may operate a motor vehicle that is registered or required to be registered in the State on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section. Provided, that law-enforcement K-9 and other emergency vehicles that are designed to haul animals are exempt from this requirement.

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



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

(d) Each manufacturer shall:

- (1) Certify to the State Police and Division of Motor Vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
- (2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and
- (3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person shall:

- (1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or
- (2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this State in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this State that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

(g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

- (1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.
- (2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.
- (3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.
- (4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

- (5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.
- (6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional offroad operation.
- (7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.
- (8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.
- (9) "Sun screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.
- (10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.  
(WVaC 17C-15-36a)

#### **345.35 OPERATION OF VEHICLES WITH SAFETY BELTS.**

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

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

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

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

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

**345.99 PENALTY.**

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

(b) Brakes. Any person violating Sections 345.19 or 345.20 shall be fined not more than one hundred dollars (\$100.00); upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00).

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

(d) Safety Belts. Any person who violates the provisions of Section 345.35 shall be fined not more than twenty-five dollars (\$25.00). No court costs or other fees shall be assessed for a violation of this section.



## ARTICLE 347 Commercial and Heavy Vehicles

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

See sectional histories for similar State law  
 Authority to designate weight limits on local streets -  
     see W. Va. Code 17C-2-8(a)(7)  
 Authority to permit oversized buses - see W. Va.  
     Code 17C-17-2(b)  
 Red light or flag on extended load - see TRAF. 345.07  
 Transporting explosives - see TRAF. 345.27

### **347.01    OVERSIZE OR OVERWEIGHT VEHICLES.**

(a)    Use of State Route. No person shall operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in West Virginia Code Article 17C-17 upon any State route within the Municipality, except pursuant to special written permit issued by the Commissioner of Highways, or upon any local truck route. Every such permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer.

No holder of a permit issued by the Commissioner of Highways shall be required to obtain any local permit or license or pay any local fee or charge for movement on any State route within the Municipality; however, it shall be unlawful to operate any such vehicle or combination of vehicles upon any roadway within the Municipality which is not a State route, except as provided in subsection (c) hereof.

(b)    Use of Local Streets. No person shall operate a vehicle exceeding a size as specified in Section 347.03 or exceeding a gross weight of five tons, upon any street in the Municipality other than a State route, except those local streets designated as a truck route and marked as such by appropriate traffic signs, and except when such operation is necessary to load or unload property, to go to or from the usual place of storage of such vehicle or to perform any other legitimate business or act other than passage through the Municipality. Operators of vehicles so deviating from either a State route or a designated truck route within the Municipality shall confine such deviation to that required in order to accomplish the purpose of the departure.

(c) **Local Permit and Conditions.** Upon application and for good cause, the Police Chief may issue a local permit authorizing an applicant to move an oversize or overweight vehicle or combination of vehicles upon local streets.

No permittee shall be required to obtain a special permit from the Commissioner of Highways for the movement of the vehicle or combination of vehicles on streets or highways under local jurisdiction; however, the approval of the Commissioner of Highways shall be required for movement upon State routes as provided in subsection (a) hereof.

The Police Chief may grant a permit for a single or round trip, or for such period of time, not to exceed one year, as the Police Chief in his discretion deems advisable, or for the duration of any construction project. The Police Chief may limit or prescribe terms or conditions of operation for such vehicle or combination of vehicles by designating the route, hours, speed or such other restrictions as may be necessary for the preservation of the public peace, property, health and safety. The Police Chief may require the posting of bond or other security necessary to compensate for any damage to a roadway or road structure.

For each such permit, the Police Chief shall charge five dollars (\$5.00), and for each hour of time or any part thereof spent by each police officer in supervising the movement of such vehicle, the applicant shall pay the sum of ten dollars (\$10.00).

Signs shall be posted indicating "no thru trucks - gross weight 5 tons" or words of similar import to apprise drivers of the limitations imposed by this section. No driver shall disobey the instructions indicated on any such sign.

Violation of any of the limitations, terms or conditions of the permit granted by the Police Chief shall be cause for immediate revocation or suspension of such permit, and denial of request for any future permit. Such violation shall also subject the violator to the penalty prescribed by Section 303.99.

### **347.02 PROJECTING LOADS ON PASSENGER VEHICLES.**

(a) No passenger-type vehicle shall be operated on any street or highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(b) A motor home, travel trailer or truck camper may exceed the maximum width prescribed in Section 347.03, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle.  
(WVaC 17C-17-3)

### **347.03 MAXIMUM WIDTH, HEIGHT AND LENGTH.**

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers, except that a motor home and school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.

(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in West Virginia Code 17C-17-11b, and except as otherwise provided in respect to the use of a pole trailer as authorized in West Virginia Code 17C-17-5. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to:

- (1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy-five feet; or
- (2) A combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the Commissioner of Highways may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States Secretary of Transportation and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers from such highways and further, as to other highways so designated by the West Virginia Commissioner of Highways, shall be as follows: the maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may not exceed twenty-eight feet in length and in no event shall any combinations exceed three units, including the truck tractor: provided, that nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations. (WVaC 17C-17-4)

(g) The total outside width, exclusive of safety equipment authorized by the United States Department of Transportation, of any vehicle or the load thereon may not exceed ninety-six inches, except as otherwise provided in West Virginia Code Article 17C-17: provided, that any vehicle with a total outside width of 102 inches, exclusive of safety equipment authorized by the United States Department of Transportation, may be operated on any street or highway designated by the United States Department of Transportation or the Commissioner of the Department of Highways or on any street or highway having a minimum lane width of ten feet.

(h) Motor homes, travel trailers, truck campers, and motor buses with a total outside width of 102 inches, excluding safety equipment authorized by the United States Department of Transportation may operate on any street or highway.  
(WVaC 17C-17-2)

#### **347.04 LOADS DROPPING OR LEAKING.**

(a) No vehicle or combination of vehicles shall be operated on any street or highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) No person shall operate on any street or highway any vehicle or combination of vehicles with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the street or highway.  
(WVaC 17C-17-6)

#### **347.05 TOWING REQUIREMENTS.**

(a) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and such drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists of a chain, rope or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.  
(WVaC 17C-17-7)

#### **347.99 PENALTY.**

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



## ARTICLE 349 Miscellaneous Rules

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

### CROSS REFERENCES

See sectional histories for similar State law

Obedience to traffic control devices - see TRAF. 313.01

#### **349.01 UNATTENDED MOTOR VEHICLE.**

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

(WVaC 17C-14-1)

#### **349.02 BACKING A VEHICLE.**

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

(WVaC 17C-14-2)

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

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

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

**349.04 PASSENGERS IN SEAT WITH OPERATOR.**

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

**349.05 PASSENGERS ON RUNNING BOARD.**

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

**349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.**

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

**349.061 APPROACHING AUTHORIZED EMERGENCY VEHICLES.**

The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

- (a) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or
- (b) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe. (WVaC 17C-14-9a)

**349.07 DRIVING OVER FIRE HOSE.**

No vehicle shall be driven over any unprotected hose of the Fire Department when laid down on any street or private driveway to be used at any fire or alarm of fire, without the consent of the Fire Department official in command. (WVaC 17C-14-10)

**349.08 FUNERAL PROCESSIONS.****(a) Definitions.**

- (1) "Funeral director" and "funeral establishment" have the same meaning as set forth in West Virginia Code 30-6-4.
- (2) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery, or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.
- (3) "Funeral lead vehicle" means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.
- (4) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.
- (5) "Funeral escort vehicle" means any motor vehicle that escorts a funeral procession.

**(b) Funeral Procession Right-Of-Way.**

- (1) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (b)(3) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.
- (2) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.
- (3) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:
  - A. Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal;
  - B. Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and
  - C. Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

**(c) Driving in Procession.**

- (1) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.
- (2) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

(d) **Liability.** Liability for any death, personal injury or property damage suffered on or after the first day of July, one thousand nine hundred ninety-nine, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.

(e) Equipment. All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens. Flashing amber or purple lights may be used when such vehicles are used in a funeral procession. (WVaC Art. 17C-23)

#### **349.09 OPENING DOOR OF VEHICLE ON TRAFFIC SIDE.**

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than is necessary to load or unload passengers.

#### **349.10 BOARDING OR ALIGHTING FROM VEHICLE.**

No person shall board or alight from any vehicle while such vehicle is in motion.

#### **349.11 UNLAWFUL RIDING.**

No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

#### **349.12 SQUEALING TIRES, CRACKING EXHAUST NOISES.**

No person shall unnecessarily race the motor of any vehicle and no person shall operate any motor vehicle, except in an emergency, in such a manner that the vehicle is so rapidly accelerated or started from a stopped position that the exhaust system emits a loud, cracking or chattering noise unusual to its normal operation, or whereby the tires of such vehicle squeal or leave tire marks on the roadway, commonly called "peeling".

#### **349.13 TAKING, INJURING OR TAMPERING WITH VEHICLE.**

(a) No person shall drive a vehicle, not his or her own, without consent of the owner thereof, and with intent temporarily to deprive such owner of his or her possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, shall also be guilty of a violation of this section.  
(WVaC 17A-8-4)

(b) No person either individually or in association with one or more persons shall willfully injure or tamper with any vehicle or break or remove any part or parts of or from a vehicle without the consent of the owner.

No person with intent to commit any malicious mischief, injury or other crime shall climb into or upon a vehicle whether it is in motion or at rest or with like intent attempt to manipulate any of the levers, starting mechanism, brakes or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent set in motion any vehicle while the same is at rest and unattended.  
(WVaC 17A-8-6)

#### **349.14 DRIVING UPON SIDEWALK, STREET LAWN OR CURB.**

(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.

**349.15 SHORTCUTTING; AVOIDING TRAFFIC CONTROL DEVICES.**

(a) No person shall operate a motor vehicle across public or private property marked with signs "No Through Traffic" or words of similar import for the purpose of passing from one roadway to another.

(b) No person shall operate a motor vehicle across public or private property for the purpose of avoiding compliance with a traffic control device.

(c) It shall be prima-facie evidence of a violation of this section for the operator of a motor vehicle to cross public or private property as provided herein without using the service of such property, stopping the engine or both.

**349.16 COASTING PROHIBITED.**

The operator of any motor vehicle when traveling on a down grade on any street, alley or highway shall not coast with the gears of such vehicle in neutral.

**349.17 DRIVING THROUGH SAFETY ZONE.**

No operator of a vehicle shall drive the same over or through a safety zone.

**349.18 DRIVING UPON STREET POSTED AS CLOSED FOR REPAIR.**

No person shall drive upon, along or across a street or highway, or any part thereof, which has been closed in the process of its construction, reconstruction or repair, and posted with appropriate signs by the authority having jurisdiction to close such street or highway.

**349.19 OBSTRUCTION OF TRAFFIC.**

No person shall operate, stop, stand or park any motor vehicle on any street or alley within the Municipality so as to obstruct or hinder the free flow of motor vehicle traffic except in compliance with a lawful order of a police officer or in compliance with a traffic control sign, signal or marking.

**349.20 VEHICLE SECURITY.**

Every owner or registrant of a motor vehicle shall maintain security upon such vehicle as required by West Virginia Code Article 17D-2A, and no person shall knowingly drive or operate on any street within the Municipality any motor vehicle upon which security is required by such Article unless the security is provided, and violation of any of the provisions of West Virginia Code Article 17D-2A including failure to have a certificate of insurance, if required, shall constitute a violation under this section.

**349.21 LITTERING FROM A MOTOR VEHICLE.**

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the State or within one hundred feet of the waters of this State, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(c) When there is more than one occupant in a motor vehicle or other conveyance and it can not be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(WVaC 17C-14-14)

### **349.22 PROHIBITED USE OF AN ELECTRONIC COMMUNICATIONS DEVICE.**

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:

- (1) Texting; or
- (2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

- (1) "Cell phone" means a cellular, analog, wireless or digital telephone.
- (2) "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.
- (3) "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:
  - A. Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or
  - B. Other voice radios used by a law enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.
- (4) "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
- (5) "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

- (6) "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.
- (7) "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, "texting" does not include the following actions:
  - A. Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;
  - B. Inputting, selecting or reading information on a global positioning system or navigation system; or
  - C. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.
- (8) "Using a cell phone or other electronic communication device" means holding in a person's hand or hands an electronic communication device while:
  - A. Viewing or transmitting images or data;
  - B. Playing games;
  - C. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or
  - D. Engaging in a call.
- (c) Subsection (a) of this section shall not apply to:
  - (1) A law enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;
  - (2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.
  - (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of West Virginia Code 17B-2-3a, or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of West Virginia Code 17E-1-1 et seq. or federal law or rule.

(e) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(WVaC 17C-14-15)

**349.99 PENALTY.**

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

- (b) (1) Any person who violates Section 349.061 shall be fined not more than five hundred dollars (\$500.00).
- (2) If violation of Section 349.061 results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.
- (3) If violation of Section 349.061 results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.
- (4) If violation of Section 349.061 results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.
- (5) Any person who violates Section 349.061 and while doing so also violates Section 333.01 shall be prosecuted under appropriate State law.  
(WVaC 17C-14-9a)

(c) Taking, Injuring or Tampering With Vehicle. Whoever violates Section 349.13 shall, for a first offense, be fined not more than five hundred dollars (\$500.00).  
(WVaC 17A-11-1)

(d) Vehicle Security. Whoever violates Section 349.20 shall be fined not less than two hundred dollars (\$200.00) or more than five thousand dollars (\$5,000).

(e) Electronic Communication Devices.

- (1) Any person who violates the provisions of Section 349.22 is guilty of a traffic offense and, shall for a first offense be fined one hundred dollars (\$100.00); for a second offense be fined two hundred dollars (\$200.00); and for a third or subsequent offense be fined three hundred dollars (\$300.00). No court costs or other fees shall be assessed for a violation of Section 349.22.
- (2) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of Section 349.22, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.
- (3) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013 when it shall be enforced as a primary offense for purposes of citation.
- (4) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law enforcement agency.  
(WVaC 17C-14-15)



## ARTICLE 351 Licensing Generally

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|---|---|
| <p><b>351.01</b> Registration, certificate of title required.</p> <p><b>351.02</b> Registration card.</p> <p><b>351.03</b> Display of registration plates.</p> <p><b>351.04</b> Operation of vehicle without evidence of registration; use of temporary facsimile.</p> <p><b>351.05</b> Improper use of registration card, plate or permit.</p> <p><b>351.06</b> Driver or motorcycle license required.</p> | <p><b>351.07</b> Persons exempt from license.</p> <p><b>351.08</b> Display of license.</p> <p><b>351.09</b> Certain acts prohibited.</p> <p><b>351.10</b> Driving under suspension or revocation.</p> <p><b>351.11</b> Owner or operator allowing another to drive.</p> <p><b>351.99</b> Penalty.</p> |
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### CROSS REFERENCES

Impounding unlicensed vehicle - see TRAF. 303.07  
Illumination of license plate - see TRAF. 345.05(c)

#### **351.01 REGISTRATION, CERTIFICATE OF TITLE REQUIRED.**

No person shall drive or move and no owner shall knowingly permit to be driven or moved upon any street or highway any vehicle of a type required to be registered under West Virginia Code Chapter 17-A which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required, except as otherwise permitted by the provisions therein: provided, that in the event of the sale of a vehicle by a person other than a registered dealer, the person purchasing the same may, for a period of not more than ten days, operate such vehicle under the registration of its previous owner and display the registration thereof: provided further that he shall have and display on the demand of any proper officer the consent in writing of such previous owner so to use such registration.  
(WVaC 17A-3-1)

#### **351.02 REGISTRATION CARD.**

Every owner upon receipt of a registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer or any officer or employee of the Department of Motor Vehicles.  
(WVaC 17A-3-13)

**351.03 DISPLAY OF REGISTRATION PLATES.**

(a) Registration plates issued for vehicles required to be registered shall be attached to the rear thereof except that on truck tractors and road tractors designed and constructed to pull trailers or semi-trailers, the registration plate shall be mounted to the front.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Notwithstanding the provisions of subsection (b) of this section, an owner of a motor vehicle with a Class G registration as defined in West Virginia Code 17A-10-1 may choose to:

- (1) Display a standard, Class G registration plate in a horizontal position; or
- (2) Display a specially designed Class G registration plate in a vertical position.  
(WVaC 17A-3-15)

**351.04 OPERATION OF VEHICLE WITHOUT EVIDENCE OF REGISTRATION; USE OF TEMPORARY FACSIMILE.**

No person shall operate or park, nor shall an owner knowingly permit to be operated or parked upon any street or highway any vehicle required to be registered unless there is attached thereto and displayed thereon or is in the possession of the operator when and as required by this Traffic Code, a valid registration card and registration plate or plates issued therefor by the Department of Motor Vehicles for the current registration year except as otherwise expressly permitted in West Virginia Code Chapter 17-A.

In the event that the registration plate or plates originally issued are lost, destroyed or stolen, a temporary facsimile of the plate or plates, showing the number of the same, may be attached to the vehicle by the owner for a period of not more than fifteen days, or until a new plate or plates are issued by the Department whichever is earlier: provided, that no such facsimile shall be used and no such vehicle shall be driven upon the streets or highways of this Municipality until the owner has notified in writing the State Police of the loss of such registration plate or plates.  
(WVaC 17A-9-2)

**351.05 IMPROPER USE OF REGISTRATION CARD, PLATE OR PERMIT.**

No person shall lend to another any certificate of title, registration card, registration plate, special plate or permit issued to him if the person desiring to borrow the same would not be entitled to the use thereof, nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates or permit not issued for such vehicle or not otherwise lawfully used thereon under this Traffic Code. (WVaC 17A-9-3)

**351.06 DRIVER OR MOTORCYCLE LICENSE REQUIRED.**

(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid driver's license issued under the provisions of the West Virginia Code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in the West Virginia Code may exercise the privilege thereby granted as provided in the West Virginia Code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this Municipality or upon any subdivision street, used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under West Virginia Code 17B-2-7b for motorcycle operation or has a valid motorcycle instruction permit. (WVaC 17B-2-1)

### **351.07 PERSONS EXEMPT FROM LICENSE.**

The following persons are exempt from the license required under Section 351.06:

- (a) Any person while operating a motor vehicle in the armed services of the United States while in the performance of his official duties;
- (b) A nonresident who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state or country unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver for a period not to exceed ninety days in any one calendar year;
- (c) A nonresident who is at least sixteen years of age, who has in the person's immediate possession a valid driver's license issued to the person in the person's home state or country and who is employed in this State, or owns, maintains or operates a place or places of business in this State, or engages in any trade, profession or occupation in this State, in addition to the driving privileges extended under subsection (b) hereof, unless the Commissioner determines the person's home state or country does not extend the same privileges to a resident of this State, may operate a motor vehicle in this State only as a noncommercial driver in traveling to and from the person's place or places of employment, place or places of business or place or places at which the person engages in the trade, profession or occupation and in the discharge of the duties of the person's employment, business, trade, profession or occupation if the duties are such that, if performed by a resident of the State of West Virginia over the age of eighteen years of age, the resident would not be required under the provisions of West Virginia Code Chapter 17 to obtain a Class A, B, C or D driver's license. However, this subsection shall not exempt any person who is required to obtain a West Virginia driver's license in accordance with the provisions of West Virginia Code 17B-2-1a;
- (d) A nonresident who is at least eighteen years of age and who has in his or her immediate possession a valid commercial driver's license issued to the person in his or her home state or country and which meets the requirements of the federal commercial motor vehicle act of 1986, Title XI of public law 99-570 and unless the Commissioner determines the person's home state or country does not extend the same privilege to a resident of this State may operate a motor vehicle in this State either as a commercial driver subject to the age limits applicable to commercial driver in this State, or as a noncommercial driver subject to the limitations imposed on nonresident drivers in subsections (b) and (c) hereof;

- (e) Any person who is a student, properly enrolled and registered in an accredited school, college or university in this State, who is at least sixteen years of age and who has in his or her immediate possession a valid driver's license issued to the person in the person's home state, notwithstanding the limitations of subsections (b) and (c) hereof may operate motor vehicle in this State only as noncommercial driver: provided, that the state of which the person is a resident shall extend the same privileges to residents of this State. This exemption shall be canceled immediately when the student is graduated from school, college or university or is expelled or ceases to be a student. (WVaC 17B-2-2)

### **351.08 DISPLAY OF LICENSE.**

Every licensee shall have his or her driver's license in such person's immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate, municipal judge, circuit court judge, peace officer or an employee of the Division of Motor Vehicles. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest.  
(WVaC 17B-2-9)

### **351.09 CERTAIN ACTS PROHIBITED.**

No person shall commit any one of the following acts:

- (a) Display or cause or permit to be displayed or have in his possession any fictitious or fraudulently altered driver's or commercial driver's license or nonoperator's identification;
- (b) Lend his driver's or commercial driver's license or nonoperator's identification to any other person or knowingly permit the use thereof by another;
- (c) Display or represent as one's own any driver's or commercial driver's license or nonoperator's identification not issued to him;
- (d) Use a false or fictitious name in any application for a driver's or commercial driver's license or nonoperator's identification or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application;
- (e) Permit any unlawful use of a driver's or commercial driver's license or nonoperator's identification issued to him; or
- (f) Do any act forbidden or fail to perform any act required by this Traffic Code or West Virginia Code Chapter 17.

(WVaC 17B-4-1)

### **351.10 DRIVING UNDER SUSPENSION OR REVOCATION.**

No person shall drive a motor vehicle on any public street or highway of this Municipality at a time when his privilege so to do has been lawfully suspended or revoked.  
(WVaC 17B-4-3)

### **351.11 OWNER OR OPERATOR ALLOWING ANOTHER TO DRIVE.**

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street or highway by any person who is not authorized hereunder or in violation of any of the provisions of this Traffic Code.  
(WVaC 17B-4-4)

**351.99 PENALTY.**

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00); for a second or subsequent violation of the same provision such person shall be fined not more than five hundred dollars (\$500.00).

(b) Driving Under Suspension or Revocation.

- (1) Except as otherwise provided in West Virginia Code 17B-4-3(b) or (d), or subsection (b)(2) or (3) hereof, whoever drives a motor vehicle on any street or highway of this Municipality at a time when his or her privilege so to do has been lawfully suspended or revoked shall, for the first offense, be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, such person, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, such person shall be imprisoned for a period of thirty days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).

A record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended lawfully shall be sent to the State Department of Motor Vehicles.

- (2) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or any combination thereof, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, for the first offense shall be imprisoned thirty days and in addition to the mandatory jail sentence, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000); for the third or any subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.
- (3) Any person who drives a motor vehicle on any public highway at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or both.
- (4) An order for home detention by the court pursuant to the provisions of West Virginia Code Article 62-11B may be used as an alternative sentence to any period of incarceration required by this section.

(c) Additional Penalties. Whoever violates Sections 351.02, 351.03, 351.05, 351.09 or 351.11 shall be fined not more than five hundred dollars (\$500.00).



**ARTICLE 353**  
**Commercial Drivers**

<b>353.01</b>	<b>Definitions.</b>	<b>353.05</b>	<b>Exemptions.</b>
<b>353.02</b>	<b>Limitation on number of driver's licenses.</b>	<b>353.06</b>	<b>Drivers prohibited from operating with any alcohol in system.</b>
<b>353.03</b>	<b>Employer responsibilities.</b>	<b>353.07</b>	<b>Commercial drivers prohibited from texting.</b>
<b>353.04</b>	<b>Commercial driver's license required.</b>	<b>353.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

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

**353.01 DEFINITIONS.**

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

- (a) "Alcohol" means:
  - (1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
  - (2) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;
  - (3) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
  - (4) Wine of not less than one half of one percent (0.5%) of alcohol by volume.
- (b) "Alcohol concentration" means:
  - (1) The number of grams of alcohol per 100 milliliters of blood; or
  - (2) The number of grams of alcohol per 210 liters of breath; or
  - (3) The number of grams of alcohol per sixty-seven milliliters of urine; or
  - (4) The number of grams of alcohol per eighty-six milliliters of serum.
- (c) "Commercial driver license" means a license issued in accordance with the requirements of West Virginia Code Article 17E-1 to an individual which authorizes the individual to drive a class of commercial motor vehicle.

- (d) "Commercial driver instruction permit" means a permit issued pursuant to West Virginia Code 17E-1-9(d).
- (e) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
  - (1) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;
  - (2) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;
  - (3) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
  - (4) If the vehicle is of any size transporting hazardous materials as defined in this section.
- (f) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.
- (g) "Disqualification" means any of the following three actions:
  - (1) The suspension, revocation or cancellation of a driver's license by the state or jurisdiction of issuance.
  - (2) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.
  - (3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).
- (h) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of Section 353.06 "drive" includes operation or physical control of a motor vehicle anywhere in this Municipality.
- (i) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.
- (j) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.
- (k) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.
- (l) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.



- (m) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.
- (n) "Farmer" includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.
- (o) "Farmer vehicle driver" means the person employed and designated by the farmer to drive a farm vehicle as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.
- (p) "Motor vehicle" means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.
- (q) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.
- (r) "Violation of an out-of-service order" means:
  - (1) The operation of a commercial motor vehicle during the period the driver was placed out of service; or
  - (2) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.
  - (3) The operation of any commercial vehicle by a motor carrier operation after the carrier has been placed out of service.
- (s) "Texting" means manually entering alphanumeric text into or reading text from an electronic device.
  - (1) This action includes, but is not limited to, short messaging service, e-mailing, instant messaging and a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry for present or future communication.
  - (2) Texting does not include:
    - A. Reading, selecting or entering a telephone number, an extension number or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;
    - B. Inputting, selecting or reading information on a global positioning system or navigation system; or
    - C. Using a device capable of performing multiple functions including, but not limited to, fleet management systems, dispatching devices, smart phones, citizen band radios or music players for a purpose that is not otherwise prohibited by this section.

(WVaC 17E-1-4)

### **353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.**

No person who drives a commercial motor vehicle shall have more than one driver license at one time. (WVaC 17E-1-4)

**353.03 EMPLOYER RESPONSIBILITIES.**

(a) Each employer shall require the applicant to provide the information specified in West Virginia Code 17E-1-5.

(b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

- (1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;
- (2) Has more than one driver's license at one time.
- (3) Or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-of-service order;
- (4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or
- (5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.

(c) No employer may require or allow a driver to operate a commercial motor vehicle while texting. (WVaC 17E-1-6)

**353.04 COMMERCIAL DRIVER'S LICENSE REQUIRED.**

(a) Except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person shall drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification, or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.  
(WVaC 17E-1-7)

**353.05 EXEMPTIONS.**

(a) Farmers. Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

- (1) Driven by a farmer or farm vehicle driver;
- (2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
- (3) Not used in the operation of a common or contract motor carrier; and
- (4) Used within 150 miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military Personnel. Active duty military personnel operating vehicles being used for military purposes are exempted from the provisions of this article in accordance with the provisions of 49 CFR § 383.3 (c)(2006).

(c) Fire Fighting and Rescue Equipment. Operators of vehicles authorized to hold an authorized emergency vehicle permit for use of red signal lights only are exempt from the provisions of this article while the authorized emergency vehicle permit is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:

- (1) Owned and operated by state, county and municipal fire departments.
- (2) Owned and operated by state, county and municipal civil defense organizations.
- (3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.
- (4) Owned and operated by volunteer fire departments.

(d) Operators of Off-Road Construction and Mining Equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, that the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, that no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) Exempt Vehicles. The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.  
(WVaC 17E-1-8)

### **353.06 DRIVERS PROHIBITED FROM OPERATING WITH ANY ALCOHOL IN SYSTEM.**

(a) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person convicted of a second or any subsequent offense under the provisions of this subsection may, in the discretion of the court be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

(b) A person who violates the provisions of subsection (a) of this section shall be treated in the same manner set forth in West Virginia Code 17C-19-3, as if he or she had been arrested for driving under the influence of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by West Virginia Code 17E-1-15 shall be placed out of service for twenty-four hours by the arresting law-enforcement officer. (WVaC 17E-1-14)

**353.07 COMMERCIAL DRIVERS PROHIBITED FROM TEXTING.**

(a) No commercial driver may engage in texting while driving a commercial motor vehicle.

(b) No motor carrier may allow or require its drivers to engage in texting while driving a commercial motor vehicle.

(c) For the purposes of this section only, and unless a more restrictive prohibition is prescribed in the West Virginia Code, driving means operating a commercial motor vehicle with the motor running, including while temporarily stationed because of traffic, a traffic control device or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of or off a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary. (WVaC 17E-1-14(a))

**353.99 PENALTY.**

Unless another penalty is provided in this article, whoever violates any provision of this article shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), except that for the second violation of Section 353.04, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000). For the third or any subsequent conviction for violation of Section 353.04, the offender shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500).

**ARTICLE 355**  
**All-Terrain Vehicles**

<b>355.01</b>	<b>Definition of all-terrain and utility terrain vehicle.</b>	<b>355.06</b>	<b>Exemption for farm, commercial use; current regulations.</b>
<b>355.02</b>	<b>Acts prohibited by operator.</b>	<b>355.07</b>	<b>Applicability of rules of operation.</b>
<b>355.03</b>	<b>Safety awareness courses.</b>	<b>355.99</b>	<b>Penalty.</b>
<b>355.04</b>	<b>Rental dealers required to provide safety equipment.</b>		
<b>355.05</b>	<b>Private property exemption.</b>		

**CROSS REFERENCES**

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

**355.01 DEFINITION OF ALL-TERRAIN AND UTILITY TERRAIN VEHICLE.**

(a) As used in this article, "all-terrain vehicle" or "ATV" means any motor vehicle, designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(b) "Utility terrain vehicle" means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.

(c) As used in this article, all-terrain vehicles means all-terrain vehicles and utility-terrain vehicles. (WVaC 17F-1-9)

**355.02 ACTS PROHIBITED BY OPERATOR.**

(a) No all-terrain vehicle may be operated in this Municipality:

- (1) On any interstate highway except by public safety personnel responding to emergencies;
- (2) On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:
  - A. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
  - B. The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
  - C. The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and
  - D. Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;

- (3) With more than one passenger unless more passengers are allowed under manufacturers' recommendations;
- (4) With a passenger under the age of eighteen, unless the operator has at a minimum a level of two intermediate driver's license or its equivalent or is eighteen years of age or older;
- (5) Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance specifications established by the American National Standards Institute Standard Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell safety standards for protective headgear for vehicle users;
- (6) Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;
- (7) Without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system; or
- (8) Unless operating in compliance with the provisions of Section 355.03.

(b) An all-terrain vehicle may, for the sole purpose of getting from one trail, field or area of operation to another, be operated upon the shoulder of any road, street or highway referred to in subsection (a)(2) of this section, other than an interstate highway, for a distance not to exceed ten miles, if:

- (1) The vehicle is operated at speeds of twenty-five miles per hour or less; and
- (2) The vehicle is operated at any time from sunset to sunrise, the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.

(c) Operation of an all-terrain vehicle in accordance with subsection (b) shall not constitute operation of a motor vehicle on a road or highway of this Municipality as contemplated by the provisions of Section 355.07.

(d) Notwithstanding any provision of this article to the contrary, the Municipality may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes.

(WVaC 17F-1-1)

### **355.03 SAFETY AWARENESS COURSES.**

(a) On and after January 1, 2005, no person under the age of eighteen may operate an all-terrain vehicle without a certificate of completion of a vehicle rider awareness course as offered or approved by the Commissioner of Motor Vehicles.

(b) The provisions of subsection (a) of this section do not apply to the operation of an all-terrain vehicle on any private or public recreational trail or area or affiliated trail or area operated by any person or entity which has in place a safety program.

(WVaC 17F-1-2)

#### **355.04 RENTAL DEALERS REQUIRED TO PROVIDE SAFETY EQUIPMENT.**

Any person or entity renting or leasing all-terrain vehicles for recreational purposes must provide protective helmets as defined by the provisions of Section 355.02(a)(5), to all persons using such vehicles who are under the age of eighteen and offer protective helmets to all persons eighteen and older using the rented or leased vehicles: Provided, that for the provisions of this section to be applicable, the age and identity of the users of the all-terrain vehicle must be disclosed to the person or entity providing the rented or leased vehicle.  
(WVaC 17F-1-4)

#### **355.05 PRIVATE PROPERTY EXEMPTION.**

Except as provided by the provisions of Section 355.02(a)(3) to (5), and except as provided by the provisions of Section 355.03, the provisions of this article do not apply if the all-terrain vehicle is operated exclusively on lands owned or leased by the vehicle owner or on private lands of others with the owner's permission.  
(WVaC 17F-1-5)

#### **355.06 EXEMPTION FOR FARM, COMMERCIAL USE; CURRENT REGULATIONS.**

(a) Except as provided by the provisions of Section 355.02(a)(4) and (5), nothing in this article may be construed to preclude or limit the use or operation of all-terrain vehicles for lawful nonrecreational commercial purposes, including, but not limited to, farm use, oil and gas operations, timbering, surveying and public utilities access.

(b) Nothing in this article may be construed to supersede or contravene the provisions of any agreement between the State of West Virginia and any private or governmental entity entered into prior to the effective date of this article, or any lawfully promulgated legislative rule, including any emergency legislative rule, regulating the operation of all-terrain vehicles.  
(WVaC 17F-1-6)

#### **355.07 APPLICABILITY OF RULES OF OPERATION.**

(a) Every person operating an all-terrain vehicle upon a public road or highway of this Municipality shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of West Virginia Code Chapter 17C and this Traffic Code except where inconsistent with the provisions of this article and except as to those provisions of West Virginia Code Chapter 17C and this Traffic Code which by their nature can have no application.

(b) Notwithstanding the provisions of subsection (a) of this section, a motor vehicle operator's license is not required of an operator of an all-terrain vehicle when he or she is operating said vehicle in conformity with the provisions of Section 355.02(a)(2) or (b) except when the operator is under the age of eighteen and is transporting a passenger under the age of eighteen.  
(WVaC 17F-1-7)

#### **355.99 PENALTY.**

(a) Except as provided in the provisions of subsection (b) of this section and in addition to any other legal remedy for violation of civil or criminal provisions of this Code, any person who violates the provisions of this article or who owns or has control over an all-terrain vehicle and knowingly permits it to be used in violation of the provisions of this article shall be fined not more than one hundred dollars (\$100.00).

(b) Any parent, legal guardian or person who has actual responsibility for a child under eighteen years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle without a helmet as required by the provisions of Section 355.02 shall be subject to the following penalties:

- (1) For a first offense, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or not more than ten hours of community service, or both;
- (2) For a second offense, a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or not more than twenty hours of community service, or both;
- (3) For a third or subsequent offense, a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or not more than one hundred hours of community service, or both.  
(WVaC 17F-1-8)



**CHAPTER SEVEN - Parking**  
**Art. 361. Parking Generally.**

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**ARTICLE 361**  
**Parking Generally**

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|---|---|
| <b>361.01 Prohibition against parking on streets or highways.</b> | <b>361.06 Accessible parking.</b>                                       |
| <b>361.02 Police may remove illegally stopped vehicles.</b>       | <b>361.07 Abandoned motor vehicles.</b>                                 |
| <b>361.03 Prohibited stopping, standing or parking places.</b>    | <b>361.08 Parking for certain purposes prohibited.</b>                  |
| <b>361.04 Vehicles parked on private property.</b>                | <b>361.09 Truck loading zones.</b>                                      |
| <b>361.05 Manner of angle and parallel parking.</b>               | <b>361.10 Bus stops and taxicab stands.</b>                             |
|   | <b>361.11 Parking in alleys and narrow streets; exceptions.</b>         |
|   | <b>361.12 Registered owner prima-facie liable for unlawful parking.</b> |
|   | <b>361.99 Penalty.</b>  |

**CROSS REFERENCES**

See sectional histories for similar State law  
 Authority to regulate the standing or parking of vehicles - see W. Va. Code 17C-2-8(a)(1)  
 Authority to regulate parallel and angle parking - see W. Va. Code 17C-13-4  
 Impounding of abandoned vehicles - see TRAF. 303.07  
 Duty to stop engine, set brake on grade and remove key - see TRAF. 349.01

**361.01 PROHIBITION AGAINST PARKING ON STREETS OR HIGHWAYS.**

(a) Upon any street or highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street or highway when it is practicable to stop, park or so leave such vehicle off such part of the street or highway, but in every event an unobstructed width of the street or highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of 200 feet in each direction upon such highway or street.

(b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street or highway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (WVaC 17C-13-1)

**361.02 POLICE MAY REMOVE ILLEGALLY STOPPED VEHICLES.**

(a) Whenever any police officer finds a vehicle standing upon a street or highway in violation of Section 361.01, such officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main-traveled part of such street or highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety. (WVaC 17C-13-2)

**361.03 PROHIBITED STOPPING, STANDING OR PARKING PLACES.**

(a) No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet of a fire hydrant;
- (5) In a properly designated fire lane;
- (6) On a crosswalk;
- (7) Within twenty feet of a crosswalk at an intersection;
- (8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of a roadway;
- (9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
- (10) Within fifty feet of the nearest rail of a railroad crossing;

- (11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance (when properly signposted);
- (12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- (14) Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
- (15) At any place where signs prohibit stopping, standing or parking, or where the curbing or street is painted yellow or red, or at any place in excess of the maximum time limited by signs;
- (16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule;
- (17) Upon any controlled-access highway;
- (18) At any place on any street or highway where the safety and convenience of the traveling public is thereby endangered;
- (19) Over or across any lines or marks established by the Municipality to indicate parking spaces.
- (20) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint. (WVaC 17c-13-3)
- (21) In the City Parking Lot, located along W. 5th Street, which is reserved exclusively for City employees, except at such times and under such circumstances as is authorized by the Chief of Police.  
(Passed 5-19-92)

(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.  
(WVaC 17C-13-3)

#### **361.04 VEHICLES PARKED ON PRIVATE PROPERTY.**

No driver of a vehicle shall stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land. The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the State Police of such action, and, in addition notify the Police Department.  
(WVaC 17C-14-13)

**361.05 MANNER OF ANGLE AND PARALLEL PARKING.**

(a) Every vehicle stopped or parked upon a roadway where there is an adjacent curb shall be stopped or parked with the curb-side wheels of such vehicle parallel with and not more than eighteen inches from the curb, unless it is impossible to approach so close to the curb; in such case the stop shall be as close to the curb as possible and only for the time necessary to discharge and receive passengers or to load or unload merchandise.

(b) This subsection does not apply to streets or parts thereof where angle parking is lawfully permitted. However, no angle parking shall be permitted on a State or Federal-aid route unless approved by the State Commissioner of Highways.

(c) Upon streets where angle parking is permitted, no person shall stop, stand or park a vehicle other than at the angle to the curb or edge of the roadway as is indicated by appropriate signs or marks.

(d) No vehicle shall be stopped or parked on a road or street with the vehicle facing in a direction other than the direction of travel on that side of the road or street.

**361.06 ACCESSIBLE PARKING.**

(a) As used in this section, the following terms have the meanings ascribed to them in this subsection:

- (1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath chiropractor, advanced nurse practitioner or physician's assistant licensed to practice in West Virginia:
  - A. Cannot walk two hundred feet without stopping to rest;
  - B. Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;
  - C. Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
  - D. Uses portable oxygen;
  - E. Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or
  - F. Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic physical condition.
- (2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in nineteen hundred sixty-nine at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

- (3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one half inches, with all of the following on each side:
  - A. The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;
  - B. An identification number measuring one inch in height;
  - C. An expiration date in numbers measuring one inch in height; and
  - D. The seal or other identifying symbol of the issuing authority.
- (4) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.
- (5) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.
- (6) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:
  - A. Inns, hotels, motels and other places of lodging;
  - B. Restaurants, bars or other establishments serving food or drink;
  - C. Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;
  - D. Auditoriums, convention centers, lecture halls or other places of public gatherings;
  - E. Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;
  - F. Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;
  - G. Terminals, depots or other stations used for public transportation;
  - H. Museums, libraries, galleries or other places of public display or collection;
  - I. Parks, zoos, amusement parks or other places of recreation;
  - J. Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social service establishments; and
  - K. Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.
- (7) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.
- (8) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the American with Disabilities Act (ADA).
- (9) "Parking enforcement personnel" includes any law enforcement officer as defined by West Virginia Code 30-29-1, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.

(b) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart along with the words "no parking" in painted letters which are at least twelve inches in height. All accessible parking spaces should have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

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

(d) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment at all times.

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

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty, he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(f) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(g) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to \$500 fine".

(h) No person may stop, stand or park a motor vehicle in an area designated or marked off as an accessible aisle to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection shall be fined two hundred dollars (\$200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars (\$300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars (\$500.00).

(i) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(j) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(k) The Municipality in enforcing this section shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (j) of this section, if adopted by the Municipality or otherwise shall go into the Municipality's General Revenue Fund. (WVaC 17C-13-6)

### **361.07 ABANDONED MOTOR VEHICLES.**

(a) Definitions.

- (1) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period of time over five days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, that a motor vehicle, or major part thereof, shall not be considered an abandoned motor vehicle if:
  - A. The owner of the motor vehicle is storing the motor vehicle on the owner's property;
  - B. The motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner;
  - C. The owner owns other motor vehicles similar to the motor vehicle being stored; and
  - D. The owner is a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.
- (2) "Enclosed building" means a structure surrounded by walls or one continuous wall and having a roof enclosing the entire structure and includes a permanent appendage thereto.
- (3) "Motor vehicle" means a vehicle which is or was self-propelled, including, but not limited to, automobiles, trucks, buses and motorcycles.
- (4) "Person" means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.  
(WVaC 17-24A-1)

(b) Abandonment of Motor Vehicle Prohibited. No person shall, within this Municipality, abandon a motor vehicle or major part thereof upon the right-of-way of any public highway, upon any other public property or upon any private property without the consent of the owner or person in control of the property, or upon property owned or controlled by that person, unless it be at a licensed salvage yard or at the business establishment of a demolisher, or a business licensed to do business in the State of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.  
(WVaC 17-24A-2)

### **361.08 PARKING FOR CERTAIN PURPOSES PROHIBITED.**

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

- (a) Displaying such vehicle for sale.
- (b) Displaying advertising.



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

#### **361.09 TRUCK LOADING ZONES.**

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

#### **361.10 BUS STOPS AND TAXICAB STANDS.**

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

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

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

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

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

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

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

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

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

**361.99 PENALTY.**

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

(b) Abandoned and Junk Vehicles. Whoever violates Section 361.07 shall be fined not more than five hundred dollars (\$500.00).

## CHAPTER NINE - Pedestrians and Bicycles

Art. 371. Pedestrians.

Art. 373. Bicycles.

### ARTICLE 371 Pedestrians

<p><b>371.01 Compliance with traffic regulations.</b></p> <p><b>371.02 Right of way in crosswalk.</b></p> <p><b>371.03 Crossing roadway outside crosswalk.</b></p> <p><b>371.04 Drivers to exercise due care.</b></p> <p><b>371.05 Moving upon right half of crosswalk.</b></p>	<p><b>371.06 Walking along streets and highways; soliciting rides.</b></p> <p><b>371.07 Persons working on streets and highways.</b></p> <p><b>371.08 Protection of blind pedestrians.</b></p> <p><b>371.09 Electric personal assistive mobility device.</b></p> <p><b>371.99 Penalty.</b></p>
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#### CROSS REFERENCES

See sectional histories for similar State law

Pedestrian defined - see TRAF. 301.21

Pedestrians at traffic signal - see TRAF. 313.03

Pedestrian control signal - see TRAF. 313.04

#### **371.01 COMPLIANCE WITH TRAFFIC REGULATIONS.**

Pedestrians shall be subject to traffic control signals at intersections as provided in Section 313.03, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

(WVaC 17C-10-1(a))

#### **371.02 RIGHT OF WAY IN CROSSWALK.**

(a) When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in Section 371.03(b).

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(WVaC 17C-10-2)

### **371.03 CROSSING ROADWAY OUTSIDE CROSSWALK.**

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(WVaC 17C-10-3)

### **371.04 DRIVERS TO EXERCISE DUE CARE.**

Notwithstanding any other provision of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(WVaC 17C-10-4)

### **371.05 MOVING UPON RIGHT HALF OF CROSSWALK.**

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

(WVaC 17C-10-5)

### **371.06 WALKING ALONG STREETS AND HIGHWAYS; SOLICITING RIDES.**

(a) Where sidewalks are provided, no pedestrian shall walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a street or highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

(WVaC 17C-10-6)

**371.07 PERSONS WORKING ON STREETS AND HIGHWAYS.**

The driver of a vehicle shall yield the right of way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic control device or flagman.

(WVaC 17C-10-8)

**371.08 PROTECTION OF BLIND PEDESTRIANS.**

The driver of a vehicle approaching a blind pedestrian who knows, or in the exercise of reasonable care should know, that such pedestrian is blind because such pedestrian is carrying a cane predominantly white or metallic in color with or without a red tip, or is using a guide dog or otherwise, shall exercise care commensurate with the situation to avoid injuring such pedestrian.

(WVaC 5-15-5)

**371.09 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.**

(a) For purposes of this section, the definition of an "electric personal assistive mobility device" is the same definition as previously set forth in Section 301.081 and "operator" shall refer to the operator of an electric personal assistive mobility device.

(WVaC 17C-10A-1)

(b) An electric personal assistive mobility device shall be equipped with:

- (1) Front, rear and side reflectors;
- (2) A braking system that enables the operator to bring the device to a controlled stop; and
- (3) If operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.

(c) An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right of way to pedestrians.

(d) Except as provided in this section, no other provisions of the motor vehicle code shall apply to electric personal assistive mobility devices.

(WVaC 17C-10A-2)

**371.99 PENALTY.**

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

(WVaC 17C-10-7)

(b) An operator who violates a provision of Section 371.09 shall receive a warning for the first offense. For a second or subsequent offense, the operator shall be punished by a fine of not less than ten dollars (\$10.00) and not greater than one hundred dollars (\$100.00).

(WVaC 17C-10A-2)



## ARTICLE 373 Bicycles

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| <p><b>373.01</b> Compliance; code application to bicycles.</p> <p><b>373.02</b> Obedience to traffic rules; exceptions.</p> <p><b>373.03</b> Riding upon seats; number of persons.</p> <p><b>373.04</b> Attaching bicycle or sled to vehicle.</p> <p><b>373.05</b> Riding on roadways and bicycle paths.</p> | <p><b>373.06</b> Carrying articles.</p> <p><b>373.07</b> Lights and reflector on bicycle; brakes.</p> <p><b>373.08</b> Reckless operation; control, course and speed.</p> <p><b>373.09</b> Bicycle helmets for children.</p> <p><b>373.99</b> Penalty.</p> |
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### CROSS REFERENCES

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

### **373.01 COMPLIANCE; CODE APPLICATION TO BICYCLES.**

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

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

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

### **373.02 OBEDIENCE TO TRAFFIC RULES; EXCEPTIONS.**

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

**373.03 RIDING UPON SEATS; NUMBER OF PERSONS.**

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

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

**373.04 ATTACHING BICYCLE OR SLED TO VEHICLE.**

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

**373.05 RIDING ON ROADWAYS AND BICYCLE PATHS.**

(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

- (1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;
- (2) When preparing for a left turn at an intersection or into a private road or driveway; or
- (3) When reasonably necessary to avoid any condition or potential conflict including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(c) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.  
(WVaC 17C-11-5)

**373.06 CARRYING ARTICLES.**

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

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

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

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



**373.08 RECKLESS OPERATION; CONTROL, COURSE AND SPEED.**

No person shall operate a bicycle:

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

**373.09 BICYCLE HELMETS FOR CHILDREN.**

(a) Definitions. As used in this section:

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

(b) Requirements for Helmet Use.

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

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

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

**373.99 PENALTY.**

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

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

## **CODIFIED ORDINANCES OF WILLIAMSTOWN**

### **PART FIVE - GENERAL OFFENSES CODE**

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Art. 501. Administration and Law Enforcement.

Art. 505. Animals and Fowl.

Art. 509. Disorderly Conduct and Peace Disturbance.

Art. 513. Gambling.

Art. 517. Indecency and Obscenity.

Art. 521. Liquor Control.

Art. 525. Minors.

Art. 529. Offenses Relating to Persons.

Art. 533. Offenses Relating to Property.

Art. 541. Railroads.

Art. 545. Weapons and Explosives.



**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART FIVE - GENERAL OFFENSES CODE**

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**ARTICLE 501**  
**Administration and Law Enforcement**

- |               |  |               |   |
|---------------|--|---------------|---|
| <b>501.01</b> | <b>Refusal to aid officer.</b>   | <b>501.06</b> | <b>Attempts.</b>                                      |
| <b>501.02</b> | <b>Obstructing or giving false information to an officer; fleeing.</b> | <b>501.07</b> | <b>Citation in lieu of arrest; failure to appear.</b> |
| <b>501.03</b> | <b>False fire alarm.</b>   | <b>501.08</b> | <b>Falsely reporting an emergency incident.</b>       |
| <b>501.04</b> | <b>False reports concerning bombs or other explosive devices.</b>      | <b>501.09</b> | <b>Interfering with City official; false report.</b>  |
| <b>501.05</b> | <b>Impersonating an official or law enforcement officer.</b>           | <b>501.99</b> | <b>Penalty.</b>                                       |

**CROSS REFERENCES**

See sectional histories for similar State law  
 Specific types of bribery - see W. Va. Code 3-1-1 et seq.,  
 15-2-17 et seq., 18-2A-9, 61-10-15 and 61-10-22  
 Penalty not to exceed that provided in W. Va. Code  
 Ch. 61 - see W. Va. Code 8-12-5(57)  
 Crimes against public justice - see W. Va. Code Art. 61-5  
 Bribery and corrupt practices generally - see W. Va. Code  
 Art. 61-5A  
 Failure to comply with lawful order of police officer -  
 see TRAF. 303.02

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**501.01 REFUSAL TO AID OFFICER.**

No person shall, when required by the Police Chief or any other officer, refuse or neglect to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of any person for a breach of the peace or in any case of escape or rescue.

(WVaC 61-5-14)

**501.02 OBSTRUCTING OR GIVING FALSE INFORMATION TO AN OFFICER; FLEEING.**

(a) No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder or obstruct, or attempt to hinder or obstruct, any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity.

(b) No person shall, with intent to impede or obstruct a law enforcement officer in the conduct of an investigation of a felony offense, knowingly and willfully make a materially false statement. Provided, that the provisions of this subsection (b) shall not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For the purposes of this subsection, "law enforcement officer" shall not include a watchman, state police or college security personnel who is not a certified law-enforcement officer.

(c) No person shall intentionally flee or attempt to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her.

(d) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop.

(e) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and cause damage to the real or personal property of any person during or resulting from his or her flight.

(f) For purposes of this section, "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in West Virginia Code 17A-1-1 whether or not it is being operated on a public highway at the time and whether or not it is licensed by the State.

(g) For purposes of this section, "flee", "fleeing" and "flight" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

- (h) (1) No person, with the intent to purposefully deprive another person of emergency services, shall interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire or emergency medical service personnel.
- (2) For the purpose of this subsection, "interfere with or prevent" includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.
- (3) For the purpose of this subsection, "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster or risk of injury or damage to a person or property. (WVaC 61-5-17)

(i) No person shall refuse or fail to comply with any lawful order, direction or signal of a police officer.

### **501.03 FALSE FIRE ALARM.**

No person shall make, turn in or telephone, or by use of any means or method of communication aid or abet in the making or turning in of any alarm of fire which he knows to be false at the time of making such alarm. (WVaC 29-3-21)

### **501.04 FALSE REPORTS CONCERNING BOMBS OR OTHER EXPLOSIVE DEVICES.**

(a) No person shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device.

(b) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section for a second offense or whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and prosecuted under appropriate State law. (WVaC 61-6-17)

### **501.05 IMPERSONATING AN OFFICIAL OR LAW ENFORCEMENT OFFICER.**

(a) No person shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or be under the order or direction of any such person. No person not a law-enforcement officer or law-enforcement official shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person.

For purposes of this section, "law-enforcement officer" and "law-enforcement official" shall have the meanings set forth in West Virginia Code 30-29-1 except that such terms shall not include members of the State Division of Public Safety and shall not include individuals hired by non-public entities for the provision of security services. (WVaC 61-1-9)

(b) No person shall falsely represent himself to be an officer or employee of the Municipality, or exercise or attempt to exercise any of the duties, functions or powers of a Municipal officer. No person not a member of the Fire Department, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the Fire Department.

### **501.06 ATTEMPTS.**

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall be subject to the penalty provided in Section 501.99 if the offense is punishable by confinement in jail. (WVaC 61-11-8)

### **501.07 CITATION IN LIEU OF ARREST; FAILURE TO APPEAR.**

A police officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

(a) Any misdemeanor, not involving injury to the person, committed in a police officer's presence: provided, that the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and

- (b) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to Section 533.01 of this Code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense, the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance. (WVaC 62-1-5(a))

#### **501.08 FALSELY REPORTING AN EMERGENCY INCIDENT.**

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed or circulated is false or baseless, he:

- (a) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or
- (b) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or
- (c) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or
- (d) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles. (WVaC 61-6-20)

#### **501.09 INTERFERING WITH CITY OFFICIAL; FALSE REPORT.**

(a) No person shall carelessly, willfully or otherwise interfere with, hinder or obstruct any officer or employee of the City who is engaged in, in route to or returning from the performance of official duty, whether such interference, hindrance or obstruction be by threat, assault or otherwise.

(b) No person shall knowingly give false or misleading information to a City police officer, any duly authorized representative of the City Police Department, or any other employee of the City of Williamstown who is engaging in the performance of official duty.

(c) Whoever violates this section is guilty of a misdemeanor, punishable by a fine not to exceed \$500.00.  
(Passed 1-21-92)



**501.99 PENALTY.**

(a) Whoever violates any provision of this Part Five - General Offenses Code for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00). Each day such violation continues shall constitute a separate offense.

(b) Whoever violates Section 501.01 shall be fined not more than one hundred dollars (\$100.00).

(c) Whoever violates Section 501.02(b) shall be fined not more than two hundred dollars (\$200.00).

(d) Whoever violates Section 501.02(d) shall be fined not more than one thousand dollars (\$1,000).

(e) Whoever violates Section 501.02(e) shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000).

(f) Whoever violates Section 501.02(h) shall be fined not less than two hundred fifty dollars (\$250.00) nor more than two thousand dollars (\$2,000).  
(WVaC 61-5-17)

(g) (1) Except as provided by the provisions of subsection (g)(2) of this section, any person who violates the provisions of Section 501.03 shall be fined for a first offense not more than one hundred dollars (\$100.00); and for a second and each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(2) Any person who violates the provisions of Section 501.03 with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and shall be prosecuted under appropriate state law.

(h) Whoever violates Section 501.04 shall be fined not more than one thousand dollars (\$1,000).

(i) Whoever violates Section 501.05(a) shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).  
(WVaC 61-1-9)



**ARTICLE 505**  
**Animals and Fowl**

<b>505.01</b>	<b>Cruelty to animals.</b>	<b>505.08</b>	<b>Bird sanctuary.</b>
<b>505.02</b>	<b>Cruelty to dogs and cats.</b>	<b>505.09</b>	<b>Cats.</b>
<b>505.03</b>	<b>Nuisance conditions prohibited.</b>	<b>505.10</b>	<b>Horseback riding.</b>
<b>505.04</b>	<b>Barking or howling dogs.</b>	<b>505.11</b>	<b>Dogs.</b>
<b>505.05</b>	<b>Hunting and trapping prohibited.</b>	<b>505.12</b>	<b>Excrement removal.</b>
<b>505.06</b>	<b>Farm animals prohibited.</b>	<b>505.13</b>	<b>Head tax on dogs.</b>
<b>505.07</b>	<b>Wild animals and reptiles.</b>	<b>505.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

Authority to regulate the keeping of animals - see  
W. Va. Code 8-12-5(26)  
Authority to prevent ill-treatment of animals - see  
W. Va. Code 8-12-5(27)  
Domestic animal tax - see W. Va. Code 8-13-10  
Disposing of dead animals - see W. Va. Code 16-9-3  
Diseases among domestic animals - see W. Va. Code  
Art. 19-9  
Dogs generally - see W. Va. Code Art. 19-20  
Vaccination of dogs - see W. Va. Code Art. 19-20A  
Hunting - see W. Va. Code Art. 20-2

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**505.01 CRUELTY TO ANIMALS.**

- (a) No person shall intentionally, knowingly or recklessly:
- (1) Mistreat an animal in a cruel manner;
  - (2) Abandon an animal;
  - (3) Withhold,
    - A. Proper sustenance, including food or water;
    - B. Shelter that protects from the elements of weather; or
    - C. Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
  - (4) Abandon an animal to die;
  - (5) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
  - (6) Ride an animal when it is physically unfit;
  - (7) Bait or harass an animal for the purpose of making it perform for a person's amusement;
  - (8) Cruelly chain or tether an animal; or
  - (9) Use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.

(b) No person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which the conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.  
(WVaC 61-8-19)

#### **505.02 CRUELTY TO DOGS AND CATS.**

No person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or mistreating any other dog or cat.

#### **505.03 NUISANCE CONDITIONS PROHIBITED.**

No person shall keep or harbor any animal or fowl in the Municipality so as to create noxious, or offensive odors or unsanitary conditions which are a menace to the health, comfort or safety of the public.

#### **505.04 BARKING OR HOWLING DOGS.**

No person shall keep or harbor any dog within the Municipality which, by frequent and habitual barking, howling or yelping, creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the Municipality. Any person who shall allow any dog habitually to remain, be lodged or fed within any dwelling, building, yard or enclosure, which he occupies or owns, shall be considered as harboring such dog.

**505.05 HUNTING AND TRAPPING PROHIBITED.**

(a) No person shall hunt, kill, or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle, or any other means within the corporate limits of the Municipality.

(b) No person shall in any manner within the Municipality, engage in the trapping of animals or fowl, cause such traps to be set, or permit otherwise upon their property to set such traps, unless permission therefor is granted, in writing, by the Chief of Police. Such permission shall be granted only under circumstances where the trapping of animals or fowl is necessary to abate a nuisance or otherwise protect the public health and safety, and in the event such trapping is permitted, the same shall be subject to all trapping regulations promulgated by the West Virginia Department of Natural Resources.

(c) Any person who violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$100.00 upon a first offense, nor more than \$500.00 upon a second offense.

(Passed 1-18-05.)

**505.06 FARM ANIMALS PROHIBITED.**

No person shall harbor or maintain within the City any horse, cow, pig, goat, sheep or other animal included in the category of beast of burden, cattle, livestock or barnyard animal, or any poultry or fowl; and no owner, custodian or person in charge of any such animal, poultry or fowl shall permit it to run at large within the City. Dogs and cats shall not be construed to be within the purview of this section.

(Passed 12-5-52)

**505.07 WILD ANIMALS AND REPTILES.**

No person shall harbor or maintain within the City any wild animal or any reptile, except pursuant to a special permit issued by Council and no owner, custodian or person in charge of any such animal or reptile shall permit it to run at large within the City.

**505.08 BIRD SANCTUARY.**

(a) The entire area embraced within the corporate limits of the City is hereby designated as a bird sanctuary.

(b) No person shall trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, that if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper public health authorities, then in such event such health authorities shall meet with a representative of the Audubon Society, bird club, garden club or humane society, or as many of those clubs as are found to exist in the City, after having given at least three days actual notice of the time and place of such meeting to the representatives of such clubs.

(c) If as a result of that meeting no satisfactory alternative is found to abate such nuisance, then the birds may be destroyed in such numbers and in such manner as is deemed advisable by the health authorities under the supervision of the Chief of Police.

**505.09 CATS.**

No person shall keep within the City any cat which shall be squalling, crying or in any other matter whatsoever, disturb the comfort or quiet of any neighborhood.

**505.10 HORSEBACK RIDING.**

No person shall ride a horse upon the public sidewalks of the City.

**505.11 DOGS.**

(a) Defined. For the purposes of this section, the term "dog" shall mean a dog of either sex, unless otherwise specified.

(b) Running at Large. Any person who owns, keeps or harbors a dog within the City shall keep such dog confined to the premises owned or occupied by him and shall not permit such dog to run at large; provided, that a dog shall not be deemed to be at large when held on leash by and under the control of a responsible person and while displaying on its collar a currently valid registration tag and currently valid vaccination tag.

(c) Impoundment. It shall be the duty of the police or other persons designated by the Mayor for such purpose to cause to be seized and impounded any dog at large in the City.

(d) Disturbing the Quiet of Neighborhood. No person shall own or keep within the City any dog which shall, by barking, squalling, crying or in any other manner whatsoever disturb the comfort or quiet of any neighborhood.

(e) Vicious Dogs. Any person who owns or harbors any dog known by him to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dog wears a tag or muzzle, and, upon satisfactory proof that such dog is vicious, dangerous or in the habit of biting or attacking persons, such person shall be required to post a notice reading "Beware Vicious Dog." Such notice shall be exhibited in a place so that any person may readily observe such notice upon entering the property where such dog is kept or harbored.

Violation of this section shall constitute a misdemeanor.

(Passed 3-15-77)

**505.12 EXCREMENT REMOVAL.**

No person owning or having custody of any dog, cat or any other animal shall permit said dog, cat or other animal to defecate on any school ground, public street, alley, sidewalk, tree bank, park or any other public grounds or on any private property within the City, other than the premises of the owner or person having custody of said dog, cat or other animal, unless said defecation is removed immediately. Whoever violates this section is guilty of a misdemeanor and for a first offense shall be fined \$50.00, and \$100.00 for such subsequent offense.

(Passed 7-5-95.)

**505.13 HEAD TAX ON DOGS.**

(a) There is hereby imposed upon each person keeping within the City a dog above the age of six months an annual head tax on each dog so kept by him in the amount of three dollars (\$3.00).

(b) It shall be the duty of each person who keeps within the City a dog above the age of six months to report each such dog to the Assessor of the County at the time of the annual assessment of personal property is made; provided, that when any person within the City acquires a dog above the age of six months, or when a dog kept by him within the City attains the age of six months, such person shall then report such dog to the Assessor of the County.

(c) Each person reporting a dog to the County Assessor pursuant to subsection (b) hereof shall pay to the Assessor the amount of the head tax prescribed in subsection (a) hereof for each dog he is required to report, and he shall then attach to the collar of each such dog the proper registration tag furnished to him by the Assessor, and retain within his possession the Certificate of Registration furnished to him by the Assessor for each such dog.

(d) The annual head tax on dogs imposed by subsection (a) hereof is for a fiscal year rather than a calendar year.  
(Passed 6-16-81.)

**505.99 PENALTY.**

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

- (a)
  - (1) Whoever violates Section 505.01(a) shall be fined not less than three hundred dollars (\$300.00) nor more than two thousand dollars (\$2,000), for a first offense. Any person convicted of a second or subsequent violation of Section 505.01(a) shall be fined not less than five hundred dollars (\$500.00) nor more than three thousand dollars (\$3,000).
  - (2)
    - A. Notwithstanding any provision of this Code to the contrary, no person who has been convicted of a violation of the provisions of Section 505.01(a) may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.
    - B. For any person convicted of a violation of subsection (a) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the program.
  - (3) In addition to any other penalty which can be imposed for a violation of Section 505.01, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a conviction. A violation under this subsection is punishable by a fine not exceeding two thousand dollars (\$2,000) and forfeiture of the animal.

(b) Whoever violates Section 505.01(b) shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000).  
(WVaC 61-8-19)

(c) Whoever violates Section 505.02 shall be fined not more than one thousand dollars (\$1,000). In addition the Humane Officer may remove the dog or cat involved and place it in the pound and such dog or cat shall not be returned to the owner or perpetrator of the act of cruelty, but shall be put up for adoption to a desirable home or given into the care of a humane society or upon the recommendation of a licensed veterinarian shall be humanely destroyed.



**ARTICLE 509**  
**Disorderly Conduct and Peace Disturbance**

<b>509.01</b>	<b>Disorderly conduct.</b>	<b>509.04</b>	<b>Disturbing the peace.</b>
<b>509.02</b>	<b>Loitering on school property.</b>	<b>509.05</b>	<b>Noise restrictions.</b>
<b>509.03</b>	<b>Wearing masks, hoods or face coverings.</b>	<b>509.06</b>	<b>Jet-skis.</b>
		<b>509.07</b>	<b>Public intoxication.</b>
		<b>509.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

Authority to maintain order - see W. Va. Code 8-12-5  
 (19), (44)  
 Crimes against the peace - see W. Va. Code Art. 61-6  
 Intoxication or drinking in public places - see GEN.  
 OFF. 521.06  
 Breach of peace with weapon - see GEN. OFF. 545.02

**509.01 DISORDERLY CONDUCT.**

(a) No person shall, in a public place, any State or Municipal office or office building or any other property owned, leased, occupied or controlled by the State or Municipality, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity: provided, that nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

- (1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.
- (2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:
  - A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and

- B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.
- (3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles. (WVaC 61-6-1b)

#### **509.02 LOITERING ON SCHOOL PROPERTY.**

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. (WVaC 61-6-14a)

#### **509.03 WEARING MASKS, HOODS OR FACE COVERINGS.**

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

- (1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;
- (2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;
- (3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;
- (4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or
- (5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.

(b) The provisions of this section do not apply to any person:

- (1) Under sixteen years of age;
- (2) Wearing a traditional holiday costume;
- (3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;
- (4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;
- (5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or
- (6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport. (WVaC 61-6-22)

#### **509.04 DISTURBING THE PEACE.**

No person shall:

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

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

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

#### **509.05 NOISE RESTRICTIONS.**

(a) Noises of Certain Character Prohibited. The creation and continuation of any loud, disturbing and unnecessary noise in the City is hereby prohibited. No person shall cause, make or contribute to creating any loud or disturbing noise of such character, intensity or duration as to be detrimental to the life or health of any individual, or such noises as disturb the quiet and peace of any citizen of the City.

(b) Specific Noises Prohibited. The following acts, among others, are declared to be loud, disturbing, annoying and unnecessary noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- (1) Blowing horns. The sounding or blowing of any horn or signal device on any automobile, motorcycle, motor bus or other vehicle, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal; the creation by means of any signal device of any loud or harsh noise, and the sounding of such device for any unnecessary or unreasonable period of time.
- (2) Radios, phonographs, etc. The playing of any radio, phonograph, piccolo or any musical instrument in such manner or with such volume as to annoy or disturb any person, or the playing of such instrument in such manner as to annoy or disturb the quiet, comfort or repose of any person in any dwelling, hotel or other residence.
- (3) Pets. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb and the comfort or repose of any persons in the vicinity.
- (4) Use of vehicle. The use of any automobile, motorcycle or vehicle so out of repair, so loaded, or used or repaired in such manner as to create loud or unnecessary noises, particularly grating, grinding, rattling, riveting or other disturbing noises.

- (5) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
- (6) Exhaust discharge. To discharge into the open air the exhaust from any steam engine, stationary internal combustion engine, motor boat engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (7) Devices using compressed air. The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled and reduced.
- (8) Building operations. The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 6:00 p.m. on week days, except in cases of urgent necessity in the interest of public safety, and then only with a permit from the property City officials.
- (9) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any school, institution of learning, library, sanitarium, hospital or court, while the same is in session, or adjacent to any church during church services, which interferes with the work or worship in any such place or institution; provided, that signs must be displayed in such streets indicating that the same is a school, hospital, church, library, sanitarium or court street.
- (10) Loading and unloading operations. The creation of loud and excessive noises in connection with loading or unloading any vehicle, or repairing any vehicle, or opening and destroying bales, boxes, crates and containers.
- (11) Bells or gongs. The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity thereof.
- (12) Hawking, peddling or soliciting. Shouting, loud talking, crying or soliciting any peddlers, hawkers, taxi drivers, solicitors and vendors, which disturbs the quiet and peace of the neighborhood, or any person therein.
- (13) Noises to attract attention. The use of any drum, loud speaker or other instrument or device for the purpose of attracting attention to any performance or event, show, sale or the display or advertisement of merchandise, by the creation of noise.
- (14) Loud-speakers or amplifiers on vehicles. The use of any mechanical loud-speakers or amplifiers on trucks, airplanes or other vehicles for advertising or other purposes, except by special permission of the City Council.
- (15) Business noises at night near residences. The operation of any garage, filling station, auto repair business, taxi business, plant, store, factory or other place of business, between the hours of 8:00 p.m. and 7:00 a.m., in such manner as to create loud and disturbing noises, of such frequency, or such volume as to annoy or disturb the quiet and comfort of any citizen, and particularly the creating of disturbing noises of such frequency and volume as to annoy or disturb the quiet, comfort, peace or repose of any person in any dwelling, hotel, boarding house or other type of residence.  
(Passed 10-4-55.)

(c) Authority of Police. For the purpose of enforcing the provisions of this section, it shall be lawful for any police officer of the City to enter any unoccupied property or place of amusement, to arrest any person violating the provisions of this section. (Passed 3-2-71.)

#### **509.06 JET-SKIS.**

The use of so-called jet-skis, or any and all similar type watercraft, shall be prohibited within an 8,000 square foot area around and near the boat loading ramp. In particular, the area where use of jet skis, or any and all similar type watercraft, is prohibited shall include an area 200 feet east of the boat loading ramp; 200 feet west of the boat loading ramp; and 200 feet north of the boat loading ramp; all totaled 8,000 square feet. The term "use" as set forth in this section is not intended to prohibit the loading or unloading of jet-skis, or any and all similar type watercraft, at the boat loading ramp. Rather, the term "use" is intended to encompass the motorized operation of said watercraft in the prohibited 8,000 square foot area. (Passed 7-19-94.)

#### **509.07 PUBLIC INTOXICATION.**

(a) It shall be unlawful for any person to:

- (1) Appear in a public place in an intoxicated condition;
- (2) Possess alcoholic liquor or nonintoxicating beer in any public park within the City limits;
- (3) Drink alcoholic liquor or nonintoxicating beer in a public place other than a business establishment duly licensed by the state to sell alcoholic liquor or nonintoxicating beer for consumption on premises;
- (4) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public garage;
- (5) Tender a drink of alcoholic liquor or nonintoxicating beer to another person in a public place.

(b) Any officer of the law is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before the municipal judge and a warrant issued, any person who, in the presence of such officer of the law, violates any one or more of the provisions of subsection (a) of this section. (Passed 9-20-77.)

#### **509.99 PENALTY.**

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

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



## ARTICLE 513 Gambling

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

See sectional histories for similar State law  
 Gambling at fairs prohibited - see W. Va. Code  
                                   19-7-8  
 Pari-mutuel system of wagering at race track permitted -  
                                   see W. Va. Code 19-23-9  
 Gaming contracts - see W. Va. Code Art. 55-9  
 Crimes against public policy - see W. Va. Code Art. 61-10

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### **513.01 KEEPING OR EXHIBITING GAMBLING APPARATUS.**

No person shall keep or exhibit a gaming table, commonly called an A.B.C. or E.O. table, faro bank, keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination or which has no name, whether the game, table, bank, machine or device is played with cards, dice or otherwise, or be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table or upon such gaming device, may be seized by order of the Police Court and the money so seized shall be forfeited to the Municipality and paid into the Municipal Treasury and the table, faro bank, machine or gaming device shall be completely destroyed. However, the provisions of this section shall not extend to coin-operated nonpayout machines with free play features or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

(WVaC 61-10-1)

**513.02 PERMITTING GAMBLING APPARATUS ON PREMISES.**

No person shall knowingly permit a gaming table, bank or device, as mentioned in Section 513.01, to be kept or exhibited on any premises in his occupation.  
(WVaC 61-10-2)

**513.03 ACTING AS LOOKOUT OR GUARD FOR KEEPER OF GAMBLING APPARATUS.**

No person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any gaming table, bank or device as mentioned in Section 513.01, nor resist, nor by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, nor unlawfully take the same from the person seizing it.  
(WVaC 61-10-3)

**513.04 PLAYING ON GAMBLING APPARATUS; HOTELS, PUBLIC PLACES.**

No person shall bet or play at any gaming table, bank or device as mentioned in Section 513.01, or, at any hotel or tavern, other public place or place of public resort, play at any game except bowling, chess or backgammon, draughts or a licensed game, or bet on the side of those who play at any game, whether or not the game is permitted or licensed.  
(WVaC 61-10-4)

**513.05 MAKING WAGER FOR VALUE OR FURNISHING MONEY TO ANOTHER FOR WAGER.**

No person shall, at any place, public or private, bet or wage money or other thing of value on any game of chance, or knowingly furnish any money or other thing of value to any other person to bet or wage on any such game.  
(WVaC 61-10-5)

**513.06 PERMITTING GAMBLING AT PUBLIC PLACES.**

No keeper of a hotel, tavern or other public place shall permit unlawful gaming at his house, or at any outhouse, booth, arbor or other place appurtenant thereto.  
(WVaC 61-10-6)

**513.07 CHEATING OR FRAUDULENT ACTIONS WHILE GAMBLING OR MAKING A WAGER.**

No person playing at any game or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or any other valuable thing.  
(WVaC 61-10-9)



**513.08 POOLROOMS AND POOL TICKETS.**

"Poolroom", wherever used in this section, means any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science or other sport or contest. No person shall set up or promote, or be connected with or interested in the management or operation of any poolroom. The buying, selling or transferring of tickets or chances in any lottery is hereby prohibited.

(WVaC 61-10-10)

**513.09 LOTTERIES AND RAFFLES.**

Except as otherwise provided by law, no person shall set up, promote or be concerned in managing or drawing a lottery or raffle for money or other thing of value; knowingly permit such lottery in any house under his control; knowingly permit money or other property to be raffled for in such house or to be won therein by throwing or using dice or by any other game of chance; knowingly permit the sale in such house of any chance or ticket, or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person or to entitle him to a prize, or a share of or interest in a prize to be drawn in a lottery. No person shall for himself or any other person, buy, sell, transfer or have in his possession for the purpose of sale or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket, or a share of a ticket, in a lottery or any such writing, certificate, bill, token or device. However, this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers".

(WVaC 61-10-11)

**513.99 PENALTY.**

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

- (a) Whoever violates Section 513.04 or 513.06 shall be fined not more than one hundred dollars (\$100.00).
- (b) Whoever violates Section 513.05 shall be fined not more than three hundred dollars (\$300.00).



**ARTICLE 517**  
**Indecency and Obscenity**

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| <b>517.01</b> Operating a place for or permitting or engaging in prostitution, lewdness or assignation.<br><b>517.02</b> Detention of person in place of prostitution.<br><b>517.03</b> Pandering.<br><b>517.04</b> Pimping.<br><b>517.05</b> Profane swearing and drunkenness. | <b>517.06</b> Obscene or harassing telephone calls.<br><b>517.07</b> Indecent exposure.<br><b>517.08</b> Invasion of privacy by looking.<br><b>517.09</b> Voyeurism.<br><b>517.10</b> Sale or display of obscene matter.<br><b>517.99</b> Penalty. |
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**CROSS REFERENCES**

See sectional histories for similar State law  
 Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)  
 Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)  
 Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)  
 Equitable remedies - see W. Va. Code Art. 61-9

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**517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.**

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge.  
(WVaC 61-8-5)

#### **517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.**

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor.  
(WVaC 61-8-6)

**517.03 PANDERING.**

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.  
(WVaC 61-8-7)

**517.04 PIMPING.**

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.  
(WVaC 61-8-8)

**517.05 PROFANE SWEARING AND DRUNKENNESS.**

(EDITOR'S NOTE: Former West Virginia Code 61-8-15 upon which Section 517.05 was based was repealed by Senate Bill 457, passed March 13, 2010.)

**517.06 OBSCENE OR HARASSING TELEPHONE CALLS.**

- (a) No person with intent to harass or abuse another by means of telephone shall:
- (1) Make any comment, request, suggestion or proposal which is obscene; or
  - (2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or
  - (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
  - (4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or
  - (5) Threaten to commit a crime against any person or property.
- (b) No person shall knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.
- (c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.  
(WVaC 61-8-16)

**517.07 INDECENT EXPOSURE.**

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm; provided, that it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.  
(WVaC 61-8-9)

**517.08 INVASION OF PRIVACY BY LOOKING.**

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

**517.09 VOYEURISM.**

(a) No person, for the purpose of gratifying himself or herself, shall commit trespass or surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(b) Whoever violates this section is guilty of voyeurism, a misdemeanor, punishable by fine not to exceed \$500.00. (Passed 1-7-92.)

**517.10 SALE OR DISPLAY OF OBSCENE MATTER.**

(a) Definitions. For the purposes of this section:

- (1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.
- (2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.

- (3) "Individual" means any human being regardless of age.
- (4) "Obscene" means matter which the average individual applying contemporary community standards would find
  - A. Taken as a whole, appeals to the prurient interest;
  - B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and
  - C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
    - 1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
    - 2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
- (5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.



- (6) "Prepare" means to produce, publish or print.
- (7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

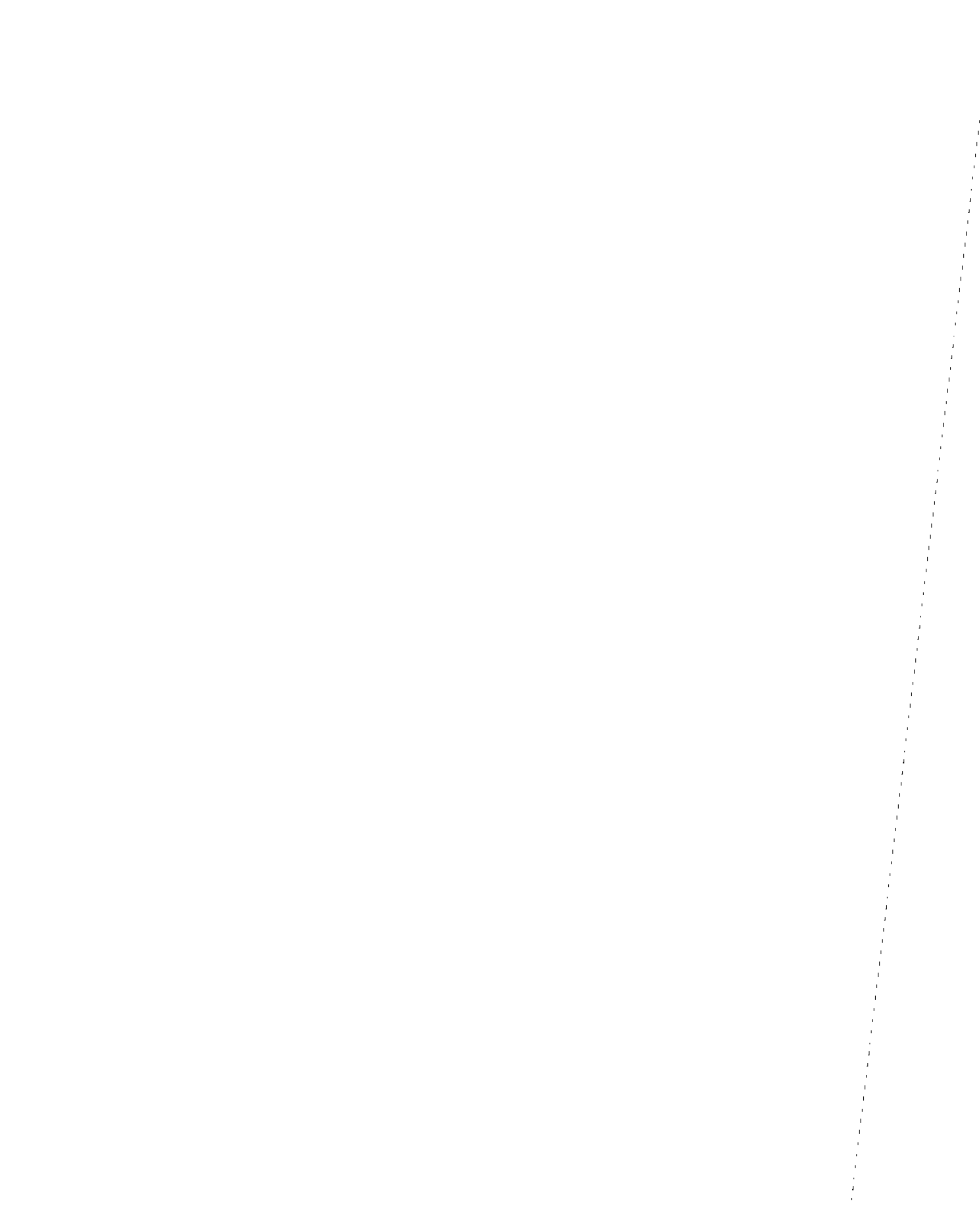
(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

#### **517.99 PENALTY.**

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

- (a) Whoever violates Section 517.01(a) shall be fined not more than two hundred fifty dollars (\$250.00).
- (b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, and for a second offense shall be fined not more than two hundred fifty dollars (\$250.00).
- (c)
  - (1) Except as provided in subsection (c)(2), any person who violates the provisions of Section 517.07 shall be fined not more than two hundred fifty dollars (\$250.00) or both.
  - (2) Any person who violates the provisions of Section 517.07 by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, shall be fined not more than five hundred dollars (\$500.00). For a second offense, the person shall be fined not more than one thousand dollars (\$1,000). For a third or subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.
- (d) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00), for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars (\$1,000).



## ARTICLE 521 Liquor Control

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| <p><b>521.01</b> Definitions.</p> <p><b>521.02</b> Article not applicable to certain uses by physicians, druggists and others.</p> <p><b>521.03</b> Prohibited acts generally.</p> <p><b>521.04</b> Unlawful sale or possession by alcoholic liquor licensee.</p> <p><b>521.05</b> Unlawful purchase of alcoholic liquors from State agency.</p> <p><b>521.06</b> Intoxication or drinking in public places; illegal possession.</p> | <p><b>521.07</b> Acts prohibited by non-intoxicating beer licensee.</p> <p><b>521.08</b> Unlawful purchase of non-intoxicating beer.</p> <p><b>521.09</b> Acts prohibited by private club licensee.</p> <p><b>521.10</b> Unlawful purchase from private club.</p> <p><b>521.11</b> Acts prohibited by wine dealers.</p> <p><b>521.12</b> Unlawful purchase of wine.</p> <p><b>521.13</b> Unlawful purchase from retail liquor licensee.</p> <p><b>521.99</b> Penalty.</p> |
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### CROSS REFERENCES

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

### **521.01 DEFINITIONS.**

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

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

- (e) (1) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater. "Liquor" as used in this article does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.
- (2) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one-half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect. (WVaC 11-16-3)
- (f) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (g) "Public place" means any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels, and any highway, street, lane, park or place of public resort or amusement. "Public place" does not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption on the premises; provided, however, "public place" does not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premises that qualifies and is licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption thereupon.
- (h) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.
- (i) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (j) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar. (WVaC 60-1-5)

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

The provisions of this article shall not prevent:

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

**521.03 PROHIBITED ACTS GENERALLY.**

No person shall:

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

**521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.**

No person licensed under West Virginia Code Chapter 60 shall:

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

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

**521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM  
STATE AGENCY.**

No person shall:

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

**521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES;  
ILLEGAL POSSESSION.**

No person shall:

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

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

**521.07 ACTS PROHIBITED BY NONINTOXICATING BEER  
LICENSEE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### **521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.**

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

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

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

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

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

**521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.**

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

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

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

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

#### **521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.**

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

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

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

#### **521.11 ACTS PROHIBITED BY WINE DEALERS.**

It shall be unlawful:

- (a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;

- (b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;
- (c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mental incompetent or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: provided that the provisions of West Virginia Code 60-3A-25a shall apply to sales of wine;
- (d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person;
- (e) For a supplier or distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed as such in this State: provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor has been authorized by a licensed supplier to distribute. The Alcohol Beverage Commissioner shall promulgate rules necessary to carry out the provision of this subsection;
- (f) For a person to violate any reasonable rule promulgated by the Alcohol Beverage Control Commissioner under West Virginia Code Article 60-8.
- (g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale or delivery of wine under the provisions of this article. With the prior approval of the Commissioner a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that such person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license.  
(WVaC 60-8-20)

**521.12 UNLAWFUL PURCHASE OF WINE.**

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve wine or other alcoholic liquor.

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

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

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

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVaC 60-8-20a)

**521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.**

- (a) (1) No person who is eighteen or over but under the age of twenty-one years shall purchase, consume, sell, serve or possess alcoholic liquor. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in West Virginia Code 49-1-4, and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in West Virginia Code 49-5-11.
- (2) Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.
- (3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

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

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source.

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor.  
(WVaC 60-3A-24)

**521.99 PENALTY.**

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

- (a) Whoever violates Section 521.05(a), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars (\$50.00) or, in lieu of such fine may, for the first offense, be placed on probation for not more than one year.
- (b) Whoever violates Section 521.05(b), 521.12(c) or 521.13(d) shall be fined not more than one hundred dollars (\$100.00).
- (c) Whoever violates Section 521.06(a) shall be sentenced in accordance with the following options:
  - (1) Upon first offense, a fine of not more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge may delay sentencing until the program is completed and upon completion may dismiss the charges;
  - (2) Upon conviction for a second offense, a fine of not more than one hundred dollars (\$100.00) or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center;
  - (3) Upon third and subsequent convictions, a fine of not more than one hundred dollars (\$100.00) or a fine of not more than one hundred dollars (\$100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: provided that three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: provided, however that for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual. A person charged with a violation of Section 521.06(a) who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 27-6A.

- (d) Whoever violates Section 521.06(b) shall be fined not more than one hundred dollars (\$100.00); upon a second or subsequent violation shall be fined not more than one hundred dollars (\$100.00).
- (e) Whoever violates Section 521.06(c) shall be fined not more than one hundred dollars (\$100.00).
- (f) Whoever violates Section 521.06(d) or (e) is guilty of a misdemeanor for a first offense and shall be fined not more than five hundred dollars (\$500.00). (WVaC 60-6-9)
- (g)
  - (1) Whoever violates Section 521.08(a) shall be fined an amount not to exceed five hundred dollars (\$500.00) or, may, for the first offense, be placed on probation for a period not to exceed one year.
  - (2) Whoever violates Section 521.08(b) shall be fined an amount not to exceed one hundred dollars (\$100.00) or, in lieu of such fine may, for the first offense, be placed on probation for a period not exceeding one year.
  - (3) Whoever violates Section 521.08(c) shall be fined an amount not to exceed one hundred dollars (\$100.00).
- (h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000).
- (i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars (\$500.00) and in addition may, for the first offense be placed on probation for a period not to exceed one year.
- (j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars (\$500.00).
- (k) Whoever violates 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars (\$500.00), or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.
- (l) Whoever violates Section 521.13(c) shall be fined not more than two hundred fifty dollars (\$250.00).





**ARTICLE 525**  
**Minors**

<b>525.01</b>	<b>Contributing to delinquency or neglect of minor.</b>	<b>525.04</b>	<b>Abandoned airtight containers.</b>
<b>525.02</b>	<b>Cruelty to children.</b>	<b>525.05</b>	<b>Tobacco usage restrictions.</b>
<b>525.03</b>	<b>Parental liability for acts of children.</b>	<b>525.06</b>	<b>Curfew.</b>
		<b>525.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

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

**525.01 CONTRIBUTING TO DELINQUENCY OR NEGLECT OF MINOR.**

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

(WVaC 49-7-7)

**525.02 CRUELTY TO CHILDREN.**

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

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

(WVaC 61-8-24)

**525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.**

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

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

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

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

(WVaC 55-7A-2)

**525.04 ABANDONED AIRTIGHT CONTAINERS.**

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater than two feet without first removing all entry doors therefrom. (WVaC 61-2-26)

**525.05 TOBACCO USAGE RESTRICTIONS.**

(a) Sale or Gift of Tobacco to Persons Under Eighteen. No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

- (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product;
- (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form; or
- (3) Any tobacco-derived product, alternative nicotine product or vapor product.

(b) Any firm or corporation that violates any provision of subsection (a) hereof and any individual who violates any provision of subsection (a) hereof shall be fined fifty dollars (\$50.00) for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: at least two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) for the second offense, if it occurs within two years of the first conviction; at least five hundred dollars (\$500.00) but not more than seven hundred fifty dollars (\$750.00) for the third offense, if it occurs within two years of the first conviction; and at least one thousand dollars (\$1,000) but not more than five thousand dollars (\$5,000) for any subsequent offense, if the subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco, tobacco product or tobacco-derived product, in any form, for the first offense shall be fined not more than one hundred dollars (\$100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

(d) Any employer who discovers that his or her employee has sold or furnished tobacco products or tobacco-derived products to minors may dismiss such employee for cause. Any such discharge shall be considered as "gross misconduct" for the purposes of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of West Virginia Code 21a-6-3 if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.  
(WVaC 16-9A-2)

(e) Use or Possession of Tobacco or Tobacco-Derived Products by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco, tobacco product or tobacco-derived product; provided, that minors participating in the inspection of locations where tobacco products or tobacco-derived products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (e). Any person violating the provisions of this subsection (e) shall for the first violation be fined fifty dollars (\$50.00) and be required to serve eight hours of community service; for a second violation, the person shall be fined one hundred dollars (\$100.00) and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined two hundred dollars (\$200.00) and be required to serve twenty-four hours of community service.  
(WVaC 16-9A-3)

#### **525.06 CURFEW.**

(a) Hours of Curfew; Responsibility of Parents and Guardians. It shall be unlawful for any parent (and the term "parent" when used herein shall mean either parent, if living, and/or any legal guardian or legal custodian of the child) of any child under the age of eighteen years to permit such child between the hours of 11:00 p.m. and 5:30 a.m. to be upon any public street, sidewalk, public way or property or on any place of public resort within the City unless accompanied by a parent, or to permit such child between such hours to linger or loiter upon any private property of another with the City without such owners' consent.  
(Passed 12-5-06.)

(b) Defenses. It shall be a sufficient defense to any charge of a violation of subsection (a) of this section for a parent to show:

- (1) That such child was proceeding to any place or home from any place where lawfully employed; or
- (2) That such child was proceeding home from any meeting or gathering held under the auspices of any church or school within the City. Otherwise, the child shall be deemed to have been abroad with the permission of its parent.

(c) Curfew Signal. The Fire Chief shall cause a signal not in conflict with existing fire signals to be given on the fire alarm each night at the beginning of such curfew period as a warning, but failure to give such a signal shall not be a defense to a violation of any offense under subsections (a) or (b) hereof.

(d) Violations. Any child found in violation of curfew shall be taken into custody by the City police and brought to Police headquarters, and the parents shall be notified promptly and required to call for the child and bring him home. (Passed 9-1-81.)

**525.99 PENALTY.**

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

Whoever violates Section 525.04 shall be fined not more than two hundred dollars (\$200.00).

**ARTICLE 529**  
**Offenses Relating to Persons**

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

**CROSS REFERENCES**

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

**529.01 ASSAULT AND BATTERY.**

(a) Assault. No person shall unlawfully attempt to use physical force capable of causing physical pain or injury to the person of another or unlawfully commit an act that places another in reasonable apprehension of immediately suffering physical pain or injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact with force capable of causing physical pain or injury to the person of another or unlawfully and intentionally cause physical pain or injury to another person.  
(WVaC 61-2-9)

**529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.**

- (a) No person shall commit an assault:
- (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
  - (2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.

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

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

**529.021 ASSAULT AND BATTERY ON GOVERNMENTAL REPRESENTATIVES, HEALTH CARE PROVIDERS, AND EMERGENCY MEDICAL SERVICE PERSONNEL.**

- (a) Definitions. For purposes of this section:
- (1) "Government representative" means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.
  - (2) "Health care worker" means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician's office, clinic or outpatient treatment facility.
  - (3) "Emergency service personnel" means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

(b) Battery. No person shall unlawfully, knowingly and intentionally make physical contact of an insulting or provoking nature with a government representative, health care worker or emergency service personnel acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity. Whoever violates this subsection (b) is guilty of a misdemeanor for a first offense.

(c) Assault. No person shall unlawfully attempt to commit a violent injury to the person of a government representative, health care worker or emergency service personnel acting in his or her official capacity, or unlawfully commit an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury. (WVaC 61-10-2(b))

**529.03 CONTROLLED SUBSTANCES.**

(a) Except as authorized by West Virginia Code Chapter 60A, no person shall manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(b) Except as authorized by West Virginia Code Chapter 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(c) No person shall knowingly or intentionally possess a controlled substance as defined in West Virginia Code 60A-1-101 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by West Virginia Code Chapter 60A.  
(WVaC 60A-4-401)

(d) No person shall knowingly or intentionally:

- (1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance.  
The provisions of subsection (d)(1) hereof shall not apply to a practitioner who administers or dispenses a placebo.  
(WVaC 60A-4-401)

#### **529.04 BREATHING, INHALING, OR DRINKING CERTAIN INTOXICATING COMPOUNDS.**

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property or releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

(b) This section does not apply to:

- (1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or
- (2) To any alcoholic liquor or nonintoxicating beer as defined in West Virginia Code 60-1-5.  
(WVaC 61-8-11)

#### **529.99 PENALTY.**

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

Whoever violates Section 529.01(a), 529.02(a) or 529.04 shall be fined not more than one hundred dollars (\$100.00).





**ARTICLE 533**  
**Offenses Relating to Property**

- |   |  |
|---|--|
| <b>533.01 Shoplifting.</b>                | <b>533.07 Littering and deposit of</b>       |
| <b>533.02 Trespass.</b>                   | <b>garbage, rubbish, junk, etc.</b>          |
| <b>533.03 Petit larceny.</b>              | <b>533.08 Barricades and warning</b>         |
| <b>533.04 Dealing with stolen goods.</b>  | <b>lights; abandoned</b>                     |
| <b>533.05 Injury or destruction of</b>    | <b>excavations.</b>                          |
| <b>property or monuments.</b>             | <b>533.09 Unauthorized use of dumpsters.</b> |
| <b>533.06 Tampering with and theft of</b> | <b>533.10 Fraudulently obtaining food or</b> |
| <b>utilities; CATV.</b>                   | <b>lodging.</b>                              |
|   | <b>533.99 Penalty.</b>                       |

**CROSS REFERENCES**

See sectional histories for similar State law  
 Authority to regulate advertising - see W. Va. Code  
                                   8-12-5(31)  
 State law provisions - see W. Va. Code Art. 61-3

**533.01 SHOPLIFTING.**

(a) General Definitions.

- (1) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.
- (2) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (3) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (4) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (5) "Merchandise" means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

- (6) "Value of the merchandise" means the merchant's stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant's stated price of the merchandise and the altered price.  
(WVaC 61-3A-6)

(b) Shoplifting Defined.

- (1) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
- A. Conceals the merchandise upon his or her person or in another manner; or
  - B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
  - C. Alters, transfers or removes any price marking affixed to the merchandise; or
  - D. Transfers the merchandise from one container to another; or
  - E. Causes cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
  - F. Removes a shopping cart from the premises of the mercantile establishment.
  - G. Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.
- (2) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.  
(WVaC 61-3A-1)

(c) Breach of Peace; Detention. An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

(WVaC 61-3A-4)

(d) Evidence.

- (1) Evidence of stated price or ownership of merchandise may include, but is not limited to:
- A. The actual merchandise alleged to have been shoplifted; or

- B. The unaltered content of the price tag or marking from such merchandise; or
    - C. Properly identified photographs of such merchandise.
  - (2) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.  
(WvaC 61-3A-2)
- (e) Civil Liability.
  - (1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:
    - A. To restore the merchandise to the mercantile establishment; and
    - B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and
    - C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and
    - D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars (\$50.00) or double the value of the merchandise whichever is higher.
  - (2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.
  - (3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.
  - (4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action.  
(WvaC 61-3A-5)
- (f) Penalty. A person convicted of shoplifting shall be punished as follows:
  - (1) First offense conviction. Upon a first shoplifting conviction:
    - A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
    - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and such fine shall not be suspended.

- (2) Second offense conviction. Upon a second shoplifting conviction:
  - A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and such fine shall not be suspended.
  - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than five hundred dollars (\$500.00).
- (3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars (\$50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.
- (4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.  
(WVaC 61-3A-3)

### 533.02 TRESPASS.

- (a) Definitions. As used in this section:
  - (1) "Structure" means any building of any kind either temporary or permanent, which has a roof over it, together with the curtilage thereof.
  - (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
  - (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
  - (4) "Posted land" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

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

(WVaC 61-3B-1)

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

(WVaC 61-3B-2)

(c) Trespass on Property Other than Structure or Conveyance.

- (1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined as follows:
  - A. First Offense Conviction. Upon a first trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$100.00 nor more than \$500.00.
  - B. Second Offense Conviction. Upon a second trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$500.00 nor more than \$1,000.
  - C. Third Offense Conviction. Upon a third and subsequent trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$1,000 nor more than \$1,500.
- (2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99(a).
- (3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars (\$100.00), or both.
- (4) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage, provided, that the provisions of this section shall not apply in a labor dispute.

(WVaC 61-3B-3)

**533.03 PETIT LARCENY.**

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

**533.04 DEALING WITH STOLEN GOODS.**

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted.  
(WVaC 61-3-18)

**533.05 INJURY OR DESTRUCTION OF PROPERTY OR MONUMENTS.**

(a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.

(b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose.  
(WVaC 61-3-30)

**533.06 TAMPERING WITH AND THEFT OF UTILITIES; CATV.**

(a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action.  
(WVaC 61-3-44)

(b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WVaC 61-3-45)

(c) No person shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a CATV system within the Municipality for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without payment for the service.

(d) No person, without the consent of the owner, shall willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

**533.07 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.**

(a) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

**533.08 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.**

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

**533.09 UNAUTHORIZED USE OF DUMPSTERS.**

No person without authorization shall dump garbage or trash, or assist in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.  
(WVaC 61-3-53)

**533.10 FRAUDULENTLY OBTAINING FOOD OR LODGING.**

No person shall, at any hotel, inn, eating, lodging or boardinghouse, or restaurant, receive or cause to be furnished any food or accommodation, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging, or boardinghouse, or restaurant. No person shall obtain credit at any hotel, inn, eating, lodging or boardinghouse, or restaurant, by the use of any false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse, or restaurant, any baggage or property of less value than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent. No person after obtaining credit or accommodation at any hotel, inn, eating, lodging or boardinghouse, or restaurant, shall abscond from such hotel, inn, eating, lodging or boardinghouse, or restaurant, or shall remove or attempt to remove therefrom any baggage or personal property of any kind subject to the lien provided for in West Virginia Code 38-11-5, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse, or restaurant, without first having paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation.

(WVaC 61-3-40)



**533.99 PENALTY.**

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

- (a) Whoever violates Section 533.05(b) or 533.10 shall be fined not more than two hundred dollars (\$200.00).
- (b) Any person convicted of a violation of Section 533.09 shall be subject to the following penalties:
  - (1) Upon a first conviction, the defendant shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).
  - (2) Upon a second conviction, the defendant shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).
  - (3) Upon any subsequent conviction in excess of a second conviction, the defendant shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000).

Notwithstanding the provisions of West Virginia Code 61-11A-4 or West Virginia Code 50-3-2a, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received.



**ARTICLE 541  
Railroads**

**541.01 Obstructing railroad crossings.**

**541.02 Trespassing.  
541.99 Penalty.**

**CROSS REFERENCES**

Authority to eliminate grade crossings - see W. Va.  
Code 17-10-7

Grant of right of way - see W. Va. Code 31-2-13

Stopping at grade crossing - see TRAF. 343.01 et seq.

**541.01 OBSTRUCTING RAILROAD CROSSINGS.**

(a) Definitions. As used in this section:

- (1) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.
- (2) "Train" or "trains" means engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.

(b) Blocking of Crossing Prohibited; Time Limit.

- (1) No railroad company, except in an emergency, shall order, allow or permit the operation of or operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway for a period longer than ten minutes. This subsection does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations.
- (2) Upon receiving notification from a law-enforcement officer, member of a fire department, operator of an emergency medical vehicle, or a member of an emergency services provider that emergency circumstances require the immediate clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances by the train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe operation of the train.

(c) Responsibility of Railroad Company. The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this section.

(d) Presumption. There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

(e) Service of Process. Process issuing for a violation of this section may be served upon the engineer or conductor of the train causing a violation of the provisions of this section or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against such railroad company.  
(WVaC Art. 31-2A)

#### **541.02 TRESPASSING.**

No person not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; nor shall any person drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public or private crossings.  
(WVaC 61-3-43)

#### **541.99 PENALTY.**

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

- (a) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(1) shall be fined not less than one hundred fifty dollars (\$150.00); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two hundred fifty dollars (\$250.00); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars (\$350.00).
- (b) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(2) shall be fined not less than one thousand dollars (\$1,000); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars (\$2,500); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars (\$5,000).  
(WVaC 31-2A-6)
- (c) Whoever violates Section 541.02 shall be fined not more than twenty-five dollars (\$25.00).

**ARTICLE 545**  
**Weapons and Explosives**

<b>545.01</b>	<b>Definitions.</b>	<b>545.06</b>	<b>Possession of machine guns.</b>
<b>545.02</b>	<b>Carrying concealed deadly weapons without license.</b>	<b>545.07</b>	<b>Display or sale of deadly weapons.</b>
<b>545.03</b>	<b>Exceptions as to prohibitions against carrying concealed deadly weapons.</b>	<b>545.08</b>	<b>Brandishing deadly weapons.</b>
<b>545.04</b>	<b>Persons prohibited from possession of firearms.</b>	<b>545.09</b>	<b>Possessing deadly weapons on premises of educational facilities.</b>
<b>545.05</b>	<b>Possession of deadly weapons by minors prohibited.</b>	<b>545.10</b>	<b>Fireworks sale, possession and discharge.</b>
		<b>545.11</b>	<b>Discharging firearms.</b>
		<b>545.12</b>	<b>Throwing or shooting missiles.</b>
		<b>545.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

See sectional histories for similar State law

Authority to prohibit carrying weapons - see W. Va. Code 8-12-5(16)

Limitations on power to restrict ownership - see W. Va. Code 8-2-5a

Dangerous weapons - see W. Va. Code Art. 61-7

**545.01 DEFINITIONS.**

As used in this article, unless the context otherwise requires:

- (a) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.
- (b) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever or other locking or catching device.

- (c) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. "Knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.
- (d) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.
- (e) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.
- (f) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The term "metallic or false knuckles" includes any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.
- (g) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
- (h) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.
- (i) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subsections (a) to (h) hereof inclusive, or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of West Virginia Code 18-3-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (c) hereof, "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of West Virginia Code 18-3-1a and 61-7-11a, "deadly weapon" includes explosives, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes.
- (j) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee shall be deemed to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

- (k) "Firearm" means any weapon which will expel a projectile by action of an explosion.
- (l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(d).
- (m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)

#### **545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.**

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

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

#### **545.03 EXCEPTIONS AS TO PROHIBITIONS AGAINST CARRYING CONCEALED DEADLY WEAPONS.**

(a) The licensure provisions set forth in West Virginia Code Article 61-7 do not apply to:

- (1) Any person:
  - A. Carrying a deadly weapon upon his or her own premises;
  - B. Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or
  - C. Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;
- (2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this State or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;
- (3) Any law-enforcement officer or law-enforcement official as defined in West Virginia Code 30-29-1;
- (4) Any employee of the West Virginia Division of Corrections, duly appointed pursuant to the provisions of West Virginia Code 25-1-11c while the employee is on duty;
- (5) Any member of the armed forces of the United States or the militia of this State while the member is on duty;
- (6) Any resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in West Virginia Code 61-7-6a;
- (7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty;
- (8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and
- (9) Any parole officer appointed pursuant to West Virginia Code 62-12-14 in the performance of their duties.

(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under West Virginia Code Article 61-7. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in West Virginia Code 61-7-4 before carrying a concealed handgun in this State:

- (1) Any justice of the Supreme Court of Appeals of West Virginia;
- (2) Any circuit judge;
- (3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
- (4) Any family court judge;
- (5) Any magistrate;
- (6) Any prosecuting attorney;
- (7) Any assistant prosecuting attorney; and
- (8) Any duly appointed investigator employed by a prosecuting attorney.  
(WVaC 61-7-6)

#### **545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.**

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in Section 545.01, who:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is habitually addicted to alcohol;
- (3) Is an unlawful user of or habitually addicted to any controlled substance;
- (4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code Chapter twenty-seven or in similar law of another jurisdiction: provided, that once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession; provided, however, that the Mental Hygiene Commissioner or Circuit Judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;
- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the armed forces under dishonorable conditions;
- (7) Is subject to a domestic violence protective order that:
  - A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;
  - B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - C.
    1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
    2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or



- (8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of West Virginia Code 61-2-28, or the provisions of West Virginia Code 61-2-9(a) or (b), or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

(b) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: provided, that a person prohibited from possessing a firearm by the provisions of subsection (a)(4) of this section may petition to regain the ability to possess a firearm in accordance with West Virginia Code 61-7A-5.

(c) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section. (WVAC 61-7-7)

#### **545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.**

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

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

#### **545.06 POSSESSION OF MACHINE GUNS.**

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

#### **545.07 DISPLAY OR SALE OF DEADLY WEAPONS.**

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

**545.08 BRANDISHING DEADLY WEAPONS.**

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

**545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.**

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

**545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.**

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

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

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

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.
- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
  - A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.
  - B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.
  - C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

- (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.
- (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.  
(WVaC 29-3-23)

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

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

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

#### **545.11 DISCHARGING FIREARMS.**

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

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

#### **545.12 THROWING OR SHOOTING MISSILES.**

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

**545.99 PENALTY.**

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

- (a) Whoever violates Section 545.04 shall be fined not more than one thousand dollars (\$1,000).
- (b) Notwithstanding the provisions of subsection (a) of this section, any person:
  - (1) Who has been convicted in this State or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or
  - (2) Who has been convicted in this State or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in West Virginia Code 60A-2-204, 60A-2-205 and 60A-2-206, and who possesses a firearm as such is defined in Section 545.01 shall be guilty of a felony and shall be prosecuted under appropriate State law. The provisions of Section 545.04(b) shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.  
(WVaC 61-7-7)

**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART SEVEN - BUSINESS AND TAXATION CODE**

---

**CHAPTER ONE - Business Regulations**

- Art. 705. General License Procedure.
- Art. 709. Itinerant Vendors and Peddlers.
- Art. 713. Junk Dealers; Secondhand Dealers; Pawn Brokers.

**CHAPTER THREE - Taxation**

- Art. 751. Business and Occupation Tax.
- Art. 755. Public Service or Utility Business.
- Art. 759. Hotel Occupancy Tax.
- Art. 763. Sales and Service Tax.
- Art. 767. Municipal Use Tax.
- Art. 771. Nonintoxicating Beer.
- Art. 775. Intoxicating Liquor.
- Art. 779. Private Clubs.
- Art. 783. Wine Dealers.



**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART SEVEN - BUSINESS AND TAXATION CODE**

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**CHARTER ONE - Business Regulations**

- Art. 705. General License Procedure.  
 Art. 709. Itinerant Vendors and Peddlers.  
 Art. 713. Junk Dealers; Secondhand Dealers; Pawn Brokers.

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**ARTICLE 705**  
**General License Procedure**

- |               |  |               |  |
|---------------|--|---------------|--|
| <b>705.01</b> | <b>License required for business.</b>            | <b>705.07</b> | <b>Designation of specific location of business.</b> |
| <b>705.02</b> | <b>Conditions precedent to doing business.</b>   | <b>705.08</b> | <b>Posting license.</b>                              |
| <b>705.03</b> | <b>Fee for license or permit to do business.</b> | <b>705.09</b> | <b>License not transferable.</b>                     |
| <b>705.04</b> | <b>Duration of licenses.</b>                     | <b>705.10</b> | <b>Assignment of licenses.</b>                       |
| <b>705.05</b> | <b>Effect of City license.</b>                   | <b>705.11</b> | <b>Effect of changes in firm on licenses.</b>        |
| <b>705.06</b> | <b>Application for and issuance of licenses.</b> | <b>705.12</b> | <b>Change of place of business.</b>                  |
|               |  | <b>705.99</b> | <b>Penalty.</b>                                      |

**CROSS REFERENCES**

General licensing authority - see W.Va. Code 8-13-4, 11-12-4

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**705.01 LICENSE REQUIRED FOR BUSINESS.**

No person without a City license shall engage in or prosecute, within the City, any of the businesses, activities, trades or employments identified in the zoning and/or other ordinances of the City.

(Passed 9-16-03.)

**705.02 CONDITIONS PRECEDENT TO DOING BUSINESS.**

Payment in full of the proper fee and the issuance of a certificate of license as hereinafter set forth shall be conditions precedent to the transactions of any business, activity, trade or employment for which a license is required.  
(Passed 9-16-03.)

**705.03 FEE FOR LICENSE OR PERMIT TO DO BUSINESS.**

In every case in which a license or permit to do business in the City is granted, the person or entity applying for the license shall pay an annual fee of five dollars (\$5.00).  
(Passed 9-16-03.)

**705.04 DURATION OF LICENSES.**

All annual licenses issued hereunder shall be for a period of one year beginning on January 1 and ending on December 31.  
(Passed 9-16-03.)

**705.05 EFFECT OF CITY LICENSE.**

Nothing herein shall be deemed to legalize any act which otherwise may be in violation of any ordinance or law, or to exempt any person or entity from any penalty prescribed for such violations.  
(Passed 9-16-03.)

**705.06 APPLICATION FOR AND ISSUANCE OF LICENSES.**

Each license provided hereunder shall be issued by the City Clerk to any person or entity making proper application and tendering in full the proper fee as herein specified. The City Clerk shall collect in full the proper fee and determine to her satisfaction that all the conditions preceding to the granting of such license have been fulfilled by the applicant before issuing a certificate of license. (Passed 9-16-03.)

**705.07 DESIGNATION OF SPECIFIC LOCATION OF BUSINESS.**

Every certificate of license issued under the provisions hereof shall designate the location of such business, activity, trade or employment at some specified building or other definite place, unless expressly provided otherwise. Exercising any of the privileges granted by any such license elsewhere than at such specified location shall be deemed to have been done without a license. Any certificate of license which does not contain the designation required by this section shall be void. (Passed 9-16-03.)

**705.08 POSTING LICENSE.**

Every person or entity to whom a certificate of license is issued in accordance with the provisions hereof shall keep such certificate posted in a conspicuous position in the place where the privileges of such licenses are exercised. Such certificate of license shall be produced for inspection whenever required by any police officer or other proper City official.  
(Passed 9-16-03.)



**705.09 LICENSE NOT TRANSFERABLE.**

Every license issued under the provisions hereof shall confer a personal privilege only to transact the business, activity, trade or employment which maybe the subject of a license, and shall not be exercised except by the person or entity holding the license unless assigned under the terms hereof.

(Passed 9-16-03.)

**705.10 ASSIGNMENT OF LICENSES.**

Any license issued under the provisions hereof may, unless otherwise specifically provided, be assigned in the manner set out in this section to any person to whom it might have been originally granted, and in the event of the death of the licensee, the license may be assigned by his personal representative in like manner and with like effect as might have been done by the licensee himself. A memorandum of the same shall be endorsed on the face of the certificate of license by the assignor, and such memorandum attested by the City Clerk. (Passed 9-16-03.)

**705.11 EFFECT OF CHANGES IN FIRM ON LICENSES.**

No changes in the name of the firm, nor the taking in of one or more new partners, nor the withdrawal of one or more members of the firm, so long as at least one member remains the same, shall be considered as terminating the privileges of any license granted to such partners or firm. (Ord. 9-16-03.)

**705.12 CHANGE OF PLACE OF BUSINESS.**

Any license issued under the provisions hereof may, unless otherwise specifically provided, be altered in the manner set out in this section so as to permit removal of such business, activity, trade or employment to another location within the City if it might have been originally granted under such altered conditions. A memorandum of the same shall be endorsed on the face of the certificate of license by the holder and attested by the City Clerk. (Passed 9-16-03.)

**705.99 PENALTY.**

Any person or entity engaging in or prosecuting any business, activity, trade or employment for which a license is herein required, whether without obtaining a license before commencing the same, or by continuing the same after the termination of the effective period of any such license, shall, in addition to paying the license fee, be liable for a penalty of fifty dollars (\$50.00) for each year during which any such violation occurs. (Passed 9-16-03.)



**ARTICLE 709**  
**Itinerant Vendors and Peddlers**

<b>709.01</b>	<b>Defined.</b>	<b>709.07</b>	<b>Duration.</b>
<b>709.02</b>	<b>Permit required.</b>	<b>709.08</b>	<b>Appeal.</b>
<b>709.03</b>	<b>Application; fee.</b>	<b>709.09</b>	<b>Exemptions.</b>
<b>709.04</b>	<b>Investigation; issuance or denial of permit.</b>	<b>709.10</b>	<b>Enforcement.</b>
<b>709.05</b>	<b>Revocation of permit.</b>		
<b>709.06</b>	<b>Hours.</b>		

**CROSS REFERENCES**

Solicitation of charitable funds - see W.Va. Code Art. 29-19  
Obtaining money by false pretenses - see W.Va. Code 61-3-24 et seq.  
Trespass - see W.Va. Code Art. 61-38

**709.01 DEFINED.**

"Itinerant Vendor, Hawker or Peddler" as used in this article means any person who engages or conducts within the City, either in one locality or in traveling from place to place, a temporary or transient business of selling goods, wares, or merchandise. (Passed 8-4-09.)

**709.02 PERMIT REQUIRED.**

No person shall engage in the business of itinerant vendor, hawker, or peddler within the City without first having obtained a permit to engage in such business. (Passed 8-4-09.)

**709.03 APPLICATION; FEE.**

(a) Applicants for a permit under this article shall file with the City Clerk a sworn application in writing on a form to be furnished by the City Clerk, which shall give the following information:

- (1) Name and description of applicant.
- (2) Permanent home address and local address.
- (3) Description of the nature of the business and goods to be sold.
- (4) Name and address of any employer with evidence establishing the exact relationship;
- (5) The length of time for which the right to do business is desired, provided that the same shall not exceed ten (10) days.

- (6) If not a transient business, the location at which sales are contemplated.
- (7) Such other information reasonably related to the permit as the City Clerk may require.

(b) At the time of the filing of the application, a fee of ten dollars (\$10.00) shall be paid to the City Clerk.  
(Passed 8-4-09.)

#### **709.04 INVESTIGATION; ISSUANCE OR DENIAL OF PERMIT.**

Upon receipt of such application, the original shall be referred to the Chief of Police, who shall cause such investigation of the applicant's business to be made as he deems necessary for the protection of the public. If, from such investigation, the applicant's business responsibility is found to be unsatisfactory, the Chief of Police shall endorse his disapproval on the application with his reasons therefor, and no permit shall be issued. If, as a result of such investigation, the business responsibility of the applicant is found to be satisfactory, the Chief of Police shall endorse on the application his approval and return it to the City Clerk, who shall upon the payment of the fee herein provided issue the applicant a permit. Such permit shall contain the name and address of the applicant, the kinds of goods to be sold, the date of issuance and the length of time such shall be operative, the location(s) at which the business may be conducted, and the license number and description of any vehicle used in soliciting or canvassing. The City Clerk shall keep a permanent record of all permits issued or refused. Any disputes or conflicts involving locations at which business may be conducted shall be resolved by the Chief of Police, whose decision shall be final and binding upon all parties.

(Passed 8-4-09.)

#### **709.05 REVOCATION OF PERMIT.**

Permits issued under the provisions of this article may be revoked by the City Clerk or Chief of Police after notice for any of the following reasons:

- (a) Fraud, misrepresentation, or false statements contained the application;
- (b) Fraud, misrepresentation, or false statements made in the course of carrying on business as solicitor or canvasser.
- (c) Conviction of any crime.
- (d) Conducting the business of soliciting or canvassing in an unlawful manner, or in such a manner as to constitute a breach of the peace or threat to the health, safety, or general welfare of the public.

(Passed 8-4-09.)

#### **709.06 HOURS.**

The effective hours of any permit issued in accordance with this article shall be between 9:00 a.m., and 6:00 p.m. Solicitations or canvassing are prohibited during any other hours.

(Ord. 8-4-09.)

#### **709.07 DURATION.**

Permits shall be effective only for a period of ten (10) days after issuance.  
(Ord. 8-4-09.)

**709.08 APPEAL.**

Any person aggrieved by the provisions of this article in the denial of a permit, or in the action of the Clerk or Chief of Police in the interpretation or enforcement of this section, shall have the right to appeal to Council. Such appeal shall be taken by filing with the City Clerk within fourteen days after notice of the action complained of has been given to the appellant, a written statement setting forth grounds for appeal. Council shall fix a time and place for a public hearing on such appeal, and notice of same shall be given to the applicant by mail to his last known place of address, at least five days prior to the date of such hearing. The decision and order of Council on such appeal shall be final.

(Ord. 8-4-09.)

**709.09 EXEMPTIONS.**

The provisions of this article shall not apply to sales made by residents of the City of Williamstown when the proceeds of said sale are to go to said residents selling farm or dairy products, nor to any sale by entities acting for charitable, religious, or benevolent purposes, or to sales of the common necessities of life in any public market.

(Ord. 8-4-09.)

**709.10 ENFORCEMENT.**

Any responsibilities herein vested in the Chief of Police or City Clerk may, in the absence of the Chief of Police or City Clerk, be exercised by such other City employee as they may designate.

(Ord. 8-4-09.)



**ARTICLE 713**  
**Junk Dealers; Secondhand Dealers; Pawn Brokers**

<b>713.01</b>	<b>License required.</b>	<b>713.06</b>	<b>Place of business.</b>
<b>713.02</b>	<b>Issuance.</b>	<b>713.07</b>	<b>Minors.</b>
<b>713.03</b>	<b>Definitions.</b>	<b>713.08</b>	<b>Records.</b>
<b>713.04</b>	<b>Application.</b>	<b>713.09</b>	<b>Inspections.</b>
<b>713.05</b>	<b>Revocation; assignment.</b>	<b>713.10</b>	<b>Information.</b>

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**713.01 LICENSE REQUIRED.**

No person shall have, keep or conduct any junk store or shop, pawnshop or secondhand shop business, within the corporate limits of the City without first having obtained a license to do so.

(Passed 9-2-80.)

**713.02 ISSUANCE.**

The Clerk of the Police Department shall grant licenses to all persons who may apply for the same which licenses shall be in writing and signed by said Clerk.

(Passed 9-2-80.)

**713.03 DEFINITIONS.**

As used herein, the business of junk dealers, secondhand dealers and pawnbrokers are defined to include the trade or business of buying, selling, trading, bartering or dealing in junk, rope, scrap iron, brass, copper or other metals, coins, antique items, rags, bones, secondhand articles and other materials commonly termed junk, secondhand or used.

(Passed 9-2-80.)

**713.04 APPLICATION.**

The license required herein shall be granted upon application in writing and filed with the Police Clerk. The application shall state the name of the person desiring such license, the particular business for which license is to be issued and the place where the business is to be carried on.

(Passed 9-2-80.)

**713.05 REVOCATION; ASSIGNMENT.**

The license shall contain a statement that it is accepted subject to the terms and conditions of this article or any other ordinance of the City which may come into force during the term of the license, and that it is issued subject to revocation for cause by Council and that the license shall not be assigned. (Passed 9-2-80.)

**713.06 PLACE OF BUSINESS.**

No person shall conduct said business at any other place than that stated in the license. However, the place of business may be changed to any other place after written application to the Police Clerk. The said Clerk shall decide whether the proposed location is suitably zoned. (Passed 9-2-80.)

**713.07 MINORS.**

No person licensed hereunder shall receive or obtain from any minor, any secondhand or used articles, junk or other items as outlined in Section 713.03, or employ any such person to collect or receive the same. No licensed pawnbroker shall receive by way of purchase or pledge, any property from any minor. (Passed 9-2-80.)

**713.08 RECORDS.**

Every person licensed hereunder shall maintain records indicating name and address of persons from whom the items have been obtained. (Passed 9-2-80.)

**713.09 INSPECTIONS.**

Every person licensed hereunder shall permit any Police Officer of the City to examine his register and articles at any time whatsoever. Refusal to permit such inspection shall be grounds for revocation of the license. (Passed 9-2-80.)

**713.10 INFORMATION.**

Every person licensed hereunder shall at all times give to any member of the Police Department any information he has concerning any article or thing which has come into possession in his business which has been or is alleged to have been lost, stolen or infected by any infectious or contagious disease. (Passed 9-2-80.)



**CHAPTER THREE - Taxation**

- Art. 751. Business and Occupation Tax.
- Art. 755. Public Service or Utility Business.
- Art. 759. Hotel Occupancy Tax.
- Art. 763. Sales and Service Tax.
- Art. 767. Municipal Use Tax.
- Art. 771. Nonintoxicating Beer.
- Art. 775. Intoxicating Liquor.
- Art. 779. Private Clubs.
- Art. 783. Wine Dealers.

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**ARTICLE 751**  
**Business and Occupation Tax**

**751.01 Levy.**

**CROSS REFERENCES**

- Authority to levy - see W.Va. Code 8-13-5
- Collection of taxes - see W.Va. Code 8-13-15 et seq.

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**751.01 LEVY.**

Upon any person engaging or continuing within the City 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 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 rate of 2 % (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 State and foreign countries. The measure of the tax under this section shall include only gross income received from supplying of public service. (Passed 5-3-83.)



**ARTICLE 755**  
**Public Service or Utility Business**

<b>755.01</b>	<b>Definitions.</b>	<b>755.05</b>	<b>Exemptions.</b>
<b>755.02</b>	<b>Imposition of excise tax.</b>	<b>755.06</b>	<b>Liability; refunds; rules.</b>
<b>755.03</b>	<b>Collection.</b>	<b>755.07</b>	<b>Effective date.</b>
<b>755.04</b>	<b>Records.</b>	<b>755.08</b>	<b>Failure to pay.</b>

**CROSS REFERENCES**  
Public utilities tax - see W.Va. Code 8-13-5a

**755.01 DEFINITIONS.**

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings:

- (a) "Person" means individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character.
- (b) "Public utility service" means all services and tangible personal property purchased within this City from a seller, as hereinafter in this section 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 State Public Service Commission; water service and sanitary sewer service, if purchased, used or consumed within the corporate limits.
- (c) "Purchaser" means any person who purchases, uses or consumes a public utility service.
- (d) "Seller" means any person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the State Public Service Commission who sells, furnishes or supplies a public utility service.
- (e) "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.
- (f) Water and Sewer Utility operated by the City of Williamstown is not included.  
(Passed 12-7-82.)

**755.02 IMPOSITION OF EXCISE TAX.**

There is hereby imposed 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 City, such public utility service. The tax shall be in the amount of two percent (2%) 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, which tax in every case shall be uniformly collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered the purchaser by the seller, and shall be paid by the purchaser to the seller at the time the purchase price or the charge shall become due and payable under the agreement between by the purchaser and the seller. The tax imposed and levied by this article is in addition to all other taxes imposed and levied by this City. In the event more than one public utility furnishes the identical public utility service to the same purchaser, the purchaser shall be entitled to group the same as single public utility service in calculating the amount of the charges in any calendar month for the public utility service. (Passed 12-7-82.)

**755.03 COLLECTION.**

Every seller in acting as the tax collecting medium or agency for this City shall collect from each purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the City and each seller shall remit the amount of tax shown by the report to have been collected on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after the effective date hereof, for public utility service rendered subsequent to the effective date hereof, and when any such periodic statement covers public utility service rendered both before and after date, only that portion of the charge for public utility service rendered after such date shall be subject to the tax, and the portion subject to the tax shall be the portion of the total charge as the number of days after the effective date hereof, within the period covered by periodic statement, bear to the total number of days covered by periodic statement. The required reports shall be in the form prescribed by the official of the City charged with the responsibility of collecting taxes. (Passed 12-7-82.)

**755.04 RECORDS.**

Every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits, which records shall show the charge made against each purchaser, the dates the 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 the City at reasonable times, and the duly authorized agents shall have the right, power and authority to make at the expense of the City the transcripts thereof during such times as they may desire. (Passed 12-7-82.)

**755.05 EXEMPTIONS.**

The tax hereby imposed and levied shall not apply to the following transaction, which transactions are hereby exempted from the tax:

- (a) Purchases of public utility service for resale;
- (b) Purchases of public utility service by the United States, the state, and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof;
- (c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied;
- (d) 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 corporate limits; and
- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service. (Passed 12-7-82.)

**755.06 LIABILITY; REFUNDS; RULES.**

(a) There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for the tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that the tax is not owed by the purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of the City, the seller shall refer the question to the official of the City charged with the responsibility of collecting taxes, and the seller shall thereafter collect or refrain from collecting the tax from the purchaser for public utility service as instructed in writing to do by the official. Any and all claims for refunds or any such tax shall be presented to the City and not to the seller.

(b) The official of the City charged with the responsibility of collecting taxes shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.  
(Passed 12-7-82.)

**755.07 EFFECTIVE DATE.**

The tax hereby imposed and levied shall not be effective until the City gives sixty days written notice by certified mail of the effective date of the article to any public utility doing business within the City which is required to collect the tax imposed and levied hereby.  
(Passed 12-7-82.)

**755.08 FAILURE TO PAY.**

(a) Any amount of tax due and unpaid under this article shall be a debt due the City. It shall be a personal obligation of the purchaser which shall be enforceable as provided in West Virginia Code 8-13-15, or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities.

(b) Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller, purchaser violating any provision or any lawful rules and regulations promulgated hereunder shall be fined not more than one hundred dollars (\$100.00). 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.  
(Passed 12-7-82.)



**ARTICLE 759**  
**Hotel Occupancy Tax**

**759.01 Definitions.**  
**759.02 Rate.**

**759.03 Collection.**  
**759.04 Distribution.**

**CROSS REFERENCES**  
Hotel occupancy tax - see W.Va. Code Art. 7-18

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**759.01 DEFINITIONS.**

A hotel is defined as any facility, building, 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 and city parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit, or any facility providing fewer than three hotel rooms, nor any tent, trailer, or camper campsites: provided, that where a university or college housing unit provides sleeping accommodations for the general non-student public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purpose of this tax.

(Passed 6-19-07.)

**759.02 RATE.**

The rate of tax shall be six percent (6%).

(Passed 6-19-07.)

**759.03 COLLECTION.**

The owner of the hotel shall collect said tax and remit it to the City Clerk of the City of Williamstown, West Virginia, at least once each month.

(Passed 6-19-07.)

**759.04 DISTRIBUTION.**

Monies received by the Clerk for said tax shall be used and distributed to the various organizations as defined in Chapter 7, Article 18 of the West Virginia Code, as amended.

(Passed 6-19-07.)





**ARTICLE 763**  
**Sales and Service Tax**

<b>763.01</b>	<b>Definitions.</b>	<b>763.03</b>	<b>Administration; enforcement; collection.</b>
<b>763.02</b>	<b>Imposition of Alternative Municipal Sales and Service Tax.</b>	<b>763.04</b>	<b>Tax imposed in addition to consumer sales and service tax.</b>

**CROSS REFERENCES**  
Municipal Use Tax - see B. & T. Art. 767

**763.01 DEFINITIONS.**

For the purpose in application, interpretation, and construction of this Article, the definitions as set forth in WV Code Chapter 11, Article 15, Section 2, shall apply, and the definitions therein are fully incorporated herein by reference.  
(Passed 8-3-10.)

**763.02 IMPOSITION OF ALTERNATIVE MUNICIPAL SALES AND SERVICE TAX.**

In accordance with the authority as set forth in WV Code Chapter 8 Article 13C, Section 4, effective on the first day of April, 2011, there is hereby imposed upon all persons or entities engaging in business within the municipal boundaries of the City of Williamstown an Alternative Municipal Sales and Service Tax in an amount equal to one percent (1%) on all sales made and services rendered within the boundaries of the municipality of the City of Williamstown, subject to the following:

- (a) The base of the Alternative Municipal Sales and Service Tax imposed herein shall be identical to the base of the Consumer Sales and Service Tax imposed pursuant to the provisions to the WV Code Chapter 11, Article 15; and,
  - (b) Except for the exemption provided in WV Code 11-15-9f, all exemptions and exceptions from Consumer Sales and Service Tax apply to this Alternative Municipal Sales and Service Tax; and,
  - (c) Sales of gasoline and special fuel are not subject to the Alternative Municipal Sales and Service Tax herein imposed; and,
  - (d) The Alternative Municipal Sales and Service Tax herein imposed is subject to the sourcing rules set forth in WV Code Chapter 11, Article 15B.
- (Passed 8-3-10.)

**763.03 ADMINISTRATION; ENFORCEMENT; COLLECTION.**

As required by the provisions of WV Code 8-13C-4(e) the services of the WV State Tax Commissioner shall be utilized to administer, enforce and collect the tax herein imposed.  
(Passed 8-3-10.)

**763.04 TAX IMPOSED IN ADDITION TO CONSUMER SALES AND SERVICE TAX.**

The Alternative Municipal Sales and Service Tax imposed pursuant to this Article shall be in addition to the Consumer Sales and Service Tax imposed pursuant to WV Code Chapter 11, Article 15, on sales made and services rendered within the boundaries of the municipality of the City of Williamstown and, except as exempted or excepted, all sales made and services rendered within the boundaries of the municipality of the City of Williamstown shall remain subject to the tax levied by that Article. Further, the Alternative Municipal Sales and Service Tax imposed pursuant to this Article shall be imposed in addition to any tax imposed pursuant to the provisions of WV Code 7-18-1, 8-13-6, 8-13-7, and 8-38-12, respectively.  
(Passed 8-3-10.)

**ARTICLE 767**  
**Municipal Use Tax**

**767.01 Imposition of municipal use tax.**  
**767.02 Administration; enforcement;**  
**collection.**

**767.03 Tax imposed in addition to**  
**consumer sales and service tax.**  
**767.04 Credit for sales tax paid to**  
**another municipality.**

**CROSS REFERENCES**

Sales and Service Tax - see B. & T. Art. 763

**767.01 IMPOSITION OF MUNICIPAL USE TAX.**

In accordance with the authority set forth in WV Code 8-13C-5, effective on and after the first day of April, 2011, an Alternative Municipal Use Tax is hereby levied and imposed on the use within this municipality of tangible personal property, custom software, or taxable services, at the rate of one percent (1%) of the purchase price of such property or taxable services, subject to the following:

- (a) The base of the Municipal Use Tax herein imposed shall be identical to the base of the use tax imposed pursuant to WV Code Chapter 11, Article 15A on the use of tangible personal property, custom software and taxable services within the boundaries of the municipality of the City of Williamstown; and,
- (b) Except for the exemptions provided in WV Code 11-15-9f, all exemptions and exceptions from the Use Tax apply to the Municipal Use Tax herein imposed; and,
- (c) Uses of gasoline and special fuel are not subject to the Municipal Use Tax herein proposed.  
(Passed 8-3-10.)

**767.02 ADMINISTRATION; ENFORCEMENT; COLLECTION.**

As required by the provisions of WV Code 8-13C-5(e) the services of the WV State Tax Commissioner shall be utilized to administer, enforce and collect the tax herein imposed.  
(Passed 8-3-10.)

**767.03 TAX IMPOSED IN ADDITION TO CONSUMER SALES AND SERVICE TAX.**

The Municipal Use Tax imposed pursuant to this Article shall be imposed in addition to the Consumer Sales and Service Tax imposed pursuant to WV Code Chapter 11, Article 15, on sales made and services rendered within the boundaries of the municipality of the City of Williamstown and, except as exempted or excepted, all sales made and services rendered within the boundaries of the municipality of the City of Williamstown shall remain subject to the tax levied by that article. Further, the Municipal Use Tax imposed pursuant to this Article shall be imposed in addition to any tax imposed pursuant to the provision of WV Code 7-18-1, 8-13-6, 8-13-7, and 8-38-12, respectively. (Passed 8-3-10.)

**767.04 CREDIT FOR SALES TAX PAID TO ANOTHER MUNICIPALITY.**

(a) A person or entity is entitled to a credit against the Alternative Municipal Use Tax herein imposed on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property or service; provided, the amount of credit allowed shall not exceed the amount of Municipal Use Tax imposed on the use of the property or service in the municipality of use. For purposes of this section the following definitions shall apply:

- (1) "Municipality" means a municipality, as defined in WV Code Chapter 8, Article 1, Section 2, or a comparable unity of local government in another State; and,
- (2) "Sales Tax" includes a sales tax or compensating use tax lawfully imposed on the use of tangible personal property, custom software or a service by the municipality or county, as appropriate, in which the sale or use occurred; and,
- (3) "State" includes the fifty (50) states of the United States and the District of Columbia, but does not include any of the several territories organized by Congress.

(b) No credit is allowed under this section for payment of any sales or use taxes imposed by this State or any other State.  
(Passed 8-3-10.)

**ARTICLE 771  
Nonintoxicating Beer**

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|---|--|
| <b>771.01 Prohibited acts.</b><br><b>771.02 Annual license tax.</b><br><b>771.03 Application for and record of license.</b> | <b>771.04 Revocation of license.</b><br><b>771.05 Unlawful acts.</b> |
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**CROSS REFERENCES**

Nonintoxicating beer - see W.Va. Code Art. 11-16  
Municipal license tax - see W.Va. Code 11-16-17

**771.01 PROHIBITED ACTS .**

No person shall manufacture, sell, possess for sale, or distribute nonintoxicating beer within the City except in accordance with the provisions of this article, and after first obtaining a City license therefore, as hereinafter provided.  
(Passed 6-15-37.)

**771.02 ANNUAL LICENSE TAX.**

(a) There is hereby levied and imposed an annual license tax upon all manufacturers and dealers in and of nonintoxicating beer, which license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, as follows:

- (1) In the case of a retail dealer selling nonintoxicating beer not for consumption on the dealer's premises, the license fee shall be one hundred dollars (\$100.00) for each place of business.
- (2) In the case of a retail dealer selling nonintoxicating beer for on-premises consumption, the license fee shall be one hundred dollars (\$100.00) for each place business; except such license fee for social, fraternal or public clubs, not operating for profit and having been in continuous operation for two years or more immediately preceding the date of application shall be fifty dollars (\$50.00).
- (3) In the case of a distributor, the license fee shall be two hundred fifty dollars (\$250.00) for each place of business.

- (4) In the case of a brewer with his principal place of business located in this City, the license fee shall be five hundred dollars (\$500.00) for each place of manufacture.

(b) The license tax upon a license issued for a period of nine months or less shall be computed quarterly of the fiscal year. (Passed 6-15-13.)

#### **771.03 APPLICATION FOR AND RECORD OF LICENSE.**

Each applicant for a city license under the provisions of Section 771.02 shall furnish to the City Clerk a true copy of the State license for which a corresponding City license is applied for, and the City Clerk shall maintain such true copy on file in his office together with his record of the corresponding City license issued by him.

#### **771.04 REVOCATION OF LICENSE.**

Council may revoke the license granted to any licensee under this article, subject to an appeal of any licensee to a court of competent jurisdiction, whenever such licensee is aggrieved:

- (a) When disorderly or immoral practices are permitted or intoxicating liquor is sold on the premises;
- (b) When circumstances happen or become known to the City Council which, had they happened or been known at the time of the application for the license, would have legally justified a refusal of such license;
- (c) When circumstances happen or become known to Council which constitute a cause for the revocation of the City licensee's corresponding State license.

#### **771.05 UNLAWFUL ACTS.**

It shall be unlawful:

- (a) For any licensee, his, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer on weekdays between the hours of two a.m., and seven a.m., or between the hours of two a.m. and one p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of the West Virginia Code of 1931, as amended, where the hours shall conform with the hours of sale of alcoholic liquors. (Passed 10-18-83.)
- (b) For any licensee, his servants, agents or employees, to sell, furnish or give any alcoholic liquor or nonintoxicating beer to a person who is less than 21 years of age, an habitual drunkard, any person severely or noticeably intoxicated, addicted to the use of controlled substances as defined by Chapter 60(a) of the West Virginia Code, as amended, or any mentally incompetent. (Passed 7-1-86.)
- (c) On and after the first day of October, one thousand nine hundred eighty-three, for any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person who is less than twenty-one years of age unless such person under the age of twenty-one years first display a valid operator's license, chauffeur's license or non-operator's identification, issued to such person under the provisions of section eight, article two, chapter seventeen-b of the West Virginia Code of 1931, as amended.

- (d) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor.
- (e) For any brewer or distributor or his, its or their agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday.
- (f) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, that a distributor may offer, for sale or rent, tanks or carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any amateur athletic event or from providing prizes or awards for participants and winners in any such events: Provided, however, that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors.
- (g) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall state the alcoholic content thereof;
- (h) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct, or practice;
- (i) For any licensee except the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of the West Virginia Code of 1931, as amended, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;
- (j) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all license premises shall be adequately lighted at all times: Provided, that provisions of this subdivision shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of article seven, chapter sixty of the West Virginia Code of 1931, as amended;
- (k) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, that the prohibitions contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of the West Virginia Code of 1931, as amended;

- (l) 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 word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;
- (m) For any retail licensee to sell or dispense nonintoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this State;
- (n) For any 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 of the same may disturb the peace and quietude of the community wherein such business is located: Provided, that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind.
- (o) For any person whose license has been revoked, as in this article provided, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;
- (p) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
- (q) 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;
- (r) For any Class B retailer to permit the consumption of nonintoxicating beer upon his license premises;
- (s) For any licensee, his, its or their 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 eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, 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. (Passed 10-18-83.)



**ARTICLE 775**  
**Intoxicating Liquor**

**775.01 Imposition of tax.**

**CROSS REFERENCES**

Authority to levy - see W.Va. Code 8-13-7; 60-7-7

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**775.01 IMPOSITION OF TAX.**

Pursuant to Chapter 8, Article 13, Section 7 of the Official Code of West Virginia, of 1931, as last amended, there is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provisions of Chapter 60, Article 8 of the aforesaid Code of West Virginia, within the corporate boundaries of the municipality. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the municipality from the State Treasury pursuant to the rules and regulation adopted by the said Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of the Code of West Virginia. (Passed 7-1-81.)



**ARTICLE 779**  
**Private Clubs**

**779.01 License fee.**

**CROSS REFERENCES**

Authority to license - see W.Va. Code 8-13-7; 60-7-7

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**779.01 LICENSE FEE.**

(a) The annual license fee for any authorized ABC Private Liquor Club shall be one-half ( $\frac{1}{2}$ ) of the amount of the license fee levied by the State under provisions of Chapter 60, article 7, Section 6 of the West Virginia Code, as amended.

(b) The annual license fee provided by this Section shall be due and payable at the same time as the West Virginia State license fee is due (July 1 of each year). Any license fee due from the time of passage to July 1 shall be pro-rated.

(Passed 4-2-85.)



**ARTICLE 783**  
**Wine Dealers**

**783.01 License tax.****783.02 Unlawful acts.**

**CROSS REFERENCES**

Authority to license - see W.Va. Code 8-13-4

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**783.01 LICENSE TAX.**

(a) There is hereby imposed an annual license tax upon distributors and retailers of wine within the City limits. No person may engage in business in the capacity of distributor or retailer of wine as provided by Chapter 60, Article 8 of the West Virginia Code of 1931, as last amended, within the corporate limits of the City, without first obtaining a license from the City, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

(b) The City shall collect an annual fee for license issued under this Section as follows:

- (1) Twenty-five hundred dollars (\$2,500) per year for a distributor's license.
- (2) One hundred fifty dollars (\$150.00) per year for a retailer's license.

(c) The license period shall begin on the first day of July each year commencing with July 1, 1981, and ending on the thirtieth day of June of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application is made.

(d) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.  
(Passed 8-4-81.)

**783.02 UNLAWFUL ACTS.**

It shall be unlawful for any distributor or retailer of wine licensed pursuant to Chapter 3, Section 7 of this Code, his servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on licensed premises, or indirectly connected therewith, wine on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. or 1:00 p.m. on Sunday, except in private clubs licensed under the provisions of Article 7, Chapter 6 of the Code of West Virginia, where the hours shall conform with the hours of the said alcoholic liquor.

(Passed 10-6-81.)



## **CODIFIED ORDINANCES OF WILLIAMSTOWN**

### **PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE**

---

#### **CHAPTER ONE - Street and Sidewalk Areas**

- Art. 901. Street and Sidewalk Regulations.
- Art. 905. Excavations.
- Art. 907. Trees.

#### **CHAPTER THREE - Utilities**

- Art. 913. Sewer Use Ordinance.
- Art. 917. Sewer Rates.
- Art. 919. Water.
- Art. 921. Storm Water Management and Surface Water Discharge Control.
- Art. 922. Storm Water Utility.
- Art. 923. Grading Permit, Soil Erosion and Sediment Control.

#### **CHAPTER FIVE - Other Public Services**

- Art. 931. Refuse Collection and Disposal.
- Art. 935. Parks.





**CODIFIED ORDINANCE OF WILLIAMSTOWN**  
**PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE**

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**CHAPTER ONE - Street and Sidewalk Areas**

Art. 901. Street and Sidewalk Regulations.  
 Art. 905. Excavations.  
 Art. 907. Trees.

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**ARTICLE 901**  
**Street and Sidewalk Regulations**

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| <b>901.01</b> Grading, draining and paving of streets to conform to standard specifications.<br><b>901.02</b> Street specifications.<br><b>901.03</b> Special charges for street improvement, maintenance and repair. | <b>901.04</b> Special charges for street lighting maintenance and repair.<br><b>901.05</b> General regulations.<br>Appendix A. |
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**CROSS REFERENCES**

Power to regulate - see W.Va. Code 8-12-5(1)  
 Connection to State road system - see W.Va. Code 17-4-26  
 Street obstructions - see TRAF. 311.01

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**901.01 GRADING, DRAINING AND PAVING OF STREETS TO CONFORM TO STANDARD SPECIFICATIONS.**

(a) All grading, draining and paving of City streets and alleys performed by private contractors shall conform to the requirements contained within the Standard Specifications for grading, draining and paving streets and alleys as adopted by City Council.

(b) Said Standard Specifications, and all subsequent modifications thereof shall be kept on file in the City Clerk's office. The City Clerk is hereby directed to furnish a complete copy of said Standard Specifications to any person upon payment of a reasonable fee or charge to cover the cost of reproducing the same.

(c) The requirements contained within the Standards Specifications shall apply to all private contractors regardless of whether the method of payment for such services is by the Certificate Plan or any other method. Where the method of payment is not by the Certificate Plan, then all provisions contained within the Standard Specifications concerning such method of financing are hereby deemed inapplicable.

(d) The Standard Specifications shall be formally designated, approved and adopted as such by proper resolution or motion of this Council, and all future amendments to said Standard Specifications shall be by resolution or motion duly passed.

(e) No street, alley or other thoroughfare will be accepted by the City of Williamstown as a public way, street or alley except such of said streets, alleys or ways that conform to the Standard Specifications. (Passed 5-5-81.)

#### **901.02 STREET SPECIFICATIONS.**

(a) Submission of Plans to Municipal Planning Commission. Any person, corporation or other entity desiring to open, construct or extend any street, whether a part of a subdivision or not, shall submit to all plans and drawings relating thereto to the Williamstown Planning Commission in the same manner as is required for the platting of subdivisions. All plans submitted showing the opening, construction or extension of any streets shall include a cross-section of each proposed street, at a scale of ten (10) feet or less to the inch showing the width of pavement and location of utility mains.

(b) Application for Permit from Building Official. Any person, corporation or other entity desiring to open, construct or extend any street shall further be required to apply for a permit to do so from the Building Official. The application shall be in such form as prescribed by the Building Official and shall include the statements and/or recommendations, if any, of the Municipal Planning Commission upon the submission of plans and drawings as required in the preceding section.

(c) Construction Specifications. All streets open, constructed or extended after the adoption of this Article shall conform to the construction specifications set forth in Appendix A of this Article.

(d) Merger of Excavation and Street Construction Permits. When the construction of any street includes excavation, the permit requirements of Article 905 relative to excavations and the permit requirements of this Article shall be merged thereby requiring the application and awarding of only one permit for both construction and excavation purposes.

(e) Nonliability of City. No person issued, inspection made or approval given by the Building Official, his agents or employees pursuant to this Article shall be construed as imposing any liability whatsoever upon the City for injury to any person or damage to any property which may occur by reason of any wrongful or negligent act or omission during the progress of any work under this article. (Passed 1-5-81.)

**901.03 SPECIAL CHARGES FOR STREET IMPROVEMENT, MAINTENANCE AND REPAIR.**

(a) Definitions. The following definitions will be used in interpreting this section:

- (1) "City": The residents of the City of Williamstown;
- (2) "Owner": One who owns and utilizes a residential unit;
- (3) "Residential Unit": One room, or a suite of two or more rooms, in a building designed and/or used by one or more persons for living and sleeping purposes and having at least one kitchen or kitchenette, which unit is located within the confines and the boundaries of the City of Williamstown, West Virginia.
- (4) "Tenant": One who leases and/or utilizes a residential unit for one or more persons.

(b) Service Charge. There shall be a charge to the owner and/or tenant of each residential unit as heretofore described of \$4.00 per month for said street improvement, maintenance and repair fund.

(c) Collection of Service Charge. The above charge of \$4.00 per month may be collected on a monthly, quarterly or yearly basis and will be collected by the Clerk of the City of Williamstown. In the event that the said charge is collected on a monthly basis, it will be \$4.00 per month. In the event that the said charge is collected on a quarterly basis, it will be \$12.00 per quarter. In the event that the said charge is collected on a yearly basis, it will be \$48.00 per year.

(d) Special Provisions for Collection of Charges. The City Clerk, with the approval of the Mayor and Council, may make such other provisions as they may deem necessary or proper consistent with this Section for the collection and periodic collection for the charges for the aforesaid service. (Passed 2-5-91)

**901.04 SPECIAL CHARGES FOR STREET LIGHTING MAINTENANCE AND REPAIR.**

(a) Definitions. The following definitions will be used in interpreting this article:

- (1) "City": The residents of the City of Williamstown;
- (2) "Owner": One who owns and utilizes a residential unit;
- (3) "Residential Unit": One room, or a suite of two or more rooms, in a building designed and/or used by one or more persons for living and sleeping purposes and having at least one kitchen or kitchenette, which unit is located within the confines and the boundaries of the City of Williamstown, West Virginia.
- (4) "Tenant": One who leases and/or utilizes a residential unit for one or more persons.

(b) Service Charge. There shall be a charge to the owner and/or tenant of each residential unit as heretofore described of \$1.00 per month for said street lighting maintenance, repair and operation fund.

(c) Collection of Service Charge. The above charge of \$1.00 per month may be collected on a monthly, quarterly or yearly basis and will be collected by the clerk of the City of Williamstown. In the event that the said charge is collected on a monthly basis, it will be \$1.00 per month. In the event that the said charge is collected on a quarterly basis, it will be \$3.00 per quarter. In the event that the said charge is collected on a yearly basis, it will be \$12.00 per year.

(d) The City Clerk, with the approval of the Mayor and Council, may make such other provisions as they may deem necessary or proper consistent with this Section for the collection and periodic collection for the charges for the service provided. (Passed 5-3-88.)

#### **901.05 GENERAL REGULATIONS.**

(a) Construction of Driveways and Ramps. No person shall construct any driveway or approach from a street across a curb, ditch or gutter in a manner that will stop the normal flow of water along the curb or berm. All driveways or ramps must have a culvert along the curb or berm sufficient in size to carry the estimated water that will flow under or through the driveway, but in no case less than six inches in diameter. Such driveway or ramp shall be constructed only by permission and under the supervision of the Superintendent.

(b) Obstructions.

- (1) No person shall, without a permit from the Building Official, construct, place or leave, or cause to be constructed, placed or left in or upon any street, sidewalk, parking or other public place any obstruction to travel. Any person occupying a roadway or sidewalk with obstructions shall exhibit a red light at night, placed in such a manner as to warn the public of the obstruction of the roadway and sidewalk, and so as to show distinctly the clear passageway left in the roadway and sidewalk. When the space occupied by the obstruction extends for twenty or more feet along the curb, at least one such light shall be exhibited at each end of the obstruction, hung clear of the obstruction on the side adjoining the roadway. Every open manhole shall be securely guarded and a red flag or other danger signal shall be displayed close thereto at all times so as to insure the public safety.
- (2) No grate, door other opening in any sidewalk in the City shall be permitted to remain open any longer than may be reasonably necessary to enable the owner or occupant to move or remove goods in the course of his trade or business, and while open it shall be properly barricaded so as to prevent pedestrians from falling therein.
- (3) No one shall place or leave, for a longer period than two hours, either in or upon any street, sidewalk, parking or other public place any wood, coal, crate or barrel or any goods, wares or merchandise, except pursuant to a permit as provided in subsection (c)(1) hereof. In every case of such temporary use of sidewalk space for handing goods, a clear passageway for pedestrians must be left, at least six feet wide on business streets and four feet wide on residence streets.

- (4) No person, without a permit so to do issued by the Building Official shall create, construct or maintain any platform, display case or other structure on any part of any public sidewalk or occupy any part of any sidewalk for the purpose of showing, displaying or storing any goods, wares, merchandise, fruit, vegetables, fish or other articles for sale.

(c) Property Abutting Streets and Public Places. Owners of lots abutting upon streets or upon other public spaces in the City, shall maintain such lots so as to prevent dirt, sand or gravel, or any bushes, trees or like things from falling or being washed upon the public spaces in front of such lots, or upon the sidewalks or streets adjacent thereto.

(d) Removal of Snow, Ice and Trash.

- (1) It shall be the duty of each individual, incorporated society, public institution or other corporation or organization using or occupying in any manner or for any purpose whatsoever any house, store, shop or other structure of any kind, and all persons having charge of churches and public buildings of every description, and the owner of occupied buildings and houses and of unimproved lots situate on any paved street in the City, and of their agents, within three hours after the fall of any snow (unless the snow shall have fallen between the hours of 6:00 p.m. and 6:00 a.m. in which case it shall be removed before 11:00 a.m.) or in the case of the formation of any ice on the sidewalk, to remove or clear the snow and ice away, or cause it to be removed or cleared away from the pavements or sidewalks abutting the residences, stores, houses, churches, structures, buildings or lots so used, occupied or owned by them or under their charge, in such manner as to leave the sidewalk clean and free from snow and ice, and in such manner as not to obstruct the passage of the water in the gutters, and it shall further be the duty of such persons or their agents to keep the gutters leading to and the pavements or sidewalks situated in the front or at the rear or side of such premises above named free from snow and ice and every obstruction, and free from dirt, trash and filth.
- (2) No person shall remove snow, ice, dirt, trash or filth from any sidewalk onto a street or other sidewalk or onto any other public place; or onto any private premises without the consent of the owner, occupant or person in charge thereof, and then only in such manner as not to constitute a nuisance.

(e) Marking on Sidewalks Prohibited. No person shall deface any sidewalk in the City by painting, printing or otherwise marking thereof any advertisement or other matter.

### STREET SPECIFICATIONS

#### 1. Street Requirements - General

- a. Street which are continuations of existing platted streets must be of no lesser quality than the existing streets relative to type of service, paved width, shoulders or curbs, etc.
- b. Streets shall be established to avoid jogs at intersections and shall intersect other streets as near to a 90-degree angle as topography permits. Any intersection angle less than 70-degrees shall require approval of the Building Official.
- c. At the discretion of the Building Official, certain proposed streets shall be extended to the boundary line of a tract to provide for adequate circulation of traffic within the vicinity.
- d. Dead-end streets shall be approved if limited to one thousand (1000) feet long for Flatland Subdivisions or Developments and two thousand (2000) feet long for Hillside Subdivisions or Developments.
- e. Subdivisions or Developments with only one entrance-exit street shall be limited to one hundred (100) dwelling units. A second entrance-exit must be provided when this limit is exceeded.
- f. Where it can be clearly demonstrated by an applicant that the topographic conditions will prevent the utilization of all possible building sites if all lots are required to abut on a street, some variation from that requirement may be permitted by the Superintendent by means of the careful design and adequate construction of private drives subject to the following requirements:
  - (1) Not more than three (3) lots shall be served by any one private drive.
  - (2) Private drives shall be constructed of the same material and with the same design characteristics as required for wider streets, except that the minimum surface width of a private drive may be sixteen (16) feet.
  - (3) Common and joint maintenance by all owners, present and future, of the lots served by the private drives shall be made a part of the deed of each of the lots, stipulating adequate maintenance and insuring passability.
  - (4) When private drives are utilized, provision shall be made on the lots for the off-street parking of at least three (3) automobiles for each lot served by the private drive. Such additional off-street parking may be provided in a common and shared lot on the premises.
  - (5) When the Building Official approves the use of private drives, such approval shall be entered in writing and filed with the City Clerk together with a copy of the deed restrictions which is required by Item (3) above.

- g. At a street and an alley intersection, property line corners shall be rounded by an arc; minimum radii of which shall be ten (10) feet and five (5) feet, respectively. The street curb shall be rounded by a radius of at least fifteen (15) feet.

2. Street Requirements - Right-of-Way Widths

- a. Collector or Secondary highways: Not less than sixty (60) feet wide in any case.
- b. Local streets: Fifty (50) feet wide for Flatland Subdivisions and forty (40) feet for Hillside Subdivisions.
- c. Minor streets and dead-end streets: Forty (40) feet wide, terminating in a circular turn-around with a minimum right-of-way diameter of seventy-five (75) feet; a 'Y' or 'T' turn-around is also permissible.
- d. Alleys and service drives: Twenty (20) feet wide.
- e. Easements for utilities, where required, shall be at least fifteen (15) feet wide and centered on rear or side lot lines. (See Placement of Utilities Drawings.)

3. Street Requirements - Minimum Pavement Widths

- a. Pavement widths for collector streets will be as designed in the Thoroughfare Plan, or as determined by the Building Official. Where required to be provided as part of the subdivision, the Subdivider will be responsible for the total paved width of thirty-one (31) feet including curbs.
- b. Local streets, minor streets, and dead-end streets shall have minimum paved widths of twenty-five (25) feet without curbs.
- c. Pavement of a turning circle shall have a minimum outside diameter of sixty (60) feet.

4. Street Requirements - Grade, Curves, and Sight Distances

- a. The grades of any street or alley shall not be less than five-tenths (0.5) percent.
- b. Arterial, collector, or secondary highways as designated by the Thoroughfare Plan shall be limited to a maximum grade of seven (7) percent.
- c. Local streets, minor streets, and dead-end streets shall be limited to a maximum grade of ten (10) percent for Hillside Subdivisions.
- d. Alleys shall be limited to a maximum grade of ten (10) percent where they are primarily for residential service, but shall be limited to a maximum of eight (8) percent when used to provide service to commercial property.

- e. All changes in street grade of one (1) percent or more shall be connected by vertical curves. The length of the vertical curve will be determined on the basis of providing stopping-sight distances for each road classification where design-speed for arterial, collector, and secondary streets is forty (40) mph, local streets is twenty-five (25) mph, and minor streets, dead-end streets and alleys is twenty (20) mph. In no case shall the length of the required vertical curve be less than fifteen (15) times the algebraic difference in rate of grades for arterials, collectors, and secondary streets or one-half ( $\frac{1}{2}$ ) of this minimum for all other streets.
- f. The radii of curvature on the centerline of the street shall not be less than that required to produce stopping-sight distance as defined in Item (3) above. In no case, however, shall the radii of curvature for arterials, collectors, and secondary streets be less than three hundred (300) feet or for local streets, minor streets, service drives, and alleys be less than fifty (50) feet.

5. Street Requirements - Construction Specifications

- a. Subgrade shall be bladed smooth to the correct slope and grade. All large stones, boulders, and debris shall be removed; subgrade shall be free from organic materials, sludge, rubbish, brush, limbs, spongy or frozen soil, and other objectional substances.
- b. One four (4) inch layer of one (1) to one and one-half ( $1\frac{1}{2}$ ) inch crushed stone or slag shall be spread and rolled to proper crown and contour.
- c. If surface is to be left as crushed stone or slag, a second layer of one-quarter ( $\frac{1}{4}$ ) to one-half ( $\frac{1}{2}$ ) inch, two (2) inches thick, shall be spread and rolled. In the case of a stone road surface, the Developer will be responsible for the maintenance of the road in condition satisfactory to the City for a period of two (2) years following the assumption of residence by the first homeowner in the Subdivision or Development. Such responsibility shall be made a matter of record in all deeds pertinent to the subdivision, along with the expiration date for such responsibility.
- d. If the surface is to be cement concrete, a minimum of six (6) inches of 2500 pound test cement concrete with proper expansion joints shall be placed over the first stone course described in b. above. Reinforcing shall be determined by the Superintendent.
- e. If the surface is to be asphaltic concrete, one (1) emulsion coat shall be sprayed on the first stone course, and four (4) inches of asphaltic concrete shall be laid and rolled in two (2) courses of two (2) inches each.
- f. The Developer is not responsible for maintenance of cement or asphaltic concrete surfaces once the finished street is accepted by the City of the County unless further development activity by the Developer causes damage to the surfaces, in which case the Developer will be responsible for acceptable repairs.



6. Other Requirements

Upon submission of plans and drawings for construction of streets to the Municipal Planning Commission, the Commission may make such further requirements and recommendations as may be dictated by the specific needs of a particular subdivision or development, and such additional recommendations or requirements shall be adopted by the Building Official unless the Building Official determines that the recommendations or requirements are contrary to any of the other provisions of this Article or otherwise without any merit. The Building Official shall also make such additional requirements for the construction of any streets as he deems necessary due to the specific nature of any subdivision or development.



## ARTICLE 905 Excavations

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|--|---|
| <p><b>905.01</b> Permit required.</p> <p><b>905.02</b> Application for permit.</p> <p><b>905.03</b> Prerequisites to granting of permit; cash deposit or bond.</p> <p><b>905.04</b> Manner of work; restoration of surface.</p> <p><b>905.05</b> Required safeguards; foot bridges.</p> <p><b>905.06</b> Bridges over excavations in roadways.</p> | <p><b>905.07</b> Safeguards relating to sidewalk excavations.</p> <p><b>905.08</b> Handling, conveyance and disposition of dirt, etc., from excavations.</p> <p><b>905.09</b> Railroads and public utilities.</p> <p><b>905.10</b> When state permit required.</p> <p><b>905.11</b> Nonliability of City.</p> |
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### CROSS REFERENCES

Authority to regulate - see W.Va. Code Sec. 8-12-5(2)

#### **905.01 PERMIT REQUIRED.**

It shall be unlawful for any person to cut into or otherwise damage or excavate any street, sidewalk or public place within the City for the purpose of connecting property with water, sewer or gas lines thereunder, or for any other purpose, except pursuant to a permit as provided in this article.

#### **905.02 APPLICATION FOR PERMIT.**

Any person desiring to cut, open or otherwise excavate any street, sidewalk or public place, whether paved or unpaved, in the City, for any purpose, shall apply to the Superintendent for a permit to do so. The application shall be in form as prescribed by the Superintendent and shall contain such pertinent information as may be required by him, including but not limited to the following: The purpose of the proposed excavation; the site at which the work is to be done; the date work is to begin and the expected duration of the work; and the name and address of the person for whose benefit the proposed work is to be done and who shall be responsible for all required safeguards, the diligent prosecution of the work, the restoration of the surface, the payment of all expenses incurred and compliance with all requirements of this article, and the application shall be signed by such person or by someone authorized by him, or by the plumber or other contractor employed by him to do the work.

**905.03 PREREQUISITES TO GRANTING OF PERMIT; CASH DEPOSIT OR BOND.**

(a) No excavation permit shall be granted unless it appears to the satisfaction of the Superintendent that the excavation is necessary for the health, safety or welfare of the person upon whose behalf the excavation is to be made; and the connection of property to a water, sewer or gas main shall be deemed sufficient under this subsection.

(b) No excavation permit shall be granted until the applicant therefor, or someone on his behalf, has made a cash deposit or given bond to the City in such amount as may be deemed by the Superintendent sufficient to cover the cost of safeguards, disposal of excavated dirt, etc., and restoration of the surface of the place of excavation to as good condition as it was prior to the making of the excavation. Each such bond shall be payable to the City, shall have corporate surety, shall be approved by the City Attorney, and shall be conditioned that the work be diligently and skillfully prosecuted (subject to unforeseeable circumstances beyond control of the person doing the work), that all necessary safeguards be maintained, that all excavated materials not required for refill be disposed of as provided in this article, that the surface of the place of excavation and not less than ten feet in all directions from the outer perimeter thereof be placed in as good condition as it was immediately prior to the commencement of the work and to the reasonable satisfaction of the Superintendent, that all requirements of this article be complied with, and that any defective work which appears within five years from the date of acceptance of restoration by the Superintendent shall be subject to repair by the City at the expense of the permit holder.

**905.04 MANNER OF WORK; RESTORATION OF SURFACE.**

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

**905.05 REQUIRED SAFEGUARDS; FOOT BRIDGES.**

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

**905.06 BRIDGES OVER EXCAVATIONS IN ROADWAYS.**

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

**905.07 SAFEGUARDS RELATING TO SIDEWALK EXCAVATIONS.**

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

**905.08 HANDLING, CONVEYANCE AND DISPOSITION OF DIRT, ETC.,  
FROM EXCAVATIONS.**

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

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

**905.09 RAILROADS AND PUBLIC UTILITIES.**

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

**905.10 WHEN STATE PERMIT REQUIRED.**

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

**905.11 NONLIABILITY OF CITY.**

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



**ARTICLE 907**  
**Trees**

**907.01 Planting, trimming, removal.**

**907.99 Penalty.**

**CROSS REFERENCES**  
Tree Commission - see ADM. Ch. 147

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**907.01 PLANTING, TRIMMING, REMOVAL.**

(a) The Tree Commission shall have the authority to regulate the planting, trimming and removal of trees on Municipal public property, by any person, within the corporate boundaries in the City of Williamstown. Council shall have the right to review the conduct, acts and decisions of the City Tree Commission. Any person may appeal from any ruling or order of the City Tree Commission to the City Council who may hear the matter and make final decision.

(b) Any person within said corporate boundaries desiring to plant, trim or remove a tree on municipal public property shall first secure permission from said Tree Commission, in writing, and if necessary, shall execute a waiver of responsibility in the same or similar form as the sample attached hereto. (Passed 5-3-83.)

**907.99 PENALTY.**

Any person violating this article shall be guilty of a misdemeanor and shall be fined by the proper municipal authority not in excess of \$100.00.  
(Passed 5-3-83.)





### **CHAPTER THREE - Utilities**

- Art. 913. Sewer Use Ordinance.
- Art. 917. Sewer Rates.
- Art. 919. Water.
- Art. 921. Storm Water Management and Surface Water Discharge Control.
- Art. 922. Storm Water Utility.
- Art. 923. Grading Permit, Soil Erosion and Sediment Control.

### **ARTICLE 913 Sewer Use Ordinance**

- |   |   |
|---|---|
| <b>913.01 Definitions.</b>                        | <b>913.10 Access to properties.</b>           |
| <b>913.02 General.</b>                            | <b>913.11 Detrimental wastes.</b>             |
| <b>913.03 Use of public sewers required.</b>      | <b>913.12 Admission of industrial wastes.</b> |
| <b>913.04 Public sewers and extensions.</b>       | <b>913.13 Change in customer.</b>             |
| <b>913.05 Application for service.</b>            | <b>913.14 Discontinuance of service.</b>      |
| <b>913.06 Customer service lines.</b>             | <b>913.15 Refund agreements.</b>              |
| <b>913.07 Sewer user charges.</b>                 | <b>913.16 Protection from damage.</b>         |
| <b>913.08 Billing procedure.</b>                  | <b>913.17 Public notification.</b>            |
| <b>913.09 Liens and penalties for nonpayment.</b> | <b>913.99 Penalty.</b>                        |

### **CROSS REFERENCES**

- Power to regulate utility systems - see W.Va. Code 8-12-5(32)
- Sewer connections - see W.Va. Code 8-18-22

### **913.01 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of terms used herein shall be as follows:

- (a) "B.O.D." or "Biochemical Oxygen Demand". The quantity of oxygen expressed in milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory procedures of five (5) days at 20 degrees Centigrade.

- (b) "Building drain". That part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the customer service line, and/or to the lateral sewer.
- (c) "Building sewer". The extension from the building drain to the customer service line and/or lateral sewer.
- (d) "City". The City of Williamstown, Wood County, West Virginia, a municipal corporation incorporated under the laws of this State.
- (e) "Combined sewer". A sewer receiving both surface runoff and sewage.
- (f) "Customer". A customer is a person, corporation, partnership or association and is that party whether owner or tenant, utilizing sewer service furnished by the City to a property.
- (g) "Customer service line". The extension from the building drain of any structure to the lateral of a sanitary sewer controlled by the City.
- (h) "Garbage". Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.
- (i) "Governing body". The Mayor and Council, together, who are charged with the responsibility of enacting ordinances and determining the public policy for the City.
- (j) "Improved property". Any property located within the City upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial wastes are or may be discharged.
- (k) "Industrial waste". Any garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows.
- (l) "Lateral". That part of the sewer system extending from a sewer located in the street to the curb line; or, if there shall be no curb line, to the property line; or, if no such lateral shall be provided, then "Lateral" shall mean that portion of, or place in, a sewer which is provided for connection of any customer service line.
- (m) "Natural outlet". Any outlet, including storm sewers and combined sewers, which flows into a watercourse, pond, ditch, lake, or other body of surface or groundwater.
- (n) "Owner". Any person, corporation, partnership or association vested with ownership, legal or equitable, sole or partial, in any real property.
- (o) "Person". Any individual, firm, company, association, society, corporation, partnership or group.
- (p) "pH". The reciprocal of the logarithm of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution.
- (q) "Public sewer". A sewer which all owners of abutting properties have equal rights and that is controlled by the City.
- (r) "Right-of-way" or "Easement". An acquired legal right for the specific use of land owned by others.
- (s) "Sanitary sewage". Normal water-carried household and toilet wastes from any improved property. The preferred term is wastewater.

- (t) "Sanitary sewer". A sewer controlled by the City that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, and to which storm, surface and ground waters are not intentionally admitted.
- (u) "Sewer". Any pipe or conduit that carries wastewater, domestic drainage, sanitary wastes, or industrial wastes.
- (v) "Sewer system". All wastewater facilities, owned by the City, for collecting, pumping, treating and disposing of sanitary sewage or industrial wastes.
- (w) "Significant industrial user". Any industrial user that will contribute greater than 10 percent of the design flow or design pollutant loading of the wastewater facilities.
- (x) "Single Family Dwelling". Any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by a family or other group of persons living together, or by persons living alone.
- (y) "Slug". Any discharge of wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes and is more than 5 times the average twenty-four hour concentration of flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater facilities.
- (z) "Storm sewer; storm drain". A sewer which carries storm and surface waters and drainage, but excludes sewage and polluted industrial wastes.
- (aa) "Superintendent". The superintendent of sanitary sewer and wastewater facilities for the City, or his authorized deputy, agent, or representative.
- (bb) "Suspended solids". Those solids which are visible and in suspension in the water. Included are the larger floating particles consisting of sand, grit, clay, fecal solids, paper, sticks of woods, particles of food and garbage, and similar materials.
- (cc) "Wastewater facilities". The structures, equipment, and processes required to collect, carry and treat domestic and industrial wastes and to dispose of the effluent.
- (dd) "Watercourse". A channel in which a flow of water occurs, either continuously or intermittently. (Passed 2-19-85.)

#### **913.02 GENERAL.**

(a) This Sewer Use Ordinance has been enacted in compliance with requirements of the United States Environmental Protection Agency (EPA) and the West Virginia Department of Natural Resources (DNR).

(b) In accordance with EPA requirements this article shall be reviewed by the Governing Body no less often than every two years. Particular items to be included in the review include the wastewater contribution of customers and customer classes and the total cost of operation and maintenance of the wastewater facilities. As a result of the review the Governing Body shall revise the effective rates and charges to accomplish the following:

- (1) Maintain the proportionate distribution of operation and maintenance costs among customers and customer classes;
- (2) Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance (including replacement) of the wastewater facilities; and,

- (3) Apply excess revenues collected from a class of customers to the costs of operation and maintenance attributable to that class for the next year and adjust rates accordingly.

(c) The City will notify each user, at least annually, in conjunction with a regular bill, of the rates and that portion of the rates which are attributable to wastewater facilities services. (Passed 2-19-85.)

### **913.03 USE OF PUBLIC SEWERS REQUIRED.**

(a) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or objectionable waste. It shall be unlawful to discharge to any natural outlet or watercourse within the City, or in any area under the jurisdiction of the City; any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article, as well as with applicable regulations of the U.S. Environmental Protection Agency, the West Virginia Department of Natural Resources and the West Virginia Department of Health.

(b) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, sinkhole, septic tank, cesspool, or other facility intended for wastewater disposal or storage on any property which is presently served by a sanitary sewer of the City.

(c) The owners of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, right-of-way or easement in which there is now located or may hereafter be located a sanitary sewer of the City, are hereby required at the Owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper sanitary sewer in accordance with the provisions of this article. All sanitary sewage and industrial wastes from any improved property, after connection of such improved property with a sewer shall be conducted into the sanitary sewer, subject to such limitations and restrictions as are established herein or otherwise shall from time to time be established by the Governing Body.

(d) Every privy vault, cesspool, sinkhole, septic tank or similar receptacle in existence shall be abandoned and, at the discretion of the Governing Body, shall be cleansed and filled at the expense of the Owner, and any such receptacle not so abandoned and/or cleansed and filled, shall constitute a public nuisance and such nuisance may be abated as provided by law. (Passed 2-19-85.)

### **913.04 PUBLIC SEWERS AND EXTENSIONS.**

(a) The Governing Body shall be responsible for maintenance and protection of all sanitary sewers.

(b) All extension of the sanitary sewers shall be approved by the City and shall comply with applicable rules and regulations of the West Virginia Department of Natural Resources and the West Virginia State Department of Health.

(c) Any person or agency, public or private, paving or repairing a road under which a sanitary sewer has been laid shall be responsible for adjusting the height of manhole frames and covers to make them flush with the road surface.

(d) Any person or agency, public or private, changing the elevation of the ground surface above a sanitary sewer shall be responsible for adjusting manhole elevations, correcting sewer structural problems, relocation of sewers, and/or making any other changes directed by the City that shall be required to protect the sewer and provide access to the sewer.  
(Passed 2-19-85.)

### **913.05 APPLICATION FOR SERVICE.**

(a) It shall be unlawful for any person or property Owner to connect with or tap a sanitary sewer, either directly or indirectly, without first having obtained a permit from the Superintendent, acting for and in behalf of the City, which permit may be secured by complying with the procedures hereinafter set forth.

(b) The procedure for obtaining a permit for connecting with or tapping a sanitary sewer shall be as provided herein. The property Owner desiring connection shall apply to the Superintendent for a permit. The application for such permit shall be in the following form:

#### **CITY OF WILLIAMSTOWN WILLIAMSTOWN, WEST VIRGINIA**

#### **APPLICATION FOR SEWER TAP PERMIT**

The undersigned makes application to tap into the sewer system of the City of Williamstown as follows:

Lot No. \_\_\_\_\_ Block No. \_\_\_\_\_  
House No. \_\_\_\_\_ Street or Avenue \_\_\_\_\_  
Date of Tap: Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_ Hour \_\_\_\_\_  
By: Name \_\_\_\_\_ Address: \_\_\_\_\_

The undersigned property Owner, for and in consideration of the granting of the permission to make said tap, does hereby covenant and agree that (a) he will erect all necessary barricades around the proposed construction and will provide red lights for the same between sun-down and sun-up and will take all other necessary precautions for the protection of the public; (b) he will assume sole responsibility and liability for all claims for injury or damages which may arise or result from said construction; (c) he will save and hold the City of Williamstown harmless from any and all claims for damages or actions at law or in equity which may arise, either directly or indirectly, out of the making and completing of the construction of the sewer tap or connection applied for; and (d) he will be responsible and liable for any and all damage resulting from said construction; that such liability shall continue for a period of twenty-four months from the date of the final inspection of said work by the duly designated representative of the City, and that such liability shall include any and all damages or injuries to said street, sidewalk, gutter or curb which may appear within a twenty-four months period, as a result of the said work done by applicant, his agents or contractors.

It is further understood that the word "he" shall mean any person, male or female, or any corporation, firm, partnership or association.

Given under my hand and seal, in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

The sewer connection or sewer tap permit shall be in the following form:

Pursuant to application above, approved: Permit No. \_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_.

CITY OF WILLIAMSTOWN  
WILLIAMSTOWN, WEST VIRGINIA

By: \_\_\_\_\_

Its \_\_\_\_\_

An application for a sewer tap or connection permit shall be executed in duplicate. The original shall be retained by the Superintendent and the duplicate copy shall be delivered to the applicant upon the payment by the applicant of the requisite fee.

(c) The fee for a sewer tap permit for residential or commercial service shall be three hundred dollars, and the fee for a sewer tap permit for industrial service shall be two hundred dollars; provided, that where any Owner, or his predecessors in title, of property consisting of two or more lots has extended the required sanitary sewer lines into a subdivision in accordance with the proper written approval of, and inspection by, the Superintendent, acting for and in behalf of the City, and without cost or expense to the City, the tap or connection fee shall be three hundred dollars for the connection of the subdivision sewer main to the public sewer main and in addition a sewer permit shall be obtained for each lot in such subdivision as and when sewer taps or connections to serve such lots are made. The fee for each such additional tap or connection shall be three hundred dollars.

(d) There shall be two classes of building sewer permits: (1) For residential and commercial service and (2) for service to establishments producing industrial wastes. In either case, the Owner or his agent shall make application on the special form furnished by the City. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of three hundred dollars for a residential or commercial building sewer permit and three hundred dollars for an industrial building sewer permit shall be paid to the City at the time the application is filed.

(e) In cases where the City will transport and treat wastes of users located outside of the City's political jurisdiction, a written agreement between the Governing Body and the political jurisdiction in which such users are located, if there be one, shall be required as a prerequisite for obtaining a sewer connection permit. Such agreement shall provide that the outlying political jurisdiction will institute a system of user charges acceptable to the U.S. Environmental Protection Agency, the West Virginia Department of Natural Resources and the West Virginia Public Service Commission.

(Passed 2-19-85.)

#### **913.06 CUSTOMER SERVICE LINES.**

(a) No unauthorized person shall uncover, make any connections with, or opening into, use, alter, or disturb any sanitary sewer or appurtenance of the City without first obtaining a written permit from the Superintendent.

(b) There shall be two classes of sewer service permits:

- (1) For residential and commercial service, and
- (2) For service to establishments producing industrial wastes. In either case, the Owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. An adequate and responsible bond shall be required and delivered to the City for the purpose of repairing and replacing any damage done to any public street or way by reason of such installation of a sewer connection or a sewer before such permit is issued. The City shall determine the amount of such bond.

(c) All costs and expenses incidental to the installation, connection and maintenance of the customer service lines shall be borne by the Owner. The Owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the customer service line, and such installation shall be done by a certified plumber or a person approved by the Superintendent under whose supervision the installation shall be made.

(d) A separate and independent customer service line shall be provided for every building or series of buildings located on a single parcel of land owned by the applicant. Old building sewers may be used in connection with new customers' service lines only when they are found, on examination by the Superintendent, to meet all requirements of this article.

(e) The slope, alignment, and materials of construction of a customer service line, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Sanitary Sewer Specifications used by the City. All customer service lines must be a minimum of 4" diameter and must be of standard strength vitrified clay pipe provided with ASTM C-425 type special joints, medium weight ductile iron pipe with O-ring rubber joints, Class 2400 asbestos-cement pipe, or polyvinyl chloride (PVC) sewer pipe meeting ASTM Spec. 2729. Adequate soil cover to protect the service line from crushing or frost action is required. No customer service line shall be laid in the same trench with any gas and/or water line and must be separated by at least ten feet from any water line. The slope of the customer service line shall be no less than one-eighth inch (1/8") per foot. All excavations for customer service line installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

(f) The customer service line shall be connected to a sanitary sewer at the place designated by the Superintendent and shall be made by the City employees under the supervision of the Superintendent. The invert of a customer service line at the point of connection shall be at the same or higher elevation than the invert of the sanitary sewer.

(g) No person shall make connection of roof downspouts, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a customer service line or lateral sewer which in turn is connected directly or indirectly to a sanitary sewer. Upon determination that this type of connection has been made, the City shall cause the Owner to be notified by Certified mail that he shall remove such connections within 30 days. Should the Owner fail to do so, penalties called for under this Article shall be invoked.

(h) Except as otherwise provided in this Article, each improved property shall be connected separately and independently with a lateral through an independent customer service line. Grouping of more than one improved property on one customer service line shall not be permitted except under special circumstances and for good sanitary reasons or other good causes shown and then only after special permission of the Superintendent as may be prescribed by the Governing Body; provided, however, a single customer service line may be permitted to serve a school, mobile home park, apartment house or other permanent multiple unit property.

(i) Where an improved property, at the time connection to a sanitary sewer is required, shall be served by its own sewage disposal system or device, the existing sewer line shall be broken on the structure side of such sewage disposal system or device and attachment shall be made, with proper fittings, to continue such sewer line as a customer service line. The Superintendent may, at his discretion, permit the utilization of an existing sewer line provided an inspection discloses that it is reasonably true to grade and alignment and in good condition. In case of an existing sewer line utilizing a type of sewer pipe not specified herein, the Superintendent shall have the right to require the Owner to uncover the full extent of the pipe to determine its condition and may require its replacement with approved pipe as outlined herein if the inspection discloses such pipe to be deteriorated in any manner. The cost of replacing the pipe where necessary, shall be the sole responsibility of the Owner thereof.

(j) No customer service line shall be covered until it has been inspected and approved by the Superintendent or his representative. Every customer service line shall be maintained in a sanitary and safe operating condition by the Owner of such improved property.

(k) The applicant for the sewer services permit shall notify the Superintendent when the customer service line is ready for inspection and connection to the sanitary sewer. The connection and testing shall be made by the Superintendent or his representative.  
(Passed 2-19-85.)

#### **913.07 SEWER USER CHARGES.**

(a) Rates. Sewer charges, or rates, are imposed upon and shall be collected from the owner of each improved property which shall be connected with the sanitary sewer system, for use of the sewer system, whether such use shall be direct or indirect. The sewer user charges shall commence and shall be effective as of the date of connection of each such improved property to the sewer system or within 31 days of availability of the sewer system, whichever is first, and shall be payable as provided herein.



(b) The Superintendent is authorized to bill the customer for the cost of services performed at the request of the customer if the solution to the problem is known or found to be the responsibility of the customer.

(c) Every Owner of improved property which is connected to the sewer system shall provide the City with and thereafter shall keep the City advised of his or her correct address. Failure of any person to receive bills for sewer user charges shall not be considered an excuse for nonpayment nor shall such failure result in an extension of the period of time during which the net bill shall be payable.

(d) Surcharge for High Strength Users: Users discharging any water or wastes with a 30 day average BOD in excess of 300 milligrams per liter or a 30 day average suspended solids content in excess of 300 milligrams per liter or containing suspended solids with a character or quantity of pollutant requiring unusual attention or expense to handle or treat, shall pay, in addition to the base monthly sewer user charges, an additional surcharge ( $C_s$ ) as determined by the following formula:

$C_s$	=	$B_c(B) + S_c(S) + P_c(P) Vu$
where		
B	=	Concentration of BOD from a user above base level (300 mg/l)
$B_c$	=	O & M cost for treatment of a unit of biochemical oxygen demand (BOD)
S	=	Concentration of suspended solids from a user above a base level (300 mg/l)
$S_c$	=	O & M cost for treatment of a unit of suspended solids
P	=	Concentration of any pollutant from a user above a base level
$P_c$	=	O & M cost for treatment of a unit of any pollutant
Vu	=	Volume contribution from a user per unit of time

(e) The Governing Body shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.  
(Passed 2-19-85.)

**913.08 BILLING PROCEDURE.**

All rates or charges provided for by this article shall be billed and collected monthly by the City or by persons or agencies authorized by the City. All bills shall be considered due and payable on or before the tenth day following the date rendered.  
(Passed 2-19-85.)

**913.09 LIENS AND PENALTIES FOR NONPAYMENT.**

(a) Sewer user charges or related charges imposed by article shall be a lien on the improved property connected to and served by the sewer system; and any such sewer user charges or other charges which are delinquent for a period of 30 days shall, together with a penalty of ten percent and a reasonable attorney's fee, be filed as a lien against the improved property and premises so connected to and served by the sewer system, which lien shall be filed in the office of the clerk of the County Commission of Wood County, West Virginia, and shall be collected in the same manner now provided by law for the enforcement of tax liens on real property. Such liens shall be of equal dignity, rank, and priority with a lien on such premises for state, county, school, and municipal taxes.

(b) At the discretion of the City, it may request that the water service to any improved property be shut off for nonpayment of sewer user charges if the bill for sewer user charges is delinquent for a period of 50 days and such owner shall have received 24-hour notice from the City of the intention to shut off the water supply, provided such action is not in violation of any rules of the West Virginia Public Service Commission or the West Virginia Department of Health. In such event, water service shall not be restored until the Owner of the improved property has paid all delinquent user charges to the City, plus the then appropriate charge for the re-installation of the water meter and opening of the water service line.  
(Passed 2-19-85.)

**913.10 ACCESS TO PROPERTIES.**

(a) The City and its Superintendent shall have the right of access at reasonable times to any part of any improved property served by the sewer system as shall be required for purposes of maintenance, inspection, measurement, sampling and testing and for the performance of other functions relating to service rendered by the City through the sewer system.

(b) Every employee of the City whose duties require him to enter the premises of a customer will carry on his person identification as an employee or representative of the City.

(c) The Superintendent and other duly authorized employees are authorized to obtain information concerning industrial process which have a direct bearing on the kind and source of discharge to the sewer system.

(d) The Superintendent or other duly authorized employees of the City bearing proper identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purpose of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work shall be done in full accordance with the terms of the easement pertaining to the private property involved.  
(Passed 2-19-85.)

**913.11 DETRIMENTAL WASTES.**

(a) No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, groundwater, roof runoff, subsurface drainage, or cooling water to any sanitary sewer.

(b) No person shall discharge or cause to be discharged any of the following described waters or wastes to any sanitary sewer:

- (1) Any gasoline, benzene, naphtha, fuel oil, motor oil or other flammable or explosive liquid, solid, or gas.
- (2) Any water or waste with a BOD in excess of 300 milligrams per liter, except as provided for herein.
- (3) Any water or waste containing suspended solids in excess of 300 milligrams per liter, except as provided for herein.
- (4) Any water containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, which injure or interfere with any waste treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment plant effluent.
- (5) Any water or waste having a pH lower than 6.5 or greater than 8.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the wastewater facilities or the sanitary sewers.
- (6) Any solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sanitary sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, gravel, ashes, bones, red dog, sand, mud, coal, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails, and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

(c) The following described substances, materials, waters, or wastes shall be limited in discharges to the sewer system, to concentrations or quantities which will not harm either the sanitary sewers or wastewater facilities; will not have an adverse effect on the receiving stream; or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The limitations or restrictions on materials or characteristics of waste or wastewater discharged to the sewer system which shall not be exceeded by any person without approval of the Superintendent are as follows:

- (1) Wastewater having a temperature higher than 40° C.
- (2) Wastewater containing more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils, or products of mineral oil origin.
- (3) Wastewater containing floatable oils, fat, or grease in excess of 500 milligrams per liter.
- (4) Any garbage that has not been properly shredded with no particle greater than ½ inch in any dimension. Garbage grinders may be connected to sanitary sewers only from homes, hotels, institutions, restaurants, hospitals, or similar places where garbage originates from the preparation of food in on-site kitchens for the purpose of consumption on the premises.

- (5) Any water or waste containing iron, chromium, copper, zinc, mercury, and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater facilities exceeds the limits established by the Governing Body for such materials.
  - (6) Any water or waste containing color-producing or odor-producing substances exceeding limits which may be established by the Governing Body.
  - (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Governing Body in compliance with applicable state or federal regulations.
  - (8) Quantities of flow, concentrations, or both which constitute a "slug" as defined herein.
  - (9) Water or waste containing substances such as synthetic detergents which are not amenable to treatment or reduction by the wastewater facilities employed, or are amenable to treatment only to such degree that the wastewater facilities effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (d) (1) Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, acting for and in behalf of the City, they are necessary for the proper handling of liquid wastes containing grease in excess of amount provided in subsection (c) hereof, or any flammable wastes, sand, and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, acting for and in behalf of the City, and shall be located as to be readily and easily accessible for cleaning and inspection.
- (2) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight.
- Where installed, all grease, oil and sand interceptors shall be maintained by the Owner, at his expense, in continuously efficient operation at all times.
- (e) No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Governing Body and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment.
- (Passed 2-19-85.)

### **913.12 ADMISSION OF INDUSTRIAL WASTES.**

- (a) No person shall discharge or cause to be discharged into the sewer system any industrial wastes except upon application to the City and upon receipt of a written permit therefor. An industrial waste permit shall be in addition to any other permit required for connection to the sewer system. There is no fee required for an industrial waste permit.

(b) Any person desiring to make or use a connection to the sewer system through which industrial wastes will be discharged into the sewer system shall file with the City an Industrial Wastes Questionnaire, to be furnished by the City, which shall supply pertinent data, including estimated quantity, flow characteristics and constituents, with respect to the industrial wastes.

(c) Any person who shall discharge industrial wastes into the sewer system, when required by the City, shall construct and thereafter properly maintain at his own expense, a suitable and accessible control manhole and other devices as may be approved by the Superintendent to facilitate observation, accurate measurement and sampling by the City of industrial waste discharges.

(d) Any improved property discharging industrial wastes into the sewer system and contemplating a change in the method of operation which will alter the characteristics and/or volumes of wastes at the time being discharged into the sewer system shall notify the City, in writing, at least sixty (60) days prior to consummation of such change. The City reserves the right to require improved properties having large variations in rates of waste discharge to install suitable regulating devices for equalizing waste flows to the sewer system.

(e) The Governing Body reserves the right to impose surcharges on sewer user charges and/or impose other requirements in connection with any high strength or industrial waste discharged into the sewer system by agreement with the Owner of the improved property, in accordance with the methods described in this article, or by modification or alterations to this article as may be acceptable to the West Virginia Department of Natural Resources and the United States Environmental Protection Agency, and/or require the pretreatment of such industrial waste at the expense of such Owner.

(Passed 2-19-85.)

#### **913.13 CHANGE IN CUSTOMER.**

Each sewer service permit applicant must give written notice to the City upon any change in ownership of any improved property. The applicant must give written notice also of any change in tenancy and the applicant shall be liable for any sewer user charges that may accrue prior to the notice of vacation of premises.

(Passed 2-19-85.)

#### **913.14 DISCONTINUANCE OF SERVICE.**

Any customer desiring discontinuance of sewer service due to the vacancy of his premises shall make application therefor directly to the Superintendent. Only premises which are both vacant and have had the water supply shut off for one or more complete monthly billing periods are eligible for exoneration from sewer user charges. No exoneration will be granted for less than one full month. In the case of premises with private water supply facilities, such application shall be supported by an affidavit to the effect that such water supply has been shut off. Application for exoneration must be made at least five (5) days in advance of the beginning of discontinuance of service. In all cases involving water service from the City, such service shall not be restored until the Owner of the improved property has paid the necessary charge for the reinstallation of the water meter and opening of the water service line.

(Passed 2-19-85.)

**913.15 REFUND AGREEMENTS.**

In cases where extensions to the sewer system are constructed by a builder or developer at his own expense, or by a group of applicants at their own volition and expense, as outlined in the P.S.C. Rules and Regulations for the operation of sewer utilities, a refund of a portion of the sewer user charges paid by customers occupying dwellings served may be to the builder, developer or other applicants under the terms of a refund agreement, entered into between the Governing Body and the builder, developer or other applicants. Such agreement will provide for refunds not exceeding such amounts and for such period as may be authorized by the Governing Body. Each refund agreement shall be an individual agreement between the interested parties, and shall not be construed as outlining a definite procedure as to percentage of refund or the duration thereof. Each and every separate refund agreement shall be negotiated independently of any other existing similar agreement. In no event shall the terms of any refund agreement exceed ten years in duration.

(Passed 2-19-85.)

**913.16 PROTECTION FROM DAMAGE.**

No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the City wastewater facilities. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

(Passed 2-19-85.)

**913.17 PUBLIC NOTIFICATION.**

(a) The City shall provide public notification, on an annual basis, of the rate or rates of sewer charges and the applicable portions thereof pertaining to operation and maintenance expense.

(b) This operation and maintenance cost shall be expressed as dollars per 1,000 gallons.

(c) Notification shall be by means of advertisement in a locally circulated newspaper, insert in the regular bill for sewer service or other means deemed suitable to the City and acceptable to the Regional Administrator of the United States Environmental Protection Agency.

(Passed 4-5-94.)

**913.99 PENALTY.**

(a) Any person found to be violating any provision of this article except Section 913.16 shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall within the period of time stated in such notice, permanently cease all violations.

(b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) hereof shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not exceeding two hundred dollars (\$200.00) for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

(c) Any person violating any of the provisions of this article shall become liable to the City for any expense, loss, or damage occasioned by the Governing Body by reason of such violation.

(d) Fines and costs imposed under this article shall be enforceable and recoverable in the manner provided by applicable law.  
(Passed 2-19-85.)





**ARTICLE 917**  
**Sewer Rates**

**917.01 Statutory authority, findings  
and determinations.**  
**917.02 Rules and regulations.**

**917.03 Establishing and fixing rates,  
charges, delayed payment  
penalty charges and a tapping  
fee.**

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**917.01 STATUTORY AUTHORITY, FINDINGS AND DETERMINATIONS.**

(a) This article is enacted pursuant to the provisions and requirements of Chapter 16, Article 13, Section 16, of the Code of West Virginia, as amended, and other applicable provisions of law.

(b) It is hereby found, determined and declared as follows:

That rates now in existence for the furnishing of sewerage service are not sufficient to provide for the payment of interest on all bonds and to creating a sinking fund to pay the principal thereof, as and when the same become due, with reasonable reserves therefor, and to provide for the repair, maintenance and operation of the sewerage system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the Ordinance authorizing the issuance of said Revenue Bonds, and the hereinafter established rates, charges and delayed payment penalty charges are just, reasonable, applied without unjust discrimination or preference and are based primarily on the costs of providing sewerage service. (Passed 7-15-86.)

**917.02 RULES AND REGULATIONS.**

(a) In the event a building or premises discharging sewage, water or other liquid wastes into the municipal sanitary sewer system uses water supplied on other than a metered basis of either a private or public water supply, the owner of such building or premises shall install a meter or other measuring device, approved by the Department of Waterworks and Sewers of the City of Williamstown.

(b) Where sewage, water or other liquid wastes are discharged into sanitary sewers of any building or premises and the same is determined by the said Department of Waterworks and Sewers to contain unduly high concentrations of any substance which add to the operating costs of the sewage system, the owner or other interested party shall specially treat such sewage water or other liquid wastes before it is discharged into the municipal sanitary system.  
(Passed 7-15-86.)

**917.03 ESTABLISHING AND FIXING RATES, CHARGES, DELAYED PAYMENT PENALTY CHARGES AND A TAPPING FEE.**

The following schedule of rates, charges, delayed payment penalty charges, and a tapping fee shall be, and they are hereby, fixed and determined as the rates, charges, delayed payment penalty charges and tapping fee to be charged to consumers of the sewerage system of the City of Williamstown throughout the entire territory served.

- (a) Schedule. Applicable in the entire territory served.
- (b) Availability of Service. Available for general domestic, commercial and industrial service.
- (c) Rates. The monthly rates or charges for the use of the City sewer system shall be based upon the amount of City water supplied to the same premises during the same month, as follows:
- (d) Metered Rate. (Per Thousand Gallons)

First 2,000 gallons or less	\$17.48 per month
Next 3,000 gallons used per month	\$8.72 per 1,000 gallons
Next 20,000 gallons used per month	\$6.79 per 1,000 gallons
Next 75,000 gallons used per month	\$5.85 per 1,000 gallons
Next 100,000 gallons used per month	\$4.81 per 1,000 gallons
All over 200,000 gallons used per month	\$3.90 per 1,000 gallons

Or, in the event that City water is not used, then, pursuant to the Ordinance as aforesaid, meter shall be installed on said water supply and the rate to be charged for the use of the sewer shall be per that installed meter.

- (e) Minimum Charge. Minimum monthly charge \$17.48
- (f) Delayed Payment Penalty Charge. The above schedule is net. On all accounts not paid in full within twenty (20) days of the billing date, ten percent (10%) penalty may be added to the net amount shown. This delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.
- (g) Tapping Fee. The City of Williamstown shall charge and collect a sewer connection fee of \$494.40 from each owner of property who makes a service connection from his said property into a sanitary sewer of the City of Williamstown, except in the following cases:
  - (1) An owner of property that has been previously assessed for sewer improvements under the provisions of the Code of West Virginia;
  - (2) An owner of property who, or his predecessors in title, has heretofore paid the costs of constructing the sewer into which he seeks to connect, providing, however, that said sewer has been installed in accordance with the specifications and requirements of the Department of Waterworks and Sewers of Williamstown. (Passed 7-15-86; 7-21-91; 12-1-12.)

## ARTICLE 919 Water

<b>919.01</b>	<b>Cross -connection control.</b>	<b>919.04</b>	<b>Required use of water meter.</b>
<b>919.02</b>	<b>Drilling of water wells prohibited.</b>	<b>919.05</b>	<b>Reconnection fee.</b>
<b>919.03</b>	<b>Water taps.</b>	<b>919.06</b>	<b>Meter repair fee.</b>
		<b>919.07</b>	<b>Rates.</b>

### CROSS REFERENCES

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

### **919.01 CROSS-CONNECTION CONTROL.**

- (a) Purpose.
- (1) To protect the public potable water supply served by the City of Williamstown from the possibility of contamination or pollution by isolating, within its customer's internal distribution system, such contaminants or pollutants which could backflow or back-siphon into the public water system.
  - (2) To promote the elimination or control of existing cross-connections, actual or potential, health hazards between its customer's in-plant potable water system, and non-potable systems.
  - (3) To provide for the maintenance of a continuing program of cross-connection control, which will effectively prevent the contamination or pollution of all potable water systems by cross-connection.
- (b) Authority.
- (1) By the Federal Safe Drinking Water Act of 1974, and the Code of West Virginia Chapter 16, Article 1 and Public Health Laws, WV Bureau for Public Health Chapter 1, Article 5B, the City of Williamstown has the responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.
  - (2) City of Williamstown, Rules and Regulations, adopted.

(c) Responsibility. The City of Williamstown shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If, in the judgment of the City of Williamstown, an approved backflow assembly is required at the water service connection to any customer's premises, the City of Williamstown, or his delegated agent, shall give notice in writing to said customer to install an approved backflow prevention device at each service connection to his premises. The customer shall, within 90 days install such approved device, or devices, at his own expense, and failure or refusal, or inability on the part of the customer to install said assembly or assemblies within ninety (90) days, shall constitute a ground for discontinuing water service to the premises until such assembly or assemblies have been properly installed.

(d) Definitions.

- (1) Approved: Accepted by the City of Williamstown as meeting an applicable specification stated or cited in this regulation, or as suitable for the proposed purpose.
- (2) Auxiliary water supply: Any water supply, on or available, to the premises other than the City of Williamstown's approved public potable water supply.
- (3) Backflow: The unintentional reversal of flow of water or other liquids, mixtures or substances under positive or reduced pressure in the distribution pipes of a potable water supply from any source other than its intended source.
- (4) Backflow preventer: A device or means designed to prevent backflow. Most commonly categorized as air gap, reduced pressure principle, double check valve assembly, pressure vacuum breaker, atmospheric vacuum breaker, hose bibb vacuum breaker, residential dual check, double check with intermediate atmospheric vent, and barometric loop.
- (5) Air gap: A physical separation sufficient to prevent backflow between the free-flowing discharge end of a potable water system and any other system. Physically defined as a distance equal to twice the diameter of the supply side pipe diameter but never less than one (1) inch.
- (6) Atmospheric Vacuum Breaker: A device which prevents back-siphonage by creating an atmospheric vent when there is either a negative pressure or sub-atmospheric pressure in a water system.
- (7) Barometric loop: A fabricated piping arrangement rising at least thirty-five (35) feet at its topmost point above the highest fixture it supplies. It is utilized in water supply systems to protect against back-siphonage.
- (8) Double check valve assembly: An assembly of two (2) independently operating spring loaded check valves with tightly closing shutoff valves on each side of the check valves, and properly located test cocks for the testing of each check valve.
- (9) Double check valve with intermediate atmospheric vent: A device having two (2) spring loaded check valves separated by an atmospheric vent chamber.
- (10) Hose Bibb Vacuum Breaker: A device which is permanently attached to a hose bib and which acts as an atmospheric vacuum breaker.

- (11) Pressure Vacuum Breaker Assembly: An assembly containing one or two independently operated spring loaded check valves and an independently operated spring loaded air inlet valve located on the discharge side of the check or checks. The assembly includes tightly closing shut-off valves on each side of the check valves and properly located test cocks for the testing of the check valve(s).
- (12) Reduced pressure principle backflow preventer: An assembly consisting of two (2) independently operating approved check valves with an automatically operating differential relief valve located between the two (2) check valves, tightly closing shut-off valves one each side of the check valves plus properly located test cocks for the testing of the check valves and the relief valve.
- (13) Residential dual check: A device consisting of two (2) spring-loaded, independently operating check valves without tightly closing shut-off valves and test cocks. Generally employed immediately downstream of the water meter to act as an isolation device.
- (14) Backpressure: A condition in which the owner's system pressure is greater than the suppliers' system pressure.
- (15) Back-siphonage: The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water supply system from any source other than its intended source caused by the sudden reduction of pressure in the potable water supply system.
- (16) Containment: A method of backflow prevention which requires a backflow prevention assembly at the water service entrance.
- (17) Contaminant: A substance that will impair the quality of the water to a degree that it creates a serious health hazard to the public leading to poisoning or the spread of disease.
- (18) Cross-connection: Any actual or potential connection between the public water supply and a source of contamination or pollution.
- (19) Fixture isolation: A method of backflow prevention in which a backflow preventer is located to correct a cross connection at an in-plant location rather than at a water service entrance.
- (20) Owner: Any person who has legal title to, or license to operate or reside in, a property upon which a cross-connection inspection is to be made or upon which a cross-connection is present.
- (21) Person: Any individual, partnership, company, public or private corporation, political subdivision or agency of the State Department, agency or instrumentality or the United States or any other legal entity.
- (22) Pollutant: A foreign substance, which if permitted to get into the public water system, will degrade its quality so as to constitute a moderate hazard, or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect such water for domestic use.
- (23) Water Purveyor: The Municipal Water Department, Water Board, Public Service District or other administrative authority invested with the authority and responsibility for the implementation of a cross-connection control program and for the enforcement of the provisions of this article.

- (24) Water Service Entrance: That point in the owner's water system beyond the sanitary control of the City of Williamstown, generally considered to be the outlet end of the water meter and always before any unprotected branch.
  - (25) WVBPH: The State of West Virginia Bureau for Public Health.
- (e) Administration.
- (1) The City of Williamstown will operate a cross-connection control program, to include the keeping of necessary records, which fulfills the requirements of the WVBPH Cross-Connections and Backflow Prevention Regulations.
  - (2) The Owner shall allow his property to be inspected for possible cross-connections and shall follow the provisions of the City of Williamstown program and the WVBPH Regulations if a cross-connection is permitted.
  - (3) If the City of Williamstown requires that the public supply be protected by containment, the Owner shall be responsible for water quality beyond the containment assembly and should utilize fixture outlet protection for that purpose. He may utilize local public health officials, or personnel from the City of Williamstown, or their designated representatives, to assist him in the survey of his facilities and to assist him in the selection of proper fixture outlet devices, and the proper installation of these devices.
- (f) City Requirements.
- (1) On new installations, the City of Williamstown will provide on-site evaluation and/or inspection of plans in order to determine the type of backflow preventer, if any, that will be required.
  - (2) For premises existing prior to the start of this program, the City of Williamstown will perform evaluations and inspections of plans and/or premises and inform the owner by letter of any corrective action deemed necessary, the method of achieving the correction, and the time allowed for the correction to be made. Ordinarily, ninety (90) days will be allowed. However, this time period may be shortened depending upon the degree of hazard involved and the history of the device(s) in question.
  - (3) The City of Williamstown will not allow any cross-connection to remain unless it is protected by an approved backflow preventer which will be regularly tested to insure satisfactory operation.
  - (4) The City of Williamstown shall inform the Owner by letter, of any failure to comply, by the time of the first re-inspection. The City of Williamstown will allow an additional fifteen (15) days for the correction. In the event the Owner fails to comply with the necessary correction by the time of the second re-inspection, the City of Williamstown will inform the Owner by letter, that the water service to the Owner's premises will be terminated within a period not to exceed five (5) days. In the event that the Owner informs the City of Williamstown of extenuating circumstances as to why the correction has not been made, a time extension may be granted by the City of Williamstown, but in no case will exceed an additional thirty (30) days.

- (5) If the City of Williamstown determines at any time that a serious threat to the public health exists, the water service will be terminated immediately.
- (6) The City of Williamstown will begin initial premise inspections to determine the nature of existing or potential health hazards. Initial focus will be on severe health hazard industries and commercial premises.

(g) Owner Requirements.

- (1) The Owner shall be responsible for the elimination or protection of all cross-connections on his premises.
- (2) The Owner, after having been informed by a letter from the City of Williamstown, shall at his expense, install, maintain, and test, or have tested, any and all backflow preventer assemblies on his premises.
- (3) The Owner shall correct any malfunction of the backflow preventer assemblies which is revealed by periodic testing.
- (4) The Owner shall inform the City of Williamstown of any proposed or modified cross-connections and also any existing cross-connections of which the Owner is aware, but have not been found by the City of Williamstown.
- (5) The Owner shall not install a by-pass around any backflow preventer unless there is a backflow preventer of the same type on the bypass. Owners who cannot shut down operation for testing of the assembly(s) must supply additional assemblies necessary to allow testing to take place.
- (6) The Owner shall install backflow preventers in a manner approved by the City of Williamstown.
- (7) The Owner shall install only backflow preventers approved by the City of Williamstown or the WVBPH.
- (8) Any Owner having a private well or other private water source must have the approval of the City of Williamstown and the WVBPH if the well or source is cross-connected to the City of Williamstown's system. Permission to cross-connect may be denied. The Owner may be required to install a backflow preventer at the service entrance if a private water source is maintained, even if it is not cross-connected to the City of Williamstown's system.
- (9) In the event the Owner installs plumbing to provide potable water for domestic purposes which is on the City of Williamstown's side of the backflow preventer, such plumbing must have its own backflow preventer installed.
- (10) The Owner shall be responsible for the payment of all fees for permits, annual or semi-annual assembly testing, retesting in the case that the assembly fails to operate correctly, and second re-inspections for non-compliance with City of Williamstown or WVBPH requirements.

(h) Degree of Hazard. The City of Williamstown recognizes the threat to the public water system arising from cross-connections. All threats will be classified by degree of hazard and will require the installation of approved backflow prevention devices.

(i) Existing In-Use Backflow Prevention Devices. Any existing backflow preventer shall be allowed by the City of Williamstown to continue in service unless the degree of hazard is such as to supersede the effectiveness of the present backflow preventer, or result in an unreasonable risk to the public health. Where the degree of hazard has increased, as in the case of a residential installation converting to a business establishment, any existing backflow preventer must be upgraded to a reduced pressure principle device, or a reduced pressure principle device must be installed in the event that no backflow device is present.

(j) Periodic Testing.

- (1) Backflow prevention assemblies shall be tested and inspected at least annually.
- (2) Periodic testing shall be performed by a WVBPH certified tester. This testing will be done at the owner's expense. The owner shall notify the City of Williamstown of the date and time of the test. The City of Williamstown has the option of being present during all device testing.
- (3) The owner shall provide the City of Williamstown with the results of all tests performed on the backflow prevention device(s) installed at the Owner's premises. Owner shall also provide the identity of the tester and a copy of the certification of said tester.
- (4) Any backflow preventer assembly which fails during a periodic test will be repaired or replaced. When repairs are necessary, upon completion of the repair the device will be retested at the owner's expense to insure correct operation. High hazard situations will not be allowed to continue unprotected if the backflow preventer assembly fails the test and cannot be repaired immediately. In other situations, a compliance date of not more than thirty (30) days after the test date will be established. The owner is responsible for spare parts, repair tools, or a replacement device. Parallel installation of two (2) devices is an effective means of the owner insuring uninterrupted water service during testing or repair of devices and is strongly recommended when the owner desires such continuity.
- (5) Backflow prevention devices will be tested more frequently than specified above, in cases where there is a history of test failures and the City of Williamstown feels that due to the degree of hazard involved, additional testing is warranted. Cost of the additional tests will be borne by the owner.

(k) Records. The City of Williamstown will initiate and maintain the following:

- (1) Master files on customer cross-connections.
- (2) Master files on customer cross-connection tests and/or inspections.
- (3) Copies of all correspondence with the WVBPH relating to backflow prevention/cross-connection. (Passed 7-20-10.)

**919.02 DRILLING OF WATER WELLS PROHIBITED.**

No person or entity shall drill or construct a water well within the City of Williamstown. This section shall not be deemed to prohibit water wells in existence as of November 30, 1998. (Ord. 12-1-98.)



**919.03 WATER TAPS.**

(a) Who May Do the Tapping and Excavation Work for Tapping. No person, except an employee of the City acting under the supervision of the Superintendent of the Department of Waterworks and Sewers, shall tap or make any connection with any water line in any street, easement or other public place; nor shall any person, except an employee of the City acting under the Supervision of the Department of Waterworks and Sewers, make any excavation in any public street, easement or public place for the purpose of making any such tap or connection.

(b) Application for Making of Connection. Anyone desiring to have any such tap or connection made with such water line located in any street, easement or other public place, and anyone desiring to have an excavation made for such purpose on any public street, easement or public place may make application therefore, in writing, to the City of Williamstown, which request will be addressed to the City Clerk, and to the Superintendent of the Department of Waterworks and Sewers.

(c) Tapping Fee; Payment of Fee Condition Precedent to Making of Connection. For each tap or connection so requested, the City Clerk shall collect from such applicant the fee of one hundred dollars. No work towards the completion of such tap or connection, or any excavation in connection therewith, will be commenced until this fee has been paid by the applicant. Upon receipt of such request by the City Clerk and the Superintendent of the Department of Waterworks and Sewers, and upon the payment of that fee, the Superintendent of the Department of Waterworks and Sewers will cause such necessary excavation and tap or connection of such water line upon the public street, easement or public place, for the purpose of making such tap or connection, and shall make such tap and connection.

(d) City to Bear Cost and Expense. The city shall bear the cost and expense of the above described excavation on such street, easement or public place, and the cost and expense of any water pipe that may be necessary to extend such water line to the curb line of the abutting property.

(e) City Not Obligated to Extend Water Lines. The provisions of this section and the obligation of the City of Williamstown to make the taps and connections as herein provided shall not be construed to mean that the City is, in any way, obligated to extend existing water lines or lay any new water lines. The provisions hereof pertain only to lateral tapping and connecting with existing water lines or lines hereafter laid which are contiguous to the property which is to be serviced by such tap or connection.

(Passed 4-20-48; 4-3-56; 4-20-71.)

**919.04 REQUIRED USE OF WATER METER.**

(a) In the event a building or premises discharging sewage, water or other liquid wastes into the municipal sewer facilities uses water supplied on other than a metered basis from either a private or a public water supply then in each such case the owner or occupant may be required by the City to cause a water meter or other measuring device to be installed, acceptable to the City, and the quantity of water used, as measured by such meter, shall determine the sewer rate or charge, and, pending installation of such meter, rates or charges shall be based upon an estimated quantity of water used.

(Passed 11-1-55.)

(b) In addition to the minimum customer charge and usage charge, there shall be an additional charge of:

- (1) 1-1/2" meters & 2" meters: \$30.00 per month for the first 12 months and, after the expiration of the first 12 months, there will be a maintenance fee of \$15.00 per month.
- (2) 3" meters: \$44.00 per month for the first 12 months and, after the expiration of the first 12 months, there will be a maintenance fee of \$20.00 per month.
- (3) 4" meters: \$80.00 per month for the first 12 months and, after the expiration of the first 12 months, there will be a maintenance fee of \$20.00 per month.
- (4) 6" meters: \$150.00 per month for the first 12 months and, after the expiration of the first 12 months, there will be a maintenance fee of \$30.00 per month.

#### **919.05 RECONNECTION FEE.**

Reconnection of water that has been disconnected for non-payment will be twenty dollars (\$20.00) payable in advance of reconnection.  
(Passed 8-6-91.)

#### **919.06 METER REPAIR FEE.**

There shall be imposed upon the users of the Water Works System of the City of Williamstown, a fee in the amount of twenty dollars (\$20.00) for the repair of any of said user or users meter or meters, damaged either by natural or unnatural causes. (Passed 3-16-82.)

#### **919.07 RATES.**

##### (a) Rates.

First 5,000	\$5.09
Next 95,000	\$3.36
All over 100,000	\$1.90

##### (b) Minimum Charge.

##### Inch Meter

5/8	\$10.19
3/4	\$15.18
1	\$25.31
1-1/2	\$50.58
2	\$80.93
3	\$151.77
4	\$252.95
6	\$505.87

##### (c) Connection Charge: \$642.45

##### (d) Reconnection Fee: \$50.00

(e) Delayed Payment Penalty. The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate. (Passed 9-1-12.)

**ARTICLE 921**  
**Storm Water Management and Surface Water Discharge Control**

<b>921.01</b>	<b>Definitions.</b>	<b>921.20</b>	<b>Drainage system standards.</b>
<b>921.02</b>	<b>General.</b>	<b>921.21</b>	<b>Plan submission and review process.</b>
<b>921.03</b>	<b>Stormwater service charges.</b>	<b>921.22</b>	<b>Maintenance of storm water facilities.</b>
<b>921.04</b>	<b>Properties affected.</b>	<b>921.23</b>	<b>Inspection.</b>
<b>921.05</b>	<b>Flat rate charges.</b>	<b>921.24</b>	<b>Sampling.</b>
<b>921.06</b>	<b>Billing.</b>	<b>921.25</b>	<b>Testing and monitoring.</b>
<b>921.07</b>	<b>Collection.</b>	<b>921.26</b>	<b>Concealment.</b>
<b>921.08</b>	<b>Use of funds.</b>	<b>921.27</b>	<b>Acts resulting in violation of Federal Clean Water Act.</b>
<b>921.09</b>	<b>General requirements and prohibitions.</b>	<b>921.28</b>	<b>Violations deemed a public nuisance.</b>
<b>921.10</b>	<b>Illicit connections.</b>	<b>921.29</b>	<b>Administrative enforcement powers.</b>
<b>921.11</b>	<b>Outdoor storage areas.</b>	<b>921.30</b>	<b>Nonexclusivity of remedies.</b>
<b>921.12</b>	<b>Construction sites.</b>	<b>921.31</b>	<b>Appeal.</b>
<b>921.13</b>	<b>Discharge of pollutants.</b>	<b>921.32</b>	<b>Disclaimer of liability.</b>
<b>921.14</b>	<b>Discharge in violation of permit.</b>	<b>921.33</b>	<b>Severability.</b>
<b>921.15</b>	<b>Training personnel; notification procedures.</b>	<b>921.34</b>	<b>Industrial or construction activity discharges.</b>
<b>921.16</b>	<b>Construction.</b>	<b>921.35</b>	<b>Notification of spills.</b>
<b>921.17</b>	<b>Stormwater taps.</b>		
<b>921.18</b>	<b>Enforcement.</b>		
<b>921.19</b>	<b>Storm water management and comprehensive drainage plans.</b>		

**CROSS REFERENCES**

Storm Water Utility - see S.U. & P.S. Ch. 922

**921.01 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

- (a) "Best Management Practices (BMPs)" are physical, structural and/or managerial practices that, when used singly or in combination, control site run off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the State. BMPs may include schedules of activities, prohibition of practices, general good housekeeping practices, maintenance procedures, design standards, educational activities and treatment requirements.

- (b) "City Watershed" is that area within the corporate limits of the City of Williamstown and designated areas outside of those limits, over which surface water naturally drains into the City. Designation of areas outside of the corporate limits of the City of Williamstown shall be made by the Mayor.
- (c) "Construction work or activity" are those activities requiring an NPDES permit.
- (d) "Mayor" is the Chairman of the Williamstown Sanitary Board.
- (e) "Facility" for purposes of this Article is a building, structure, installation or construction site in which pollutants are produced and/or discharged as a result of a process or processes, conducted within the building, structure or installation.
- (f) "Flat Rate Charge" is the charge applicable to a single family dwelling per dwelling unit.
- (g) "Footing drain" is a pipe or conduit which is placed around the perimeter of a building foundation or other structure for the purpose of admitting ground water.
- (h) "Illicit connection" means any direct or indirect non-storm discharge to a publicly maintained storm drain system which has not been permitted or allowed by the Williamstown Sanitary Board from the date of enactment of this article.
- (i) "Illicit discharge" means any discharge, surface or subsurface, to a storm drain or into the storm water collection system that is not composed entirely of storm water, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and other discharges exempted in this Article.
- (j) "Impervious area" is land area covered by buildings, pavement, gravel or other material that significantly inhibits storm water from penetrating the soil.
- (k) "Industrial sites" are those sites that contain industrial activities which require NPDES storm water permits as set forth in 40 CFR 12226(a) or (b)(14).
- (l) "Multi-unit property" is a residential, non-residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.
- (m) "Non-stormwater" is all flows to the storm water system not defined as stormwater by this Article or as determined by the Municipality. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.
- (n) "Pervious area" is all land area that is not impervious.
- (o) "Pollutant" means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal wastes, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.
- (p) "Pollution" is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the State and/or the discharge of any pollutant to the waters of the State which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

- (q) "Stormwater" is natural precipitation, surface runoff water, ground water discharge, water from operation of the water distribution system, water used in fire fighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City's stormwater NPDES permit, except as may be defined as non-stormwater by this Article.
- (r) "Stormwater management" is the process of collection, conveyance, storage, treatment and disposal of storm water to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with flooding.
- (s) "Stormwater service charge" is a flat rate charge, a charge based on land area, and/or a nonstormwater user charge.
- (t) "Stormwater system" is public and private stormwater sewers, drains, ditches, streets, retention/detention ponds, dams, river impoundments and flood control facilities used for collecting and transporting storm water and non-stormwater.
- (u) "User" is a firm, person or property which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-stormwater flows to the storm water system, whether within or outside the corporate limits of the City of Williamstown. (Passed 11-1-05)

#### **921.02 GENERAL.**

(a) This article has been enacted to protect and enhance the water quality of our watercourses, water bodies, groundwater and wetland in a manner pursuant to and convenient with the Clean Water Act and associated federal and state storm water regulations.

(b) The intent of this article is:

- (1) To control non-storm water discharges to storm drain systems.
- (2) To reduce pollutants in storm water discharges.
- (3) To control storm water runoff by providing design, construction and maintenance criteria for permanent and temporary storm water facilities.
- (4) To maintain and improve the storm water collection system in order to protect and improve water quality in the receiving streams and to reduce or eliminate local flooding resulting from storm water accumulation.
- (5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding storm water management and the water quality of the receiving streams.

(c) This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted.

(d) The City of Williamstown shall administer, implement and enforce the duties imposed by this Article. Said duties may further be delegated to other entities acting in compliance with applicable ordinances. (Passed 11-1-05)

**921.03 STORMWATER SERVICE CHARGES.**

(a) Users connected to or draining into the public storm drainage system shall pay an equitable share of the actual cost of the operation, maintenance of, improvements to and necessary additions to the stormwater system. Therefore, all owners or tenants of real property in the City of Williamstown and the City of Williamstown watershed shall be charged for the use of the stormwater system based on the amount of stormwater and rate of flow of stormwater which is projected to discharge into the storm water system from the property.

(b) The Council of the City of Williamstown shall, by ordinance, set fees which will recover from users their fair share of costs for use of the storm water system by property within and outside the corporate limits of the City of Williamstown and with the City watershed. Such fees will be for the operation and maintenance of, improvements to, and necessary additions to the stormwater system. (Passed 11-1-05)

**921.04 PROPERTIES AFFECTED.**

Except as provided in this article, all real property shall be subject to the storm water service charges regardless of whether privately or publicly owned.  
(Passed 11-1-05)

**921.05 FLAT RATE CHARGES.**

(a) The monthly service charge for users occupying a residential dwelling and/or residential unit, shall be \$1.00 per month. For purposes of this article, a "residential unit" shall be deemed to include all residential units separately metered for purposes of water and sewer billing, even if located in a multi-unit residential facility.

(b) The monthly service charge for all other properties other than described in the previous section shall be \$5.00 per building. (Passed 11-1-05)

**921.06 BILLING.**

The billing for storm water service as herein authorized may be combined with the billing for other utility services provided by the Williamstown Sanitary Board and/or the City of Williamstown. (Passed 11-1-05)

**921.07 COLLECTION.**

Unpaid storm water service charges shall constitute just cause for disconnection of public water service to the non-paying property. The Mayor shall ensure sufficient notice of disconnection is issued no later than thirty (30) days prior to the scheduled disconnection, and that notice of disconnection is posted on the affected property no later than five (5) days prior to the scheduled disconnection. Water service shall be reactivated only upon full payment of the storm water service charges or other payment arrangements approved by the Mayor. In the alternative, the Mayor may take appropriate legal action to collect unpaid charges.  
(Passed 11-1-05)

**921.08 USE OF FUNDS.**

All funds collected for storm water service shall be accounted for separately and shall be used solely for the construction, operation and maintenance of the storm water system, the financing of storm water related projects, and administration of the utility.  
(Passed 11-1-05)

**921.09 GENERAL REQUIREMENTS AND PROHIBITIONS.**

(a) The use of the storm water collection system shall be the collection and transportation of storm water.

(b) No person shall place or cause to be placed any pollutant into the storm water system other than storm water, unless written approval has been granted by the Mayor. The Mayor may refuse to grant approval to discharge non-storm water into the storm water system for any reason or combination of reasons.

(c) The Williamstown Sanitary Board shall administer use of the storm water system to all users with the City of Williamstown watershed, whether located within or outside the corporate boundaries.

(d) No person shall cause or permit the introduction of any pollutant into the storm water system, whether solid, liquid or gaseous, that will cause:

- (1) Chemical reaction, either directly or indirectly with the materials of construction used in the storm water system or that will impair the strength or durability of sewers or structures.
- (2) Mechanical action that will destroy or damage sewers or structures.
- (3) Restriction of the normal maintenance and inspection of sewers.
- (4) Danger to public health and safety or to the environment.
- (5) Conditions that create a public nuisance.
- (6) An oil sheen or unusual color;
- (7) Abnormal demand on the storm water system capacity; or
- (8) The storm water system to violate its NPDES permit or applicable receiving water standards and all other Federal, State and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, ownership and/or operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit, or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Mayor. Approval by the Mayor must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

(Passed 11-1-05)

#### **921.10 ILLICIT CONNECTIONS.**

It is prohibited to establish, use, maintain or continue illicit connections to the municipal storm water system, or to commence or continue any illicit discharges to the municipal storm water system. (Passed 11-1-05)

#### **921.11 OUTDOOR STORAGE AREAS.**

In outdoor areas, no person shall store grease, oil, or other hazardous substances in a manner that will or may result in such substances entering the storm water system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the storm water system. To prevent the discharge of hazardous substances to the storm water system, the Mayor may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

(Passed 11-1-05)

#### **921.12 CONSTRUCTION SITES.**

Any person performing construction work in the City watershed of the City of Williamstown shall comply with the provisions of this article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to a storm drain system. The City Council may establish by ordinance standards and guidelines implementing BMPs designed to provide erosion and sediment control from construction sites.

(Passed 11-1-05)

#### **921.13 DISCHARGE OF POLLUTANTS.**

Discharges from the following activities will not be considered a source of pollutant to waters of the State when properly managed: water line flushing and other discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, ground water infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential and non-profit group car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting activities and training. (Passed 11-1-05)



**921.14 DISCHARGE IN VIOLATION OF PERMIT.**

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City of Williamstown shall seek to have such persons defend, indemnify and hold harmless the City of Williamstown in any administrative or judicial enforcement action against the City of Williamstown and/or the Williamstown Sanitary Board relating to such discharge as provided by applicable rules of law.

(Passed 11-1-05)

**921.15 TRAINING PERSONNEL; NOTIFICATION PROCEDURES.**

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training and maintain notification procedures to assure that immediate notification is provided to the Mayor upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutant or waste creating a risk of discharge into the municipal storm water system or into a receiving stream.

(Passed 11-1-05)

**921.16 CONSTRUCTION.**

(a) Only designated employees of the Williamstown Storm Water Utility, Williamstown Sanitary Board, or employees of the City of Williamstown or other parties authorized by the Mayor may perform construction upon the public facilities of the storm water system. Public facilities of the system shall include:

- (1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit storm water from and/or across two or more properties; and,
- (2) All taps other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private storm water facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Mayor.

(c) Parties authorized by the Mayor to perform construction of or upon the public facilities of the storm water system shall comply with the design and construction standards promulgated by the Mayor. These parties shall allow for inspection of the construction by the Mayor at all times, and construction shall only occur during normal working hours of the Williamstown Sanitary Board. No facilities constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Mayor. This authority shall be granted by the Mayor upon satisfaction of the announced design and construction standards.

(d) All public facilities shall upon, authorized completion, be property of the Municipality.

(e) A party authorized by the Mayor to perform construction upon the public facilities of the storm water system shall meet the following requirements prior to and throughout construction:

- (1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,
- (2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §5-22-1, et seq., and 21-5A-1, et seq; and,
- (3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and
- (4) Contractors liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Mayor, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Williamstown and the Williamstown Sanitary Board as additional insureds. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Mayor, and
- (5) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Mayor, equal to the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Mayor, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and
- (6) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Mayor, in an amount no more than the reasonable estimate of repair costs, as determined by the Mayor, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Mayor, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and
- (7) Certification of full compliance with all relevant state and local permitting and tax rules and regulations, certification of appropriate property rights to perform the construction, and conveyance to the City of Williamstown of appropriate property rights for the completed public facilities.
- (8) Nothing in subsections (e)(2), (3), (4), (5) and (6) shall apply to any situation where the Mayor shall come to an agreement with volunteers or a volunteer group doing work for a qualified not for profit entity, whereby the Mayor will provide engineering, technical or other services and the volunteers will provide the necessary labor without charge to, or liability upon, the City of Williamstown or the Williamstown Sanitary Board. The not for profit entity shall be responsible for all costs to the utility associated with such a project. (Passed 11-1-05)

#### **921.17 STORMWATER TAPS.**

(a) The Mayor or a party authorized by the Mayor will furnish and install storm water system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Mayor. The applicant shall pay the full cost of the tap installation.

(b) The Mayor may deny a tap application when the requested tap is proposed to an inadequate public facility. (Passed 11-1-05)

**921.18 ENFORCEMENT.**

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this article.

(b) The Mayor and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this article.

(d) The Mayor is authorized to take appropriate legal action to require compliance with this article.

(e) The Mayor is authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this article, the Mayor may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charge amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Mayor, for full payment of the invoiced amount.

(g) In addition to any other remedy, the Mayor, after thirty (30) calendar days written notice and five (5) calendar days notice posted on the affected property, is authorized to disconnect water service, sanitary sewer and storm water sewer services to any property in violation of this article. The notice shall state that persons affected may within five (5) calendar days provide the Mayor with any information or reasons as to why services should not be disconnected.

(h) The Mayor is authorized to take all steps necessary to immediately halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(i) Persons aggrieved by any determination of the Mayor in enforcing this article may appeal that determination to the Williamstown Sanitary Board or a court of proper jurisdiction. Prosecution shall be stayed pending such an appeal.  
(Passed 11-1-05)

**921.19 STORM WATER MANAGEMENT AND COMPREHENSIVE DRAINAGE PLANS.**

(a) Within twelve (12) months of the effective date of this article, the Williamstown Storm Water Utility shall propose and there shall be enacted by the Council of the City of Williamstown by ordinance regulations providing for specific requirements and standards for storm water management and drainage upon all new developments and redevelopment projects. These regulations shall be written to minimize the discharge and transport of pollutants to storm drain systems and prevent the determination of water quality. At a minimum, these regulations shall address:

- (1) Prevention of any direct discharge of untreated storm water, either on or off-site.
  - (2) Prevention of increased post-development discharge rates.
  - (3) Removal of a designated amount, determined by the percentage of impervious parcel area, of annual total suspended solids generated from development or redevelopment runoff prior to any off site discharge.
  - (4) Description and implementation of best management practices, and the continuation of those BMP's for appropriate periods of time.
  - (5) Protection of ground water from instances of polluted runoff infiltration.
- (Passed 11-1-05)

**921.20 DRAINAGE SYSTEM STANDARDS.**

Drainage systems shall comply with the standards established by ordinance.  
(Passed 11-1-05)

**921.21 PLAN SUBMISSION AND REVIEW PROCESS.**

(a) Within eighteen (18) months of the effective date of this article, and no sooner than six (6) months following the enactment of regulations providing for specific requirements and standards for storm water management and drainage upon all new developments and redevelopment projects, storm water management plans and comprehensive drainage plans for any new construction or reconstruction within the City watershed shall be submitted to the Mayor. The plans shall be reviewed by the Mayor for compliance with the applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they conform to the requirements of this article.

(b) The plan submission and review process shall be coordinated with and integrated into the City of Williamstown planning and permitting process. Following the effective date of this section, no building permit shall be issued without an approved storm water management plan if required under this article. (Passed 11-1-05)

**921.22 MAINTENANCE OF STORM WATER FACILITIES.**

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Mayor upon request.

(d) The Mayor may perform corrective or maintenance work, which shall be at the owners' expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Mayor.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this article and guidance of the Mayor.

(Passed 11-1-05)

#### **921.23 INSPECTION.**

(a) Storm water systems within the City of Williamstown watershed shall be inspected by the Mayor during and after construction to assure consistency with the approved storm water management plan.

(b) All storm water systems within the City of Williamstown watershed shall be subject to the authority of the Mayor to ensure compliance with this article and may be inspected when deemed necessary.

(c) The owner of a private storm water system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the Mayor has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this article, the Mayor may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this article; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Mayor is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and perform such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this article, including but not limited to, random sampling and/or sampling in areas with evidence of storm water pollution, illicit discharges, or similar factors.

(Passed 11-1-05)

**921.24 SAMPLING.**

With the consent of the owner or occupant or with Court order, the Mayor may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Mayor may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples. (Passed 11-1-05)

**921.25 TESTING AND MONITORING.**

(a) Whenever the Mayor determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to storm water pollution or illicit discharges to the storm water system, the Mayor may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such report as the Mayor may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

(b) Within twenty (20) days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the Mayor of the recipient's position with respect to the order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Mayor to review the Order's requirements and revise the Order as the Mayor may deem necessary. Within ten (10) days of such meeting, the Mayor shall issue a final written order. Final orders issued pursuant to this section may be appealed to the Williamstown Storm Water Utility Board by the filing of a written appeal with the Williamstown Sanitary Board (acting in its capacity as the Williamstown Storm Water Utility), within ten (10) days of receipt of the final order. The appeal notice shall set forth the particular order requirements or issues being appealed. The Williamstown Storm Water Utility Board shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the order. The decision of the Williamstown Storm Water Utility Board shall be final, but may be subject to review by a Court of competent jurisdiction.

(c) In the event the owner or operator of the facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the order in the time frames set forth therein, the Mayor may cause such monitoring and/or analyses to occur. If a violation is found, the Mayor may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Mayor may pursue judicial action to enforce the Order and recover all costs incurred. (Passed 11-1-05)

**921.26 CONCEALMENT.**

Causing, permitting, aiding, abetting or concealing a violation of any provisions of this article shall constitute a violation of such provision. (Passed 11-1-05)

**921.27 ACTS RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT.**

Any person who violates any provision of this article, or who discharges waste or waste water which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Federal Clean Water Act and may be subject to the sanctions of that Act, including civil and criminal penalties.

(Passed 11-1-05)

**921.28 VIOLATIONS DEEMED A PUBLIC NUISANCE.**

(a) In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this article shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Mayor and may be summarily abated and/or restored by the Mayor and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance.

(b) The cost of such abatement and/or restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

(c) If any violation of this article constitutes a seasonal and recurrent nuisance, the Mayor shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

(d) In any administrative or civil proceeding under this article in which the City of Williamstown or its agent prevails, the City of Williamstown or its agent may be awarded all costs of investigation, administrative overhead, out of pocket expenses, costs of administrative hearings, costs of suit and reasonable attorney's fees.

(Passed 11-1-05)

**921.29 ADMINISTRATIVE ENFORCEMENT POWERS.**

(a) In addition to the other enforcement powers and remedies established by this article, the Mayor has the authority to utilize the following administrative remedies:

- (1) Cease and Desist Orders. When the Mayor finds that a discharge has taken place or is likely to take place in violation of this article, the Mayor may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharged and direct that those persons not complying shall (a) comply with the requirement; (b) comply with a time schedule for compliance; and/or (c) take appropriate remedial or preventive action to prevent the violation from recurring.
- (2) Notice to Clean. Whenever the Mayor finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system, he or she may give notice to the property owner to remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.

- (3) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Mayor may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. (Passed 11-1-05)

#### **921.30 NONEXCLUSIVITY OF REMEDIES.**

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Passed 11-1-05)

#### **921.31 APPEAL.**

Any person, firm, corporation or organization notified of non-compliance with this article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Mayor may appeal such decision in writing to the Williamstown Storm Water Utility Board within ten (10) days following the effective date of the decision. Upon receipt of such request, the Williamstown Sanitary Board (acting in its capacity as the Williamstown Storm Water Utility) shall request a report and recommendation from the Mayor and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the Williamstown Storm Water Utility may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to Court of competent jurisdiction. (Passed 11-1-05)

#### **921.32 DISCLAIMER OF LIABILITY.**

The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This article shall not create liability on the part of the City of Williamstown, any agent or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made thereunder. (Passed 11-1-05)

#### **921.33 SEVERABILITY.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not invalidate the other provisions or application of this article. (Passed 11-1-05)

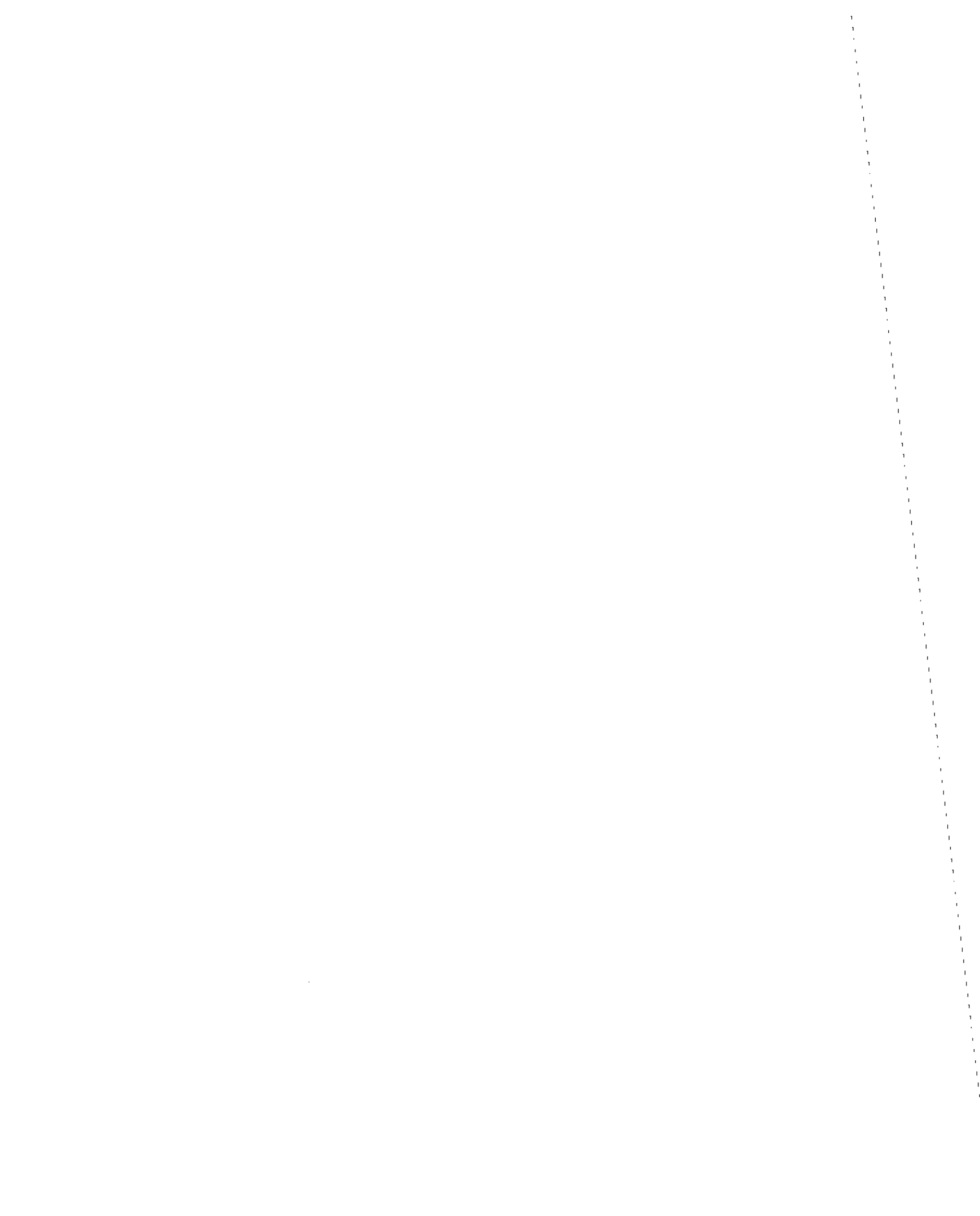
#### **921.34 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with this permit may be required in a form acceptable to the City of Williamstown prior to allowing discharges to the storm water system. (Passed 11-1-05)



**921.35 NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has any information of any known or suspected release of materials which are or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the State of West Virginia, said person shall all necessary steps to ensure the discovery, containment, and cleanup of release. In the case of a release of hazardous material shall immediately notify emergency response agencies of the spill. (Passed 11-1-05)



**ARTICLE 922**  
**Storm Water Utility**

- |                                  |                                 |
|----------------------------------|---------------------------------|
| <b>922.01 Established.</b>       | <b>922.04 Fees and charges.</b> |
| <b>922.02 Purpose.</b>           | <b>922.05 Sanitary Board.</b>   |
| <b>922.03 Powers and duties.</b> |                                 |

**CROSS REFERENCES**  
Storm Water Management - see S.U. & P.S. Ch. 921

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**922.01 ESTABLISHED.**

There is hereby established the Williamstown Storm Water Utility. This utility shall serve the City of Williamstown Urban Watershed, which shall include all areas within the corporate boundaries of the City of Williamstown and all adjacent and contiguous areas over and through which surface and storm water flows into the City of Williamstown. The Storm Water Utility shall provide storm, flood, and surface water management services to all real property located within the Urban Watershed. (Passed 11-1-05)

**922.02 PURPOSE.**

The Williamstown Storm Water Utility shall protect, to the greatest extent practicable, life, property, and the water environment from loss, injury, and damage by pollution, erosion, flooding, and other potential hazards, whether from natural causes or from human activity, and shall protect, to the greatest extent practicable, surface waters and receiving waters from pollution, mechanical damage, excessive flows and other conditions which degrade the water environment, reduce recharging or ground water, or endanger aquatic and benthos life within the City of Williamstown watershed and other receiving waters of the State. The Williamstown Storm Water Utility shall further meet the requirements of state and federal law. (Passed 11-1-05)

**922.03 POWERS AND DUTIES.**

(a) The Williamstown Storm Water Utility is authorized to plan, acquire, improve, construct, inspect, develop, install, modify, manage, operate, maintain, replace, control, demolish, abandon, regulate and fund storm and surface water drainage services, system and facilities within the urban watershed. The Utility is further authorized to acquire property and/or rights in land by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend storm water and flood management facilities within the City watershed. The Utility is further authorized to charge and collect rates and fees for these services, which rates and fees shall be determined by the Council of the City of Williamstown. The Utility is further authorized to accept federal funds under any federal law for actions preliminary to construction/reconstruction of storm water and flood management facilities.

(b) The Williamstown Storm Water Utility is authorized, in anticipation of the collection of revenues of and from storm water facilities, to issue revenue bonds to finance in whole or in part, the cost of acquisition, construction, reconstruction, improvements, betterment or extension of such facilities, and to pledge punctual payment of said bonds and interest thereon all or any part of the revenues of the Utility. The fees collected by the Williamstown Storm Water Utility shall be used to pay for any said bonds and the other costs associated with the operation of the utility.

(c) The Williamstown Storm Water Utility may enter into and perform contracts and agreements with other governmental entities, utility enterprises and private parties for or concerning the planning, construction, lease, or other acquisition and the financing of storm water and flood management facilities and the maintenance and operation thereof.  
(Passed 11-1-05)

#### **922.04 FEES AND CHARGES.**

Fees and charges for storm water management services shall be subject to review, approval and enactment by the Council, pursuant to the charter and ordinances of the City. Enacted rates and fees shall be sufficient to fully fund the operation of the storm water utility. Collected rates and fees shall be used solely for the operation of the Storm Water Utility and the rates shall bear a direct relationship to the costs of operating the utility. Rate readjustments will be conducted at regular intervals determined by the Council.  
(Passed 11-1-05)

#### **922.05 SANITARY BOARD.**

(a) All powers and authority possessed by the City of Williamstown pertaining to public flood control and storm and surface water drainage services and operations is hereby transferred to the Williamstown Sanitary Board. The Mayor, as Chairman of the Williamstown Sanitary Board, shall serve as the Director of the Williamstown Storm Water Utility.

(b) The Williamstown Sanitary Board shall have the power and authority to negotiate agreements which combine and pool the resources of the Williamstown Storm Water Utility with any concomitant boards of other municipalities or governmental entities for the purpose of establishing the Williamstown Storm Water Utility. Any such agreements must be ratified by the Council of the City of Williamstown.

(c) All storm and surface water drainage systems or facilities owned or controlled by the City of Williamstown and revenues raised for the purpose of or pertaining to public flood control and storm and surface water drainage services and operation of the storm water utility, are to be collected and managed by the Williamstown Sanitary Board. The Williamstown Sanitary Board shall, no less than annually, present to Council a budget and audited financial statement of the storm water utility. (Passed 11-1-05)

**ARTICLE 923**  
**Grading Permit, Soil Erosion and Sediment Control**

**923.01 General.**

**923.02 Fee and expiration.**

**923.03 Size requirements.**

**923.99 Penalties.**

**CROSS REFERENCES**

Surface water discharge control - see S.U. & P.S. Ch. 921

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**923.01 GENERAL.**

This article is in response to the storm water management program as administered by WV Department of Environmental Protection.

- (a) Any person(s), individual(a), landowner(s), developer(s), operator(s) or their assign(s) that intend to develop or engage in land disturbing activities of any kind, on any lot, tract, parcel of land or any portion thereof for development, redevelopment, construction, addition or modification work in the City limits shall provide erosion and sediment controls that effectively prevent discharges of pollutants to the storm drain system or waterway of the City, or property of another. No person shall do or cause to be done any grading, stripping or cutting upon any site within the City of Williamstown unless he has obtained a grading permit from the City. However, the following exemptions shall apply. No grading permit shall be required for tilling or cultivation of any plot of ground for the purpose of growing flowers or vegetables or other plants. The City Maintenance Department shall be considered to be under a blanket grading permit and will utilize appropriate grading, soil erosion and sediment control techniques at their excavations. The City Building Inspector may also waive the need for a grading permit on small construction projects which are deemed not to cause a significant source of soil erosion and sediment issues.
- (b) Any person(s), individual(s), landowner(s), developer(s), operator(s), or their Assign(s) are required to control wastes such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site. That may cause adverse impacts to water quality.  
(Passed 8-5-08)

**923.02 FEE AND EXPIRATION.**

(a) Upon being granted a grading permit, the permittee shall pay five dollars (\$5.00) for each one thousand dollars (\$1000) of the estimated cost of grading as shown on the application, but in any event a minimum fee of twenty-five dollars (\$25.00) and the payment of such fee shall be a prerequisite to the granting of any grading permit.

(b) If the work described in any grading permit has not begun within ninety days from the date of issuance thereof, the permit shall expire and be cancelled by the City Building Commissioner, and written notice thereof shall be given to the persons affected.

If the work described in any grading permit has not been substantially completed within two years of the date of issuance thereof, such permit shall expire and be cancelled by the Building Commissioner and written notice shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new grading permit has been obtained. (Passed 8-5-08)

**923.03 SIZE REQUIREMENTS.**

(a) Plans for grading sites less than 1 acre shall be submitted to the City Building Inspector for approval prior to issuing a grading permit. These plans shall include the following information:

- (1) A map (hand drawn map will suffice) of the existing site area with the name of the owner, the address, and North arrow.
- (2) Planned grading/construction area.
- (3) All storm water drains or catch basins located on or near the property that would convey storm water from the property.
- (4) Proposed temporary or permanent soil erosion, sediment control devices.
- (5) Property boundary lines. It is not required for sites under an acre to be surveyed but is recommended as it is the owner's responsibility to know where their property boundaries are.

(b) Plans for grading site equal to or larger than 1 acre shall be submitted to the City Building Inspector, and may need to be approved by the City Storm Water Board, City Planning Committee and/or the City Engineer prior to issuing a grading permit. These plans shall include the following information:

- (1) Descriptive information:
  - A. Title block with:
    1. Development name.
    2. Owner.
    3. Design firm.
    4. Authorized registered professional engineer stamp, signature, and date.
    5. Legend.
    6. North arrow.
    7. Vicinity map.
    8. Scale.
    9. Sheet numbers.
    10. Revision numbers and dates.

- B. Topographical features:
1. Original and proposed contours at intervals no greater than two vertical feet.
  2. Existing drainage components, i.e., streams, ponds, pipes, etc.
  3. Property boundary lines.
  4. 100-year floodplain.
  5. Off site drainage entering the site.
  6. Existing and proposed structures, roads, buildings, paved areas, and utilities.
  7. Existing and proposed storm water management systems and components.
  8. Proposed sediment and soil erosion control measures both temporary and permanent structure.
- (Passed 8-5-08)

**923.99 PENALTIES.**

(a) Any person convicted of violating the provisions of this article may be guilty of a misdemeanor and upon conviction thereof, may be subject to a fine of not more than \$500.00 per day.

(b) Each day that a violation continues will be a separate offense.

(c) The City of Williamstown may institute injunctive, mandamus or other appropriate action or proceedings of law to correct violations of this Article or seek temporary or permanent restraining orders, injunctions, mandamus or other appropriate forms of relief.

(Passed 8-5-08)





**CHAPTER FIVE - Other Public Services**

Art. 931. Refuse Collection and Disposal.

Art. 935. Parks.

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**ARTICLE 931****Refuse Collection and Disposal****931.01 Definitions.****931.02 Prohibited disposal.****931.03 Approved disposal site.****931.04 Maintenance of premises.****931.05 Refuse collection service.****CROSS REFERENCES**

Power to regulate - see W.Va. 8-12-5(10) et seq.

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**931.01 DEFINITIONS.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) Ashes. The term "ashes" shall mean the residue resulting from the burning of wood, coal, coke or other combustible material.
- (b) Garbage. The term "garbage" shall mean all animal and vegetable wastes resulting from the handling, preparation, cooking, or consumption of foods.
- (c) Refuse. The term "refuse" shall mean all solid wastes, except body wastes, and shall include garbage, ashes, and rubbish.
- (d) Rubbish. The term "rubbish" shall include glass, metal, paper, plant growth, wood or nonputrescible solid wastes.
- (e) Trash. The term "trash" shall have the same meaning as, and be interchangeable with, the term "rubbish."

**931.02 PROHIBITED DISPOSAL.**

(a) It shall be unlawful for any person to dump, deposit or place any refuse, waste, trash, debris or any offensive or unwholesome substance or matter upon any lot, tract or parcel of land or upon any street, sidewalk or public place within the City.

(b) No person shall deposit or dispose of any refuse in any pond, lake, spring, well, cistern, river or watercourse or in any gutter or drain.

(Passed 3-5-57.)

**931.03 APPROVED DISPOSAL SITE.**

It shall be unlawful to dump, burn, bury, destroy or otherwise dispose of any refuse within the City, except at a refuse disposal site established or approved by Council; provided, that persons licensed by the City to collect refuse, as provided in this article, may dispose of refuse collected by them at such places as may be authorized for such purpose in their respective licenses, and then only pursuant to the laws and ordinances in effect at such disposal places.

**931.04 MAINTENANCE OF PREMISES.**

(a) Refuse which originates on any premises within the City shall not be suffered by the owner or occupant of the premises to accumulate in such manner or in such quantity as to constitute a fire or safety hazard or a danger to health, or so as to become unsightly or otherwise give offense to persons in the neighborhood. Garbage and trash shall be collected and disposed of regularly, as provided in this article. Refuse other than garbage and trash shall be disposed of by the owner or occupant promptly as it originates, in a lawful and sanitary manner.

(b) Garbage and trash to be collected as provided by this article shall be stored, pending collection, in refuse containers in accord with the requirements of this article.

(Passed 12-2-46; Passed 4-24-59.)

**931.05 REFUSE COLLECTION SERVICE.**

(a) Definitions. For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) Approved. The word "approved," as applied to refuse containers, shall mean containers which meet the requirements of and conform to the provisions of this article.
- (2) Authorized collector. The term "authorized collector" shall mean a person having a contract with the City to collect and dispose of refuse, or a person who is authorized by ordinance, resolution or order of the City Council to collect and dispose of refuse.
- (3) Disposal. The term "disposal" shall include the storage, collection, disposal or handling of refuse.

(b) Contracts with authorized collectors.

- (1) The Mayor is hereby authorized to enter into a contract or contracts for the period of one year, with some person for the removal of the garbage or offal collected or accumulated in the City, and to remove garbage from the area comprising the municipal limits. The Mayor may enter into such contract or contracts with any persons, by and with the consent of Council, and he may, or may not, as he deems advisable, advertise for such person ninety days before the termination of any such contract. The person or

persons to whom such contract is awarded by the Mayor shall enter into a written agreement with the City, binding himself, themselves, or itself, to remove or cause to be removed and deposited as hereinbefore mentioned all garbage and offal from the City. Such contract shall also provide that any failure or neglect of any such contractor to perform any part of his contract or any of his duties thereunder, or to carry out any of the provisions of this article applicable to him or it, shall be a cause for the forfeiture of the contract, and the Mayor may, upon such failure or neglect, declare such contract forfeited and may award to some other person the contract, for removal of such garbage and offal for the unexpired portion of the contract period. No member of Council or any other officer of the City shall make any proposals or be interested in any contract provided for in this article.

- (2) The contractor or contractors with whom the Mayor enters into agreement for the removal of the garbage and offal, as hereinbefore provided, shall provide himself with all necessary carts, wagons, trucks or other vehicles to remove garbage and offal. The vehicles used for such purpose shall be so constructed as to be watertight and insofar as possible shall be kept securely covered while in use in transit, except when opened for the immediate reception of garbage. Such vehicles shall always be kept as clean as practicable and shall be so loaded and driven that none of the contents thereof shall spill therefrom.
- (3) Such contractor or contractors shall regularly see that all receptacles and garbage cans, as hereinbefore defined, are called for and the contents thereof removed, as herein provided; such contractor in making his collections shall follow the same route each time and shall inquire for and remove in a clean manner all kitchen garbage and offal that may be offered for removal or that may be found in receptacles in garbage cans, as hereinbefore defined, and shall carefully return such receptacles to the places from which they have been taken.
- (4) In addition to and not in lieu of any of the foregoing provisions designed to protect the City and provide it with adequate and efficient garbage and offal collection and disposal services, the Mayor may require of any contractor a performance bond, with corporate surety, payable to the City, in such amount and with such conditions as the Mayor may deem adequate, subject to approval by the City Attorney as to form and legality.

(c) Refuse Containers. Refuse containers shall be made of durable, water-tight, rust-resistant material, each with a close-fitting lid and handles to facilitate collection. Containers for residences shall be of not less than ten gallons, nor more than thirty-two gallons in capacity. Containers for commercial establishments shall not exceed forty gallons in capacity except as may be provided otherwise in any case by a separate contract.

(d) Preparation of Refuse for Collection. The following rules shall be complied with prior to setting out refuse for collection:

- (1) All refuse shall be drain-free of liquids before disposal.
- (2) Garbage shall be wrapped in paper or similar material.
- (3) All cans, bottles and other food containers shall be rinsed free of food particles and drained before disposal.

- (4) Rubbish shall be (1) placed in approved containers, or (2) cut and baled, tied, bundled, stacked or packaged so as not to exceed thirty-six inches in length and fifty pounds in weight.
- (e) Storage of Refuse.
  - (1) Each householder, commercial establishment, or other person having refuse shall provide himself with approved refuse containers and shall place and keep all refuse therein, except as otherwise authorized in subsection (d)(4) hereof.
  - (2) It shall be unlawful for any person to place any refuse in any street, sidewalk or any other public place, or upon private property, whether his own property or not, unless such refuse is placed in an approved container, except as otherwise authorized in subsection (d)(4) hereof.
- (f) Containers to Be Kept Clean by Rinsing. It shall be unlawful for any person to permit the accumulation of residue of liquids or solids, or a combination thereof, on the bottom or sides of containers, it being the intention of this provision that the interior of containers shall be kept clean by thorough rinsing and draining as often as necessary.
- (g) Tampering. It shall be unlawful for any person, without proper authority, to destroy, deface, damage, remove, turn over or empty a receptacle used for the storage of garbage, rubbish or refuse, or without the consent of the City to empty, scatter or burn the contents of any such receptacle within the confines of the City.
- (h) Unauthorized Collections. It shall be unlawful for any person to permit an unauthorized collector to collect or remove, for compensation, refuse from a household, institution, commercial enterprise or other place within the City.
- (i) Authorized Collectors. No person shall, for compensation, collect, remove, haul or convey any refuse through or upon any of the streets or public places of the City or dispose thereof in any manner or place without authority to do so conferred by Council.
- (j) Garbage Collection Vehicles. All vehicles used for the collection of garbage shall be equipped with compacting devices or equivalent types of closed bodies and shall have enclosed cargo space. The City Council may at any time require that garbage collection vehicles of authorized collectors undergo a sanitary inspection, and that defects disclosed by such inspection be corrected prior to use of such vehicles thereafter for collection purposes.

**ARTICLE 935**  
**Parks**

<b>935.01</b>	<b>Board of Trustees.</b>	<b>935.04</b>	<b>Fee for use of City park shelters.</b>
<b>935.02</b>	<b>Vehicles speed limits; drunken and reckless driving.</b>	<b>935.05</b>	<b>Consent to use City Park for major events.</b>
<b>935.03</b>	<b>Prohibited hours to enter or remain.</b>	<b>935.06</b>	<b>Garage sales prohibited.</b>

**935.01 BOARD OF TRUSTEES.**

(a) The management and maintenance, the making and enforcing of rules and regulations for the government of all municipal parks, and for the maintenance of good order therein, shall be vested in a Board of Trustees of five members, which said Board shall be constituted as follows:

- (1) The member of Council to whose department the affairs of the park have been vested and assigned by Council shall be always ex officio a member of the Board of Trustees.
  - (2) Four other persons, residents in, and qualified voters of, the City to be elected by Council.
- (b)
- (1) The term of office of each elected member of the Board of Trustees of the City's parks shall be four years. In the month of January of each year Council shall elect one member of the Board of Trustees to succeed the member whose term will expire on the 10th day of that month, and to hold office for the term of four years from the 10th day of January, on which his term commences, provided, however, that council may re-elect any member of the Board of Trustees to succeed himself.
  - (2) All vacancies arising on the board shall be filled by the City Council for the remainder of the unexpired term.
- (c) The members of the Board of Trustees shall serve without compensation.

(d) Any elected member of the Board of Trustees may be removed by resolution of Council for any cause arising from or affecting the performance of his duties as such trustee, provided, that no such resolution of removal shall be adopted by Council until it has remained on file with the City Clerk for at least one month after it has been introduced; and provided further, that no such removal shall be made for or on account of any political affiliation of the Trustee to be removed.

- (e)
  - (1) The Board of Trustees shall elect from its members a Chairman, Vice Chairman and Secretary-Treasurer, and shall make rules for its own governance and meetings, and the Board shall have a regular meeting at least once a year. The Board may appoint and act through an executive committee, which executive committee shall be three in number, shall be composed of the Chairman of the Board, or in his absence, the Vice Chairman, the Councilman member and the Secretary-Treasurer of the Board.
  - (2) All officers of the Board of Trustees shall be elected by a majority of the Board and shall serve for a period of two years, or until their successors have been duly elected. The election of officers shall be by open nominations at the regular meeting and not by a nominating committee.
  - (3) The Chairman of the Board of Trustees shall call a special meeting at the written request of two or more members and at such place within the City as they may designate. He shall give at least three days notice of such meeting by verbal or written notice, unless all members of the board agree at the time to a shorter notice.

(f) The Board of Trustees shall make and promulgate rules and regulations for the management and maintenance, the making and enforcing of rules and regulations for the government of the park, and for the maintenance of good order therein.

(g) It shall be the duty of the Board of Trustees to promulgate and recommend to Council all plans for work and improvements in the City's parks.

(h) All public meetings and celebrations in the park must be submitted to and approved by the Board of Trustees or its executive committee.

(i) The park shall be free to the public for nonprofit entertainments and celebrations, except as the Board of Trustees may authorize.

#### **935.02 VEHICLE SPEED LIMITS; DRUNKEN AND RECKLESS DRIVING.**

(a) It shall be unlawful to operate or drive an automobile or other motor driven vehicle at a greater speed than fifteen miles per hour on any street or driveway in any City park.

(b) Drunken or reckless driving in any City park is subject to the same restrictions, laws and penalties governing other roads, streets and alleys in the City. (Passed 7-17-56.)

**935.03 PROHIBITED HOURS TO ENTER OR REMAIN.**

It shall be unlawful for any person to enter, be, or remain in any City Park (excluding the public boat ramp) for any purpose whatsoever between dusk and dawn, except as hereinafter provided.

(Passed 11-21-00.)

**935.04 FEE FOR USE OF CITY PARK SHELTERS.**

(a) A fee in the amount of \$10.00 shall be charged to reserve for use any of the shelters in any of the City Parks. Applications for reservations of shelters shall be made not less than twenty-four hours in advance of the anticipated date and time of the use of same.

(b) The reservation fee may be waived by the Park Committee for use of any such shelter by any group recognized as a non-profit group under applicable Internal Revenue Service Regulations, or otherwise by any public service, non-profit or other similar group in the discretion of the Park Committee.

(c) The Park Committee may, in its discretion, promulgate such additional regulations for the use of shelters and other park facilities, subject to approval by Council. Upon approval of any such regulations, the same shall have the full force and effect as if the same were duly adopted by ordinance. (Passed 9-7-04.)

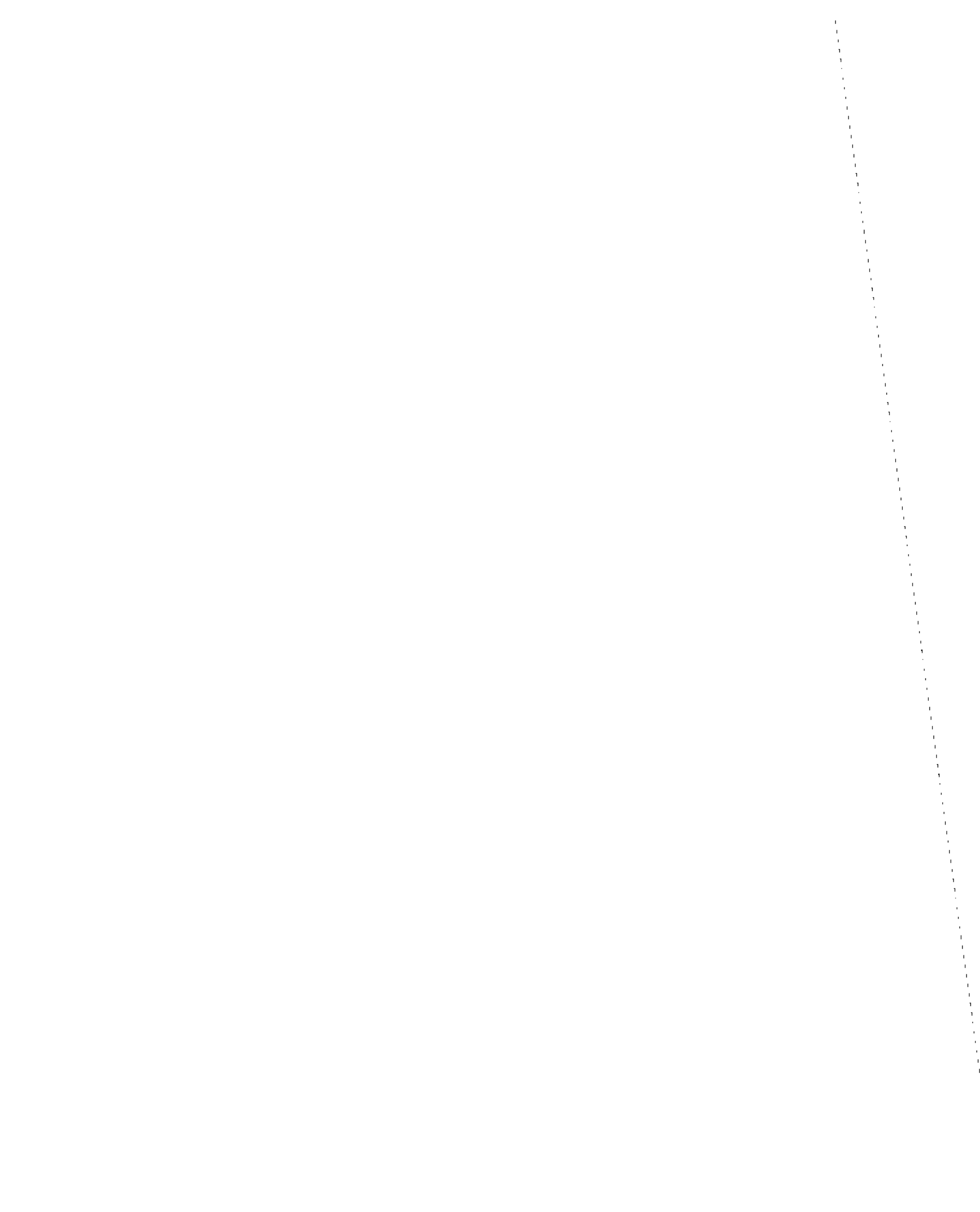
**935.05 CONSENT TO USE CITY PARK FOR MAJOR EVENTS.**

(a) Any person or entity desiring to utilize a significant portion of any park owned by the City for a major event or festival, such person or entity must first apply to the Park Committee for permission to so utilize a City owned park not less than sixty days prior to the commencement of any such event or festival.

(b) In the event the Park Committee denies the request for the use of the City owned park as contemplated in any such application, any person or entity aggrieved by such decision may appeal the same to Council at its next regular meeting. The decision of Council upon any such appeal shall be final and binding upon the City and all other parties.  
(Passed 7-18-06.)

**935.06 GARAGE SALES PROHIBITED.**

Garage sales, and other retail sales and similar functions, by whatever name called, are prohibited in any City Park, except that any such sales by a group designated as a non-profit group under applicable Internal Revenue Service Regulations, or otherwise by any public service, non-profit or other similar group may be permitted in the discretion of the Park Committee.  
(Passed 9-7-04.)





**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART ELEVEN - HEALTH AND SANITATION CODE**

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Art. 1109. Nuisances.



**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART ELEVEN - HEALTH AND SANITATION CODE**

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**ARTICLE 1109**  
**Nuisances**

<b>1109.01</b>	<b>Interpretation.</b>	<b>1109.06</b>	<b>Right to enter private premises.</b>
<b>1109.02</b>	<b>Nuisances prohibited.</b>	<b>1109.07</b>	<b>Notice to cease and desist.</b>
<b>1109.03</b>	<b>Certain nuisances enumerated.</b>	<b>1109.08</b>	<b>Notice to abate condition.</b>
<b>1109.04</b>	<b>Stagnant water.</b>	<b>1109.09</b>	<b>Failure to abate.</b>
<b>1109.05</b>	<b>Inspections, investigations and complaints.</b>	<b>1109.10</b>	<b>Arrest.</b>

**CROSS REFERENCES**

Authority to prohibit nuisances generally - see W.Va. Code 8-12-5(10), (13),  
(23), (24)

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**1109.01 INTERPRETATION.**

Various nuisances are defined and prohibited in other articles of this Code, and it is the intent of Council in enacting this article to make it supplemental to those other articles in which nuisance are defined and prohibited; and the provisions of this article relating to the abatement of nuisances shall be regarded as alternative methods and procedures for the abatement of nuisances in those instances where other methods and procedures for abatement are provided.

**1109.02 NUISANCES PROHIBITED.**

No person shall cause, harbor, commit or maintain, or suffer to be caused, harbored, committed or maintained any nuisance as defined by the statute or common law of this State or as defined by this Code or other ordinance of the City at any place within the City, or at any place beyond the City limits which is owned by the City or over which the City has a right of way; or at any other place beyond the City limits but within one mile thereof and not in any other incorporated municipality, wherever the powers and authority granted by this article cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits of the City.

**1109.03 CERTAIN NUISANCES ENUMERATED.**

The following acts when committed, or conditions when existing, within the City or within the area surrounding the City and within the extraterritorial jurisdiction of Council as provided in Section 1109.02 are hereby defined and declared to be nuisances:

- (a) Any act done or committed or aided or assisted to be done or committed by any person, or any substance, being or thing kept, maintained, placed or found in or upon any public or private place, which is injurious or dangerous to the public health or safety.
  - (b) All buildings, bridges or other structures of whatever character kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
  - (c) All trees and other appendages of or to realty kept or maintained or which are permitted by any person owning or having control thereof to be kept or maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.
  - (d) All ponds or pools of stagnant water, and all foul or dirty water or liquid when discharged through any drain, pipe or spout, or thrown into or upon any street, public place or lot to the injury or annoyance of the public.
  - (e) All obstructions caused or permitted on any street or sidewalk to the danger or annoyance of the public, and all stones, rubbish, dirt, filth, slops, vegetable matter or other article thrown or placed by any person on or in any street, sidewalk or other public place, which in any way may cause any injury or annoyance to the public.
  - (f) All sidewalks, gutters or curbstones permitted to remain in an unsafe condition, or out of repair.
  - (g) All stables, cattle yards, hog, sheep or cow pens or other places where animals are kept or yards for poultry, permitted by the owner thereof or the person responsible therefore to be in such a condition as to become offensive, annoying or injurious to the public.
  - (h) All houses or buildings, structures or enclosures used for special storage of powder, dynamite or other explosive or highly flammable substances or gasses, except those maintained pursuant to permit issued by competent authority.
  - (i) Any litter, trash, garbage, or refuse, or any abandoned unlicensed motor vehicle or any part thereof, which is or may be offensive to the neighborhood or citizens generally.
  - (j) Any offensive or unwholesome substance or growth of grass, weeds or brush upon any lot or parcel of ground.
  - (k) Any drilling and/or production of oil and/or gas from within or under the surface of any tract, lot or parcel of ground.
- (Passed 9-1-81.)

The nuisances described in this section shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the State is, when committed, omitted or existing within the City or within the extraterritorial jurisdiction of Council as provided in Section 1109.02 hereby declared to constitute a nuisance.

**1109.04 STAGNANT WATER.**

No person owning or in possession of any lot, house, building or enclosure shall allow or suffer to exist in or upon such premises any stagnant water, animal or vegetable matter or other substance liable to become putrid, offensive, annoying or unhealthy. Persons owning or in possession of any real estate shall provide proper and adequate drainage therefore so that no offensive, baneful or disagreeable liquids shall flow or seep into any street. Any violation of this section is hereby declared to be a nuisance.

**1109.05 INSPECTIONS, INVESTIGATIONS AND COMPLAINTS.**

(a) It shall be the duty of the Chief of Police, the Fire Chief, the Building Official and, if there be one, the City Health Officer, or to cause inspections to be made from time to time within the City and, when they deem it in the interests of the City so to do, within the extraterritorial jurisdiction of the City as provided in Section 1109.02, to determine whether any condition exists or activity is being practiced which constitutes a nuisance; and each such officer shall cause an investigation to be made upon written complaint made by any responsible person.

In the absence of a City Health Officer, any public health officer having jurisdiction within the City is hereby vested with the authority conferred by this article on a City Health Officer, and he may exercise such authority when authorized so to do by his own superiors.

(b) Each officer mentioned in subsection (a) hereof shall, for the purpose of this article, be designated as an "enforcement officer."

**1109.06 RIGHT TO ENTER PRIVATE PREMISES.**

Enforcement officers shall have the right to enter upon private premises for the purposes specified in Section 1109.05, upon proper identification and in compliance with all applicable provisions of law. Unless it appears probable that advance warning would defeat the purpose of each entry, occupants of premises to be entered shall be given reasonable notice in advance, and in any case it shall be unlawful for any owner or occupant to prevent such entry which is sought to be made in compliance with law.

**1109.07 NOTICE TO CEASE AND DESIST.**

If at any time an enforcement officer shall find that an activity or practice which constitutes a nuisance is occurring within the City or within the area surrounding the City and within the extraterritorial jurisdiction of the City as provided in Section 1109.02 he shall promptly and by the most expeditious means notify the violator to cease and desist forthwith.

**1109.08 NOTICE TO ABATE CONDITION.**

If at any time an enforcement officer shall find that a condition which constitutes a nuisance exists within the City or within the area surrounding the City and within the extraterritorial jurisdiction of the City as provided in Section 1109.02, he shall give notice in writing to the owner, occupant or person in charge of the premises upon which such condition exists, stating therein the condition which constitutes a nuisance, and directing such addressee to remedy the condition within the time stated in such notice, which shall be not more than ten days; and it shall be unlawful for any such owner, occupant or person in charge to fail to comply with the terms of such notice; provided, that any owner, occupant or person in charge may, within two days from the service thereof, appeal to Council, in which case the terms of such notice shall be stayed pending action of Council, which shall be final; provided further, that if the enforcement officer shall state in such notice that the condition which constitutes a nuisance is such as to be an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which such nuisance exists, then the addressee shall comply with the terms of such notice.

**1109.09 FAILURE TO ABATE.**

(a) Upon the failure of any person to whom notice has been given pursuant to Section 1109.08 to comply with the terms of such notice, or within the terms imposed by Council on appeal, as the case may be, the enforcement officer shall forthwith direct the appropriate City officer to remedy the condition which is the subject of such notice, and the expense incurred by the City in so doing shall be charged to the addressee of such notice, as well as to the owner of the premises which is the subject of such notice, jointly and severally, to be collected as City taxes or in any other manner authorized by law for the collection of money due the City.

(b) Abatement by the City of any condition which constitutes a nuisance and reimbursement to the City of expenses incurred thereby shall not bar prosecution for maintenance of a nuisance.

**1109.10 ARREST.**

Nothing in this article shall be construed to prohibit any police officer from arresting any person for committing or maintaining a nuisance when such arrest is made pursuant to law.

**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART THIRTEEN - PLANNING AND ZONING CODE**

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EDITOR'S NOTE: The Zoning Ordinance is published separately. See the City Clerk for current regulations.



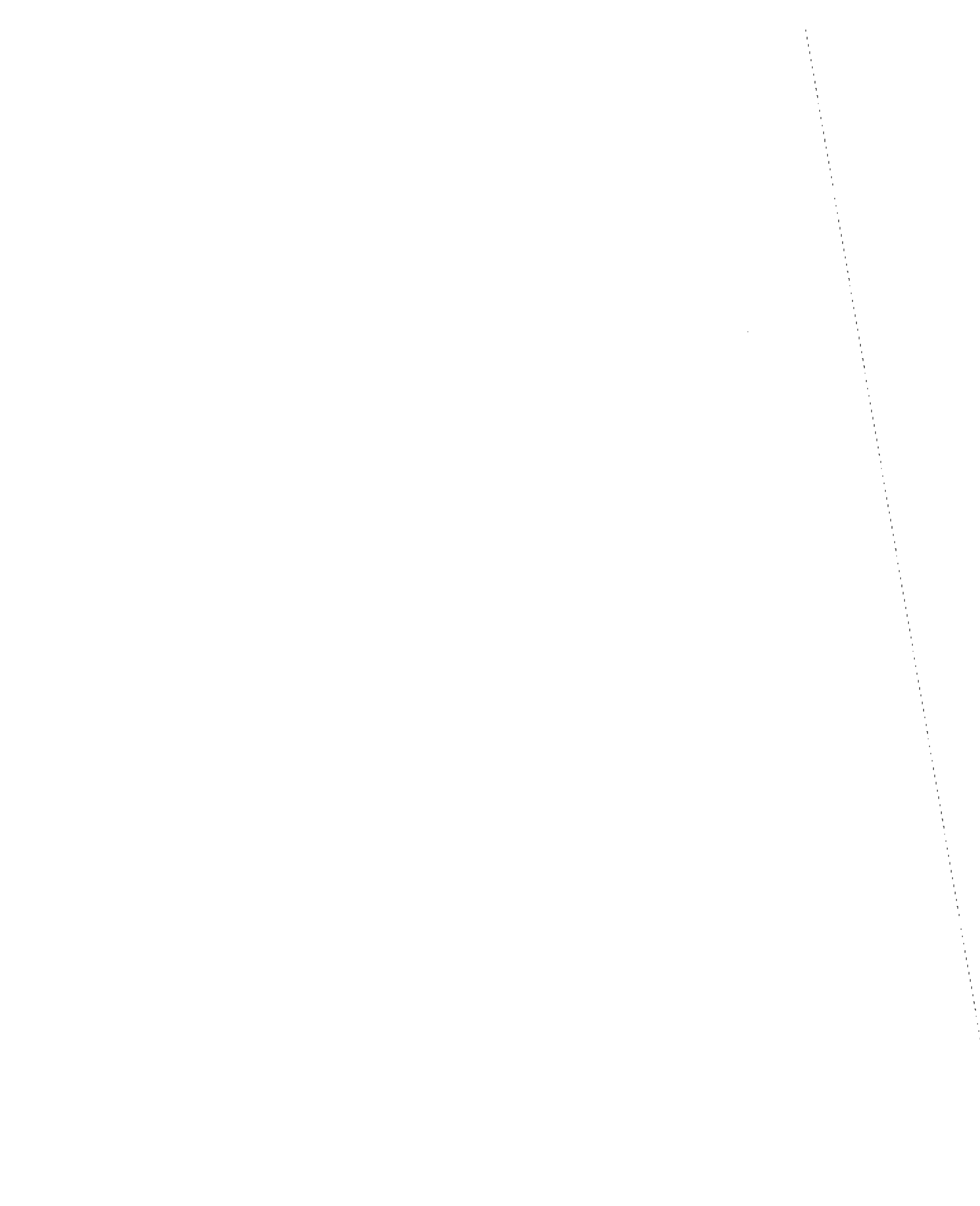


**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART FIFTEEN - FIRE PREVENTION CODE**

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Art. 1501. West Virginia State Fire Code

Art. 1519. Local Regulations.



**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART FIFTEEN - FIRE PREVENTION CODE**

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**ARTICLE 1501**  
**West Virginia State Fire Code**

<b>1501.01</b>	<b>Adoption of Code.</b>	<b>1501.04</b>	<b>New materials, processes or</b>
<b>1501.02</b>	<b>Modifications.</b>		<b>occupancies which may</b>
<b>1501.03</b>	<b>Appeals from actions of</b>		<b>require permits.</b>
	<b>Chief of Fire Department.</b>	<b>1501.99</b>	<b>Penalty.</b>

**CROSS REFERENCES**

Adoption by reference - see W. Va. Code 8-11-4

Promulgation of State Fire Code - see W. Va. Code 29-3-5

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**1501.01 ADOPTION OF CODE.**

There is hereby adopted and incorporated by reference as if set out at length herein, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosions, that certain code known as the West Virginia State Fire Code, which became effective March 30, 1984.

The Fire Marshal and other sworn officers of the Fire Department, as appointed by the Fire Chief, are hereby empowered to enforce the Fire Code and to issue summonses to violators of its provisions.

**1501.02 MODIFICATIONS.**

The Chief of the Bureau of Fire Prevention shall have power to modify any of the provisions of the Fire Prevention Code adopted by this article upon application in writing by the owner or lessee or his duly authorized agent when there are practical difficulties in the way of carrying out the strict letter of such Code; provided, that the spirit of such Code shall be observed, public safety secured and substantial justice done. The particulars of such modification, when granted or allowed, and the decision of the Chief of the Bureau of Fire Prevention thereon shall be entered upon the records of the Fire Department, and a signed copy shall be furnished the applicant.

**1501.03 APPEALS FROM ACTIONS OF CHIEF OF FIRE DEPARTMENT.**

Whenever the Chief of the Fire Department disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the Fire Prevention Code adopted by this article do not apply or that the true intent and meaning of the Fire Prevention Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Chief of the Fire Department to Council within thirty days from the date of the decision appealed.

**1501.04 NEW MATERIALS, PROCESSES OR OCCUPANCIES WHICH MAY REQUIRE PERMITS.**

The Mayor, the Chief of the Fire Department and the Chief of the Bureau of Fire Prevention shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the Fire Prevention Code. The Chief of the Bureau of Fire Prevention shall post such list in a conspicuous place in his office, and distribute copies thereof to interested persons.

**1501.99 PENALTY.**

Whoever violates any provision of this Part Fifteen - Fire Prevention Code, for which no other penalty is provided or fails to comply therewith; or violates or fails to comply with any order made thereunder; or builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or fails to comply with such an order as affirmed or modified by Council or by a court of competent jurisdiction within the time fixed herein, shall severally for each such violation and noncompliance respectively, be fined not more than five hundred dollars (\$500.00). The imposition of one penalty for any violation shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of any penalty pursuant to this section shall not be held to prevent the enforced removal of prohibited conditions.

**ARTICLE 1519  
Local Regulations**

<b>1519.01</b>	<b>Obstructing or hindering operations.</b>	<b>1519.03</b>	<b>Bonfires and outdoor rubbish fires restricted.</b>
<b>1519.02</b>	<b>Duty of spectators and authority of firemen and police, at scene of fire.</b>	<b>1519.04</b>	<b>Smoking prohibited under certain conditions.</b>
		<b>1519.05</b>	<b>Accumulations of waste materials.</b>

**CROSS REFERENCES**

Authority of Council to provide for the prevention and extinguishment of fires - see W.Va. Code, § 8-15-1.

Authority of State Fire marshal - see W.Va. Code, §29-3-1 et seq.

Fireworks - see W.Va. Code §§ 29-3-23 to 29-3-27

**1519.01 OBSTRUCTING OR HINDERING OPERATIONS.**

(a) It shall be unlawful for any person to obstruct or to hinder the operation of any apparatus of the fire department while going to a fire, answering an alarm of fire, or returning therefrom.

(b) It shall be unlawful for any person to obstruct any fire plug or hydrant or prevent or delay access thereto.

(c) No person shall use any fire apparatus or equipment of the City for any private purpose, nor shall any person willfully and without proper authority remove, take away, tamper with, keep or conceal any tool, equipment, appliance or other article used in any way by the Fire Department.

(d) It shall be unlawful for any unauthorized person to ride upon any fire apparatus of the City at any time; and no person other than those assigned to such apparatus shall be authorized to ride thereon while such apparatus is responding to a fire alarm except by authority of the Fire Chief.

**1519.02 DUTY OF SPECTATORS AND AUTHORITY OF FIREMEN AND POLICE, AT SCENE OF FIRE.**

(a) Every person present at the scene of a fire shall be subject and obedient to the orders of any police officer or member of the fire department there present as to any matter relating to extinguishments of the fire, the removal and protection of property or the maintenance of order; and it shall be unlawful for any person present at the scene of any fire to disobey any such lawful order of any police officer or member of the fire department there present.

(b) Firemen and police officer present at the scene of any fire shall have power to arrest any person for disobedience of the lawful order of a police officer or fireman given pursuant to this section and to hold the offender in custody until the fire has been extinguished, at which time he shall be taken before an appropriate judicial officer to be dealt with according to law.

**1519.03 BONFIRES AND OUTDOOR RUBBISH FIRES RESTRICTED.**

(a) Generally; At Site of Work Project. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained without authorization by the fire chief. During construction or demolition of buildings or structures no waste materials or rubbish shall be disposed of by burning on the premises or in the immediate vicinity without having obtained a permit or other proper authorization from the fire chief. "Proper authorization," within the meaning of this article, shall mean a written permit, oral permission, or compliance with instructions or regulations of the fire chief which have been posted on the City hall bulletin board and placed on file in the office of the city clerk.

(b) Location Restricted. No person shall kindle or maintain any bonfire or rubbish fire or authorize any such fire to be kindled or maintained on any private land unless (1) the location is not less than fifty feet from any structure and adequate provision is made to prevent fire from spreading to within fifty feet of any structure, or (2) the fire is contained in a waste burner, of a type approved by the fire chief, located safely not less than fifteen feet from any structure; provided, that no bonfire or rubbish fire shall be kindled or maintained on any part of the streets, sidewalks, public squares or other public places in the city.

(c) Attendance of Open Fires. Bonfires and rubbish fires shall be constantly attended by a competent person until such fire is extinguished. This person shall have a garden hose connected to the water supply, or other fire extinguishing equipment readily available for use.

(d) Fire Chief may Prohibit. The fire chief may prohibit any or all bonfires and outdoor rubbish fires when atmospheric conditions or local circumstances make such fire hazardous.

(e) Burning shall be permitted except otherwise prohibited on Saturdays from 1:00 p.m. to 9:00 p.m., the only materials that may be burned, if not otherwise prohibited, at that time are any tree limbs, branches, twigs and or leaves. All other material is prohibited from being burned at anytime. (Passed 9-3-91.)

**1519.04 SMOKING PROHIBITED UNDER CERTAIN CONDITIONS.**

(a) "Smoking" shall mean and include the carrying of a lighted pipe, cigar, cigarette, tobacco, marijuana or other substance in any form.

(b) Where conditions are such as to make smoking a hazard in any areas of piers, wharves, warehouses, stores, industrial plants, institutions, places of assembly, and in open spaces where combustible materials are stored or handled, the fire chief is empowered and authorized to order the owner or occupant in writing to post "No Smoking" signs in each building, structure, room or place in which smoking shall be prohibited. The fire chief shall designate specific safe locations, if necessary, in any building, structure or place in which smoking may be permitted.

(c) "No Smoking" signs of approved sized lettering and location required in accordance with subsection (b) of this section shall read "By Order of the Fire Chief."

(d) It shall be unlawful for any person to remove any legally required "No Smoking" sign or to smoke in any place where such signs are posted.

**1519.05 ACCUMULATIONS OF WASTE MATERIALS.**

Roofs, courts, yards, sidewalks, alleys, vacant lots and open spaces shall be kept free and clear of deposits or accumulations of waste paper, hay, grass, straw, weeds, litter or combustible waste or rubbish of any kind. All weeds, grass, vines or other growth, when same endangers property, or is liable to be fired, shall be cut down and removed by the owner or occupant of the property.





**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART SEVENTEEN - BUILDING AND HOUSING CODE**

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- Art. 1711. West Virginia State Building Code.
- Art. 1721. Local Regulations.
- Art. 1731. Swimming Pools.
- Art. 1741. Floodplain Regulations.
- Art. 1751. Signs and Outdoor Display Structures.
- Art. 1761. Dangerous Structures.



**CODIFIED ORDINANCES OF WILLIAMSTOWN**  
**PART SEVENTEEN - BUILDING AND HOUSING CODE**

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**ARTICLE 1711**  
**West Virginia State Building Code**

<b>1711.01</b>	<b>Adoption.</b>	<b>1711.04</b>	<b>Additions, insertions and</b>
<b>1711.02</b>	<b>Definitions.</b>		<b>changes.</b>
<b>1711.03</b>	<b>Conflicts.</b>		

**CROSS REFERENCES**

Adoption by reference - see W. Va. Code 8-11-4  
Building regulation - see W. Va. Code 8-12-13  
State Building Code - see W. Va. Code 29-3-5b

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**1711.01 ADOPTION.**

(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the Municipality that certain code known as the State Building Code as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(b) The standards and requirements as set out and as published by the Building Officials & Code Administrators International and the Council of American Building Officials, as listed below, and as adopted by the State Fire Marshal, shall have the same force and effect as if set out verbatim in this section:

IRC 2009 Code

**1711.02 DEFINITIONS.**

(a) "Building Code" includes all aspects of safe building construction and mechanical operations and all safety aspects related thereto.

(b) "Fire Marshal" means the West Virginia State Fire Marshal and/or his designated representatives.

(c) "State Building Code" means the entire contents of this article and the referenced national codes.

(d) "BOCA" refers to the Building Officials & Code Administrators International, 4051 Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

(e) "CABO" refers to the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia, 22041.

**1711.03 CONFLICT.**

Whenever there arises a conflict between the State Fire Code and the State Building Code, the State Fire Code shall take precedence.

Whenever there arises a conflict between the BOCA National Plumbing Code portion of the State Building Code and the rules of the State Board of Health, the rules of the Board of Health shall take precedence.

Whenever there arises a conflict between the State Building Code and statutory laws of the State of West Virginia, the West Virginia State Code shall take precedence.

**1711.04 ADDITIONS, INSERTIONS AND CHANGES.**

## ARTICLE 1721 Local Regulations

<b>1721.01</b>	<b>Applicability of article.</b>	<b>1721.09</b>	<b>Removal or demolition of buildings.</b>
<b>1721.02</b>	<b>Building official; administration and enforcement.</b>	<b>1721.10</b>	<b>Inspections required; stop work orders.</b>
<b>1721.03</b>	<b>Restrictions.</b>	<b>1721.11</b>	<b>Disposal of waste.</b>
<b>1721.04</b>	<b>Exceptions.</b>	<b>1721.12</b>	<b>Certificate of occupancy.</b>
<b>1721.05</b>	<b>Standards of design, construction and materials.</b>	<b>1721.13</b>	<b>Implementing rules and regulations.</b>
<b>1721.06</b>	<b>Building permits.</b>	<b>1721.14</b>	<b>Appeals.</b>
<b>1721.07</b>	<b>Application for permit.</b>	<b>1721.99</b>	<b>Penalty.</b>
<b>1721.08</b>	<b>Building permit fees.</b>		

### CROSS REFERENCES

Permits for construction and alteration - see W.Va. Code 8-12-14

Municipal inspection - see W.Va. Code 8-12-15

#### **1721.01 APPLICABILITY OF ARTICLE.**

No building or structure shall hereafter be constructed, altered, repaired, or removed, nor shall the equipment of a building, structure or premises be constructed, installed, altered, repaired or removed, except in conformity with the provisions of this article.

(Passed 5-20-47.)

#### **1721.02 BUILDING OFFICIAL; ADMINISTRATION AND ENFORCEMENT.**

(a) The Office of Building Official is hereby established. The Building Official shall be appointed by the Mayor, and he shall serve under the general control of the Mayor. His appointment shall continue during the term of the Mayor making such appointment, unless sooner removed by a vote of a majority of the members of Council.

(Passed 3-19-13.)

(b) It shall be the duty of the Building Official to enforce all laws and all provisions of this Code and other ordinances relating to the construction, alteration, repair, removal, and demolition of buildings and structures, and all electrical wiring, apparatus and appliances, all gas systems, apparatus and appliances, and all plumbing systems and fixtures and, in general, all appliances, devices and apparatus within or ancillary to any building or other structure within the City which is a part of or relates to the use of such building or other structure.

(c) The Fire Chief and the Chief of Police, within the scope of their respective offices, shall cooperate with the Building Official in the performance of his duties, and the Building Official shall request the cooperation and advice of the health officer and other County and State officers when he deems it necessary or desirable to do so.

(Passed 5-20-47.)

### **1721.03 RESTRICTIONS.**

(a) Generally. The restrictions in this article cover buildings and structures located or to be located within the district or districts established as the fire limits.

(b) New Buildings. Except as otherwise provided in Section 1721.04, no new building or structure shall be erected within the fire limits when such building or structure is of:

- (1) Wood frame construction.
- (2) Unprotected noncombustible construction with walls not meeting the bearing wall requirements of ordinary construction.
- (3) Heavy timber construction with walls not meeting the bearing wall requirements for this type of construction.
- (4) Ordinary construction with walls not meeting the bearing wall requirements for this type of construction.

Wood or other combustible veneers on exterior walls of any type of construction shall not be permitted within the fire limits.

(c) Additions and alterations. No addition shall be made to any building or structure within the fire limits when such building or structure is of:

- (1) Wood frame construction.
- (2) Unprotected noncombustible construction having walls not meeting the bearing wall requirements of ordinary construction except as permitted by Section 1721.04(c).
- (3) Ordinary or heavy timber construction with wall not having the bearing wall requirements of these types of construction. Nothing in this subsection shall be construed to prohibit alterations within the fire limits provided there is no change of occupancy to a class of occupancy otherwise prohibited.

(d) Moving Buildings. No building or structure prohibited by subsection (b) hereof of this section shall be moved from without to within the fire limits or from one lot to another within the fire limits.

(e) Building Partly Within Fire Limits. A building or structure shall be deemed to be within the fire limits if one-third or more of the area of such building or structure is located therein.

(f) Definitions of Terms Used in this Section. Certain terms used in this section shall have the meanings respectively ascribed to them in this subsection:

- (1) Heavy timber construction, as applied to buildings, means that in which walls are of approved masonry or reinforced concrete; and in which the interior structural elements, including columns, floors and roof construction, consist of heavy timbers with smooth flat surfaces assembled to avoid thin sections, sharp projections and concealed or inaccessible spaces; and in which all structural members which support masonry walls shall have a fire-resistance rating of not less than three hours; and other structural members of steel or reinforced concrete, if used in lieu of timber construction, shall have a fire-resistance rating of not less than one hour.
- (2) Noncombustible, as used in the term "unprotected noncombustible construction" and as applied to a building construction material, means a material which, in the form in which it is used, falls in one of the following groups (1) through (3). It does not apply to surface finish materials nor to the determination of whether a material is noncombustible from the standpoint of clearances to heating appliances, flues or other sources of high temperature. No material shall be classed as noncombustible which is subject to increase in combustibility or flame spread rating beyond the limits herein established, through the effects of age, moisture or other atmospheric condition. Flame spreading rating as used herein refers to ratings obtained according to the Standard Test Method for Fire Hazard Classification of Building Materials of Underwriters' Laboratories, Inc., U.L. 723, NFPA 255, ASTM E84:
  - A. Materials no part of which will ignite when subjected to fire. Any material which liberates flammable gas when heated to any temperature up to one thousand three hundred eighty degrees Fahrenheit for five minutes shall not be considered noncombustible within the meaning of this paragraph.
  - B. Materials having a structural base of noncombustible material, as defined in subsection (f)(2)A. with a surfacing not over one-eighth inch thick which has a flame spread rating not higher than 50.
- (3) Materials in the form and thickness used, other than as described in subsection (f)(2)A. or B., having a flame spread not higher than 25 without evidence of continued progressive combustion and of such composition that surfaces that would be exposed by cutting through the material in any way would not have a flame spread rating higher than 25 without evidence of continued progressive combustion.
- (3) Ordinance construction, as applied to buildings, means that in which exterior walls, and bearing walls are of approved masonry, or reinforced concrete, and in which the structural elements are wholly or partly of wood or smaller dimensions than required for heavy timber construction, or of steel or iron not protected as required for fireproof construction or semi-fireproof construction.

- (4) Wood frame construction, as applied to buildings, is that type of construction in which the structural members are wholly or partly of wood or other combustible material and the construction does not qualify as heavy timber construction or ordinary construction.

**1721.04 EXCEPTIONS.**

Nothing within Section 1721.03 shall prohibit within the fire limits and subject to the specified limitations, the erection of new buildings or structures, additions to buildings or structures of wood frame construction or unprotected noncombustible construction, and the use of wood or other combustible veneers as follows:

- (a) Wood or other combustible veneers or noncombustible backing for show windows that do not extend above the first full story above grade.
- (b) A building occupied as a parking garage or carport, not more than one story in height nor more than seven hundred fifty square feet in area, located on the same lot with a dwelling; provided, that such building shall be placed at least three feet from the lot lines of adjoining property.
- (c) Buildings of unprotected noncombustible construction, except when used for a high hazard occupancy, not exceeding two thousand five hundred square feet in area when used for an automotive service garage, car wash or a business occupancy or one thousand square feet in area when used for other occupancies, nor more than one story in height, and having a horizontal separation of not less than ten feet on all sides. Walls having a horizontal separation of less than ten feet shall have a fire resistance rating of not less than one hour.
- (d) Enclosed and open air parking garages of unprotected noncombustible construction, which comply with the requirements of the Building Official.
- (e) Greenhouses not more than fifteen feet in height erected on the same lot with and accessory to a dwelling or a store.
- (f) Sheds open on the long side, not more than fifteen feet in height nor more than five hundred square feet in area, located at least five feet from buildings and from adjoining lot lines.
- (g) Builders' shanties for use only in connection with a duly authorized building operation and located on the same lot with such building operation, on a lot immediately adjoining, on an upper floor of the building under construction, or on a sidewalk shed.
- (h) Piazzas or balconies on dwellings, not exceed ten feet in width nor extending more than three feet above the second story floor beams; provided, that no such structure shall be located nearer than three feet to an adjoining lot line or be joined to a similar structure of another building.
- (i) Fences not exceeding ten feet in height.
- (j) Display signs as provided in Article 1751.
- (k) Cooling towers, as may be approved by the Building Official.
- (l) Roofs over parking lots and bus stations, of unprotected noncombustible construction, where the roof is at least ten feet above the floor, and at least every forty feet there is an open roof ventilation area six feet wide extending the full length of the roof or the full width of the roof.



- (m) Such other exceptions as may be approved by the Building Official, upon showing to his satisfaction that any such exception is in conformity with nationally recognized safe and acceptable standards of design, construction and materials applicable to the intended location and use thereof.

**1721.05 STANDARDS OF DESIGN, CONSTRUCTION AND MATERIALS.**

(a) On and after the effective date of this Code all buildings or other structures which are to be constructed or installed anywhere within the City, and all electrical wiring, apparatus and appliances, all gas systems, apparatus and appliances as well as plumbing systems and fixtures which are to become a part of or are to be used within any such building or other structure shall conform to nationally recognized safe and acceptable standards and specifications of design, construction and materials.

(b) On and after the effective date of this Code all buildings and other structures anywhere within the City, and all electrical wiring, apparatus and appliances, all gas systems, apparatus and appliances as well as all plumbing systems and fixtures which are a part of or are used within any such old building or other structure, which are to be altered or enlarged shall, with respect to such alteration or enlargement, conform to nationally recognized safe and acceptable standards of design, construction and materials; provided, that any repair of any such old building, structure, apparatus, appliance, fixture, electric wiring or gas system costing fifty percent or more of the value of the thing repaired shall be deemed to be an alteration within the meaning of this subsection.

(c) Conformity with the applicable provisions of the following publications, when current, shall be deemed to be prima facie evidence of conformity with nationally recognized and safe and acceptable standards:

- (1) National Building Code, recommended by the American Insurance Association and, as may be applicable in any case, the abbreviated edition thereof.
- (2) BOCA Basic Building Code, recommended by the Building Officials and Code Administrators International, Inc., and, as may be applicable in any case, the abbreviated edition thereof.
- (3) Southern Standard Building Code, recommended by the Southern Building Code Congress.
- (4) National Electrical Code, recommended by the National Fire Protection Association.
- (5) Fire Prevention Code, recommended by the American Insurance Association and, as may be applicable, the abbreviated edition thereof.
- (6) Southern Standard Gas Code, recommended by the Southern Building Code Congress.
- (7) BOCA Basic Plumbing Code, recommended by the Building Officials and Code Administrators International, Inc., and, as may be applicable in any case, the abbreviated edition thereof.
- (8) BOCA Basic Housing Code, recommended by the Building Officials and Code Administrators International, Inc.

- (9) BOCA Basic Plumbing Code, recommended by the Building Officials and Code Administrators International, Inc.
- (10) BOCA Basic Mechanical Code, recommended by the Building Officials and Code Administrators International, Inc.
- (11) Southern Standard Plumbing Code, recommended by the Southern Building Code Congress.
- (12) Southern Standard Fire Prevention Code, recommended by the Southern Building Code Congress.

(d) It is mandatory that all rules, regulations and orders promulgated by the State Fire Marshal pursuant to Section 29-3-4a of the Code of West Virginia be complied with.

(e) It is mandatory that all rules, regulations and orders promulgated by the State Board of Health pursuant to Section 16-1-3 of the Code of West Virginia be complied with.

#### **1721.06 BUILDING PERMITS.**

(a) No person shall, within the City, move any house or other building over any public street, sidewalk or public grounds, or demolish any building or other structure, or erect, construct, install, repair, alter or enlarge any building or other structure or any electrical wiring, apparatus or appliance, any gas system, apparatus or appliance or any plumbing system or fixture which is to become a part of any building or structure, except pursuant to an unexpired City building permit first issued to him for such purpose.

(b) All such permits shall expire ninety days after the date of issuance if within such time there has been no substantial activity undertaken towards the completion of the aforementioned demolition, repairs, construction, alterations or enlargements.

(c) Substantial activity is herein defined as:

- (1) Any significant physical change caused by the permittee to the erection, building, structure, electrical wiring apparatus, gas system or plumbing fixture or system or the land upon which such building, erection, structure, apparatus, system or fixture is situate or intended to be situate. It is the intent of this section to exclude as significant, physical change which could be labeled as clearing, cleaning or general preparation, or
- (2) Any demonstrable commitment or expenditure of money or other property or the existence of any contractual obligation by the permittee which clearly indicates that the permittee would suffer substantial economic hardship if the permit were to expire. The permittee in such case must also demonstrate that the failure to effect any significant physical change as described in paragraph (1) above was the result of circumstances or conditions beyond his control.

It shall be the duty of the Building Official to inspect the premises which are the subject of a building permit at the termination of the ninety day period to ascertain whether there has been compliance with this section. If, upon ascertaining that there has been no substantial activity undertaken, the Building Official shall promptly notify the permittee by registered letter that the subject permit has expired. The permittee may then reapply for a new permit in the same manner and subject to the same conditions then pertaining to applications for building permits generally; except, that the permittee shall not be required to resubmit any information, plans or specifications which he submitted in connection with the original application. All building permits in existence prior to August 15, 1978 shall be deemed to have been issued on the same date. An appeal of the Building Official's determination may be taken in the manner specified in Section 1721.13; except, that the application for appeal must be filed with the City Clerk within five days from the date of postmarking of the letter of notification of expiration.

(d) Minor repairs, the total cost of which does not exceed two hundred dollars (\$200.00) for both materials and labor and which do not constitute an alteration of the things repaired may be made without such permit. Such repairs shall conform to nationally recognized safe and acceptable standards.  
(Passed 8-15-78.)

#### **1721.07 APPLICATION FOR PERMIT.**

(a) Applications for building permits shall be submitted in writing, on forms provided by the City, to the Building Official. Each such application shall state the location of the proposed project, the character, design and purpose thereof, the materials proposed to be used and the manner in which the work shall be done; and the Building Official may require that detailed plans and specifications be submitted in duplicate with the application. The Building Official may require such other information as may be necessary to enable him to determine whether the proposed project meets all requirements of state law, this Code and other ordinances.

(b) When detailed plans and specifications are submitted, one set thereof shall be retained by the Building Official and the other set shall be kept at the location of the work being done pursuant thereto.  
(Passed 7-20-47.)

(c) Each application for a building permit shall be accompanied by any permit fee which may be required for the issuance of the permit applied for.

(d) Upon the filing of a proper application for a building permit, the Building Official shall proceed to determine whether the proposed project, if undertaken and completed according to the statements contained therein and in any accompanying plans, specifications or other papers, would meet all requirements of state law, this Code and other ordinances, and he may refer any part or all of such application and accompanying papers to the Fire Chief and to other City, county and state officers whose authority extends to any subject covered therein for their comments and recommendations; and, to enable those officers and the Building Official to make proper findings, each shall have authority to inspect premises which are the subject of such applications, at reasonable times and upon reasonable notice to the owners and occupants, and in compliance with all applicable provisions of law.

- (e) (1) The Building Official shall issue a building permit, when properly applied for and upon the payment of any fee which may be required, upon determination by him that the proposed project, if undertaken and completed according to the statements contained in the application and in any accompanying plans, specifications and other papers, would meet all requirements of state law, this Code and other ordinances, and he shall deny a permit when he determines that such requirements would not be met; provided, that the building official may permit any application to be amended by the applicant so as to meet such requirements.
- (2) Building permits shall be in such form as may be prescribed by the Building Official, unless otherwise provided by rules and regulations of the City Council promulgated pursuant to this chapter. In either case, the application for each building permit, together with its accompanying plans, specifications and other papers, if any, as approved by the Building Official, shall be deemed to be an integral part of the permit.

#### **1721.08 BUILDING PERMIT FEES.**

There shall be a ten dollar (\$10.00) application fee transmitted with all applications, and the fee charged for a building permit shall be as follows:

- (a) 2% of the cost of the work to be done for the first \$10,000.00, and \$5.00 for each additional \$5,000.00, of the estimated cost. (Passed 10-21-86.)
- (b) The first \$500.00 of the estimated cost shall be exempt. (Passed 6-3-87.)

#### **1721.09 REMOVAL OR DEMOLITION OF BUILDINGS.**

(a) Before a building may be demolished or removed, the owner thereof shall notify all utilities having service connections within the building such as water, telephone, electric, gas, sewer and other connections. A permit to demolish or remove a building shall not be issued until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed and plugged in a safe manner.

(b) Only when written notice has been given by the applicant to the owners of adjoining lots and to the owners of wires or other facilities, of which the temporary removal may be necessitated by the proposed work, shall a permit be granted for the removal of a building or structure.

(c) Whenever a building is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences.

#### **1721.10 INSPECTIONS REQUIRED; STOP WORK ORDERS.**

The Building Official shall inspect or cause to be inspected at various intervals all construction or work for such a permit is required, and a final inspection shall be made of every building or structure upon completion, prior to the issuance of the certificate of occupancy required by this article. Whenever, in the opinion of the Building Official, by reason of defective or illegal work the continuance of a building operation is contrary to public welfare, he may order all further work to be stopped and may require suspension of work until the condition in violation has been remedied. (Passed 7-20-47.)

#### **1721.11 DISPOSAL OF WASTE.**

Waste material and rubbish shall not be stored nor allowed to accumulate within the building or in the immediate vicinity, but shall be removed from the premises as rapidly as practicable. (Passed 5-20-47.)

#### **1721.12 CERTIFICATE OF OCCUPANCY.**

(a) Upon completion of a building erected after the effective date of this Code and in accordance with approved plans, and after the final inspection referred to in this article, and upon application therefore, the Building Official, upon his finding that all requirements of state law and this article have been complied with, shall issue a certificate of occupancy stating the nature of the occupancy permitted, the number of persons for each floor when limited by law, and the allowable load per square foot for each floor in accord with nationally accepted safe standards; provided, that a temporary certificate of occupancy may be issued for a portion or portions of a building which may safely be occupied prior to final completion of the building.

(b) It shall be unlawful to any person owning or in charge of any building or other structure in this City which has been erected, constructed, installed, repaired, altered or enlarged pursuant to a building permit issued under this article on or after the effective date of this Code to permit the use or occupancy of such building or other structure without having first obtained the certificate of occupancy mentioned in this section.

#### **1721.13 IMPLEMENTING RULES AND REGULATIONS.**

(a) Council, and the Building Official with the approval of Council, may promulgate and from time to time amend rules and regulations, not inconsistent with State law, this Code or other ordinance, for the implementation of the provisions of this article and to carry out the intent and spirit thereof. Such rules and regulations may include, among other pertinent subjects not herein mentioned, the following:

- (1) The issuance, suspension and revocation of building permits and certificates of occupancy.
- (2) Inspection of work done, materials used, etc., pursuant to permit.
- (3) Variations from and waivers of provisions of this chapter in cases of undue hardship, whenever any such variation or waiver would not result in a departure from the intent and spirit of this article or a fire hazard or hazard to the health, safety or well-being of the public or any segment of the public or any individual.

- (4) Stop-work orders and other enforcement powers of the Building Official.
- (5) Appeals to Council or one of its committees or to some other body for decisions, orders and actions of the Building Official.

(b) All rules and regulations so promulgated shall be placed on file in the office of the City Clerk, and now shall be effective until so placed on file.

(c) It shall be unlawful for any person to violate or fail to comply with any rule or regulation promulgated, and filed in the office of the City Clerk, pursuant to the provisions of this section.

#### **1721.14 APPEALS.**

All appeals from any decision of the Building Official or other Administrative Official of the City under the Building and Housing Code shall be made to the Board of Zoning Appeals. The Board of Zoning Appeals shall take such action with respect to any appeal from the Building Official or other Administrative Official in accordance with the provisions of West Virginia law respecting such appeals.

**1721.99 PENALTY.**

(a) A person who shall violate a provision of this article or fail to comply therewith or with any of the requirements thereof, or who shall erect, construct, alter or repair, or has erected, constructed, altered or repaired a building or structure, in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00).

(b) The owner of a building, structure or premises, where anything in violation of this article shall be replaced or shall exist, and an architect, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and upon conviction thereof shall be fined as therein provided.

(c) The imposition of the penalties herein prescribed shall not preclude the City Attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent an illegal act, conduct, business or use in or about any premises.

(Passed 5-20-47.)





**ARTICLE 1731  
Swimming Pools**

**1731.01 Requirements.**  
**1731.02 Effective date.**

**1731.03 Prefabricated pools.**  
**1731.99 Penalty.**

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**1731.01 REQUIREMENTS.**

A swimming pool shall be allowed as an accessory structure to a residential property provided that it complies with the following conditions and requirements:

- (a) The pool is intended and is to be used solely for the enjoyment of the occupants and guests of the property on which the swimming pool is located.
- (b) The swimming pool shall not be located closer than ten feet to the rear and side property lines. No swimming pool shall be located closer than ten feet behind the required front yard setback.
- (c) The swimming pool, or the property on which it is located shall be so walled or fenced as to prevent uncontrolled access by small children, other than the residents of the property, from the street or from adjacent properties. With regard to in-ground pools, any such wall or fence shall be at least four feet high, completely surround the pool, and may be partially made up by the house, garage or other permanent structure. With regard to above-ground pools, the top of the walls for any such pool shall be at least four feet off the ground, or said pool must be surrounded by the same type of wall or fence as is used with in-ground pools, as just described. That is to say, for example, and for example purposes only, if there is an above ground pool with walls two feet high, which is not completely surrounded by a wall or fence similar to that required for in-ground pools, the walls on such an in-ground pool must be extended two feet higher by the use of some type of barrier, securely affixed on top of the existing two foot wall. Furthermore, all above-ground pools must have some means of raising and/or locking the ladder or access to the pool, and said ladder or access to the pool must be raised or locked at all times when the pool is not in use.

(Passed 8-18-92.)

**1731.02 EFFECTIVE DATE.**

The provisions of this section, except Section 1731.01(b) shall apply to all swimming pools existing on or after the first day of July 1992. (Passed 8-18-92.)

**1731.03 PREFABRICATED POOLS.**

Small prefabricated and/or inflatable swimming pools intended exclusively for the use by small children are not subject to the requirements of Section 1731.01(c).  
(Passed 8-18-92.)

**1731.99 PENALTY.**

Any one found to be in violation of this article shall be guilty of a misdemeanor and shall, if said violation is not rectified within seven days of written notification from the City, be subject to a fine equal to the aggregate sum of twenty-five dollars (\$25.00) a day for each and every day that said violation continues.

## ARTICLE 1741 Floodplain Regulations

1741.01	Authority and purpose.	1741.06	Specific requirements.
1741.02	Interpretations and definitions.	1741.07	Administration.
1741.03	Establishment of the Special Flood Hazard Area.	1741.08	Appeals and penalties.
1741.04	Utilization of the Special Flood Hazard Area.	1741.09	Government actions.
1741.05	Criteria for building and site plan approval.	1741.10	Severability and municipal liability.

### CROSS REFERENCES

Treatment of streams to prevent floods - see W.Va. Code 7-1-3(u)  
 Floodplain area management - see W.Va. Code 7-1-3(v)  
 Flood control projects - see W.Va. Code 8-30-1

### 1741.01 AUTHORITY AND PURPOSE.

(a) Authority.

- (1) The provisions of this article have been prepared with the intention of meeting the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) amended by the congress of the United States through the 15th of February, 1975 (Public Law 91-152).
- (2) Authority to adopt, administer and enforce this article is vested in the City of Williamstown pursuant to West Virginia State Codes 8-12-14, 7-1-3n, 7-1-3v and 7-1-3kk and/or West Virginia State Code 8A-4-2, 8A-5-7, 8A-7-2.

(b) Intent. The intent of this article is to:

- (1) Promote the general health, welfare, and safety of the City of Williamstown.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future and protect natural drainage.
- (3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian.
- (4) Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.

- (5) Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- (6) Reduce financial burdens imposed on the City of Williamstown, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

(c) Abrogation and Greater Restrictions. This article supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(d) Applicability.

- (1) It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within City of Williamstown, unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed as defined in this article, a site plan with elevation data shall be submitted to, and approved by, the Floodplain Administrator prior to any development.
- (2) Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.
- (3) The Building Official of the City shall act as the Floodplain Administrator.

(e) Matters not provided for specifically. Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

(Passed 1-15-13.)

**1741.02 INTERPRETATIONS AND DEFINITIONS.**

(a) Interpretations. For the purpose of this article, the following interpretations shall apply:

- (1) Words used in the present tense include the future tense
- (2) The singular includes the plural.
- (3) The plural includes the singular.
- (4) The word "person" includes a corporation, unincorporated association or partnership as well as an individual.
- (5) The Term "shall" or "will" is always mandatory.
- (6) The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
- (7) The word "ordinance" shall refer to the Floodplain Ordinance.

(b) Definitions. Unless specifically defined below, words and phrases used in this article shall be interpreted so as to give this ordinance it's most reasonable application.

- (1) Appurtenant Structure: A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.
- (2) Base Flood: Means the flood having a one percent chance of being equaled or exceeded in any given year.
- (3) Base Flood Elevation (BFE): The water surface elevation of the base flood in relation to the datum specified on the City of Willamstown's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.
- (4) Basement: Any area of the building having its floor sub grade (below ground level) on all sides.
- (5) Certificate of Compliance: A certification that all development is in compliance with the provisions of this ordinance.
- (6) Compensatory storage: An artificially excavated, hydraulically equivalent volume of storage within the special flood hazard area used to balance the loss of natural flood storage capacity when artificial fill or structures are placed within the special flood hazard area.
- (7) Contractor - WV State Code 21-11-3(c): A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

- A. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.
- B. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- C. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work
- D. A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

- E. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a Registered Professional Engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.
- (8) Critical Facility: Any facility in which, even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it should be provided a higher level of protection so that it can continue to function and provide services during a flood.
- (9) Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- (10) Flood: A general and temporary inundation of normally dry land areas.
- (11) Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Willamstown. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- (12) Flood Insurance Study: The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.
- (13) Floodplain:
- A. A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
  - B. An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
- (14) Floodway: The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.
- (15) Flood proofing: Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (16) Freeboard: A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed. Freeboard also tends to lower the cost of flood insurance.

- (17) Highest Adjacent Grade (HAG): The highest natural elevation of the ground surface immediately adjacent to the development or structure foundation. This is primarily used during insurance rating in approximated floodplains.
- (18) Historic Structure: Any structure that is:
- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
  - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
  - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    1. By an approved state program as determined by the Secretary of the Interior; or,
    2. Directly by the Secretary of Interior in states without approved programs.
- (19) Licensed Manufactured Home Retailer: A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.
- (20) Licensed Manufactured Home Installer: A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.
- (21) Licensed Professional Surveyor: Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.
- (22) Lowest Adjacent Grade (LAG): The lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation.
- (23) Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2 and usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
- (24) Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

- (25) New Construction: Structures for which the Start of Construction as herein defined commenced on or after 10/18/1983 and including any subsequent improvements to such structures. Any construction started after effective date of the City of Willamstown's first floodplain ordinance adopted by the City of Willamstown and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the ordinance was issued, provided the start of construction was within 180 days of permit issuance.
- (26) One-Hundred (100) Year Flood: A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.
- (27) Person: Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.
- (28) Practice of Engineering:
  - A. Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.
  - B. Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a Registered Professional Engineer, or by using another title implies that he or she is a Registered Professional Engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.
- (29) Principally Above Ground: Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.



- (30) Recreational Vehicle: A vehicle which is:
  - A. Built on a single chassis;
  - B. 400 square feet or less when measured at the largest horizontal projection;
  - C. Designed to be self-propelled or permanently towable by a light duty truck; and
  - D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (31) Registered Professional Engineer: A person who has been duly registered or licensed as a Registered Professional Engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.
- (32) Remedy a Violation: To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.
- (33) Reasonably Safe from Flooding: Means that during the base flood, water should not damage structures and any subsurface waters related to the base flood should not damage existing or proposed structures.
- (34) Special Flood Hazard Area: The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. This term shall also include areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.
- (35) Start of Construction: The date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (36) State Coordinating Office: The West Virginia Division of Homeland Security and Emergency Management
- (37) Stream: As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

- (38) **Structure:** A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
- (39) **Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."
- (40) **Substantial Improvement:**
- A. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.
  - B. This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
  - C. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.
  - D. For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.
- (41) **Top of Bank:** The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank may be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.
- (42) **Violation:** The failure of any structure or development to be fully compliant with all the requirements of this ordinance. Any structure or other development lacking the certifications, finished construction elevation certificate or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided. (Passed 1-15-13.)

**1741.03 ESTABLISHMENT OF THE SPECIAL FLOOD HAZARD AREA.**

- (a) Identification.
- (1) The identified special flood hazard area shall be those areas of the City of Willamstown which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Willamstown by the Federal Emergency Management Agency (FEMA) dated November 6, 2013 or the most recent revision thereof including all digital data developed as part of the FIS.
  - (2) The identified special flood hazard area shall also be those special flood hazard areas identified by the City of Willamstown by use of historic or other technical data and shown on an officially recognized "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.
- (b) Descriptions of Special Flood Hazard Areas. The identified special flood hazard area shall consist of the following four specific areas:
- (1) The Floodway shall be those areas of AE zone identified as Floodways in the FIS and as shown on the FIRM. The term shall also include any floodway areas delineated by developers in the approximated floodplain and designated as such by the community.
  - (2) The Floodway Fringe shall be those areas of AE zone for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
  - (3) The AE Area without Floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
  - (4) The Approximated floodplain shall be those areas identified as an A zone on the FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided.
- (c) Changes in Designation of Area.
- (1) The delineation of the identified special flood hazard area may be revised by the City of Willamstown where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
  - (2) A City of Willamstown's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information becomes available, the City of Willamstown shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
  - (3) The City of Willamstown may identify and regulate new local flood hazard or ponding areas. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

(d) Boundary Disputes. Should a dispute concerning the location of proposed development relative to a special flood hazard area arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Willamstown. The burden of proof shall be on the appellant/applicant.

(e) Elevations Prevail. Elevation data certified by a Licensed Professional Surveyor or Registered Professional Engineer shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

- (1) The proposed development will automatically conform to the flood damage reduction requirements of this ordinance if the natural lowest adjacent grade (LAG) to the proposed development is at or above the closest applicable base flood elevation (BFE) specified in the flood insurance study. The applicant shall be advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the special flood hazard area designation removed from the structure or specific area. If the difference between LAG and BFE is modest the applicant will also be advised to use caution during site preparation or excavation and information concerning the Preferred Risk Policy should be provided.
  - (2) The proposed development shall be considered to be within the special flood hazard area if the natural LAG to the proposed development is below either:
    - A. The closest applicable BFE specified in the flood insurance study, or
    - B. The reasonably safe from flooding elevation determined by the City of Willamstown in approximate floodplains. The proposed development shall then be required to conform to all appropriate flood damage reduction provisions of this article.
- (Passed 1-15-13.)

#### **1741.04 UTILIZATION OF THE SPECIAL FLOOD HAZARD AREA.**

(a) Floodway. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the City of Willamstown during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.

- (1) New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.

- (2) When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
- (3) All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.
- (4) In special flood hazard areas for which no regulatory floodway has been designated, the regulatory floodway for small, single lot development not incorporating significant amounts of fill can, at the discretion of the City of Willamstown, be determined to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

(b) Floodway Fringe. Within any Floodway Fringe area any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

(c) AE without Floodway. Within any AE without Floodway area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway where determined.

(d) Approximated Floodplain (Zone A). Within any Approximated Floodplain

- (1) The Floodplain Administrator shall use elevation and floodway information from Federal, State, or other acceptable sources when available to determine the elevation above which development will be reasonably safe from flooding.
- (2) When data from an acceptable source is not available, the Floodplain Administrator shall review, or shall cause to be reviewed; all proposed development to determine; 1. The amount being invested and, 2. The specific flood risk at the site. The Floodplain Administrator shall then require the applicant to determine the elevation above which the development will be reasonably safe from flooding using elevation data, hydrologic and hydraulic analyses or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- (3) Any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

(e) Alteration or relocation of a stream.

- (1) Whenever a developer intends to alter or relocate a stream within the special flood hazard area the developer shall notify in writing, by certified mail, the City of Willamstown, The Floodplain Administrator, the State Coordinating Office, any adjacent communities and any adjacent property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Emergency Management Agency (FEMA). In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval..
- (2) The developer shall also assure the City of Willamstown in writing that the flood carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- (3) Alteration of a stream includes placement of culverts, bridges or other stream crossings. The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- (4) All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this article.
- (5) The developer is required to provide the City of Willamstown a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1741.08(c).
- (6) The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose. (Passed 1-15-13.)

**1741.05 CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.**

(a) General. Permits are required in order to determine whether all new construction or substantial improvements are:

- (1) Located in an identified Floodplain, Floodway or other special flood hazard area.
- (2) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (3) Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2 or the most recent revision thereof.
- (4) Constructed by methods and practices that minimize flood damage.
- (5) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) To comply with WV State Code §11-3-3a. concerning County Assessor "Building or real property improvement notice"
- (7) Approved by County Health Department for Water and Sewer to assure facilities are designed or located in compliance with the flood damage reduction requirements of this article.

(b) Basic Format. The basic format of the permit shall include the following:

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed development is to occur.
- (3) Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of state regulations or the most recent revision thereof.
- (4) A description of Site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.
- (5) A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the floodway boundary when applicable.
- (6) An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 1741.07(i).
- (7) An acknowledgement that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.

- (8) The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The City of Williamstown does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.
- (c) Elevation and Flood Proofing Information.
  - (1) All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this article.
  - (2) Depending on the type of structure involved, the following information shall also be included in the application for work within the Special flood hazard area:
    - A. For structures to be elevated two feet above the Base Flood Elevation:
      - 1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
      - 2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer or Licensed Professional Surveyor.
      - 3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
      - 4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
      - 5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a Registered Professional Engineer or Licensed Professional Surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
      - 6. A finished construction elevation certificate shall be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate shall confirm that the structure in question, together with attendant utilities is elevated in compliance with permit conditions.



7. A non-conversion agreement shall be signed by the applicant whenever the City of Willamstown determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
  - a. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this article.
  - b. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1741.08(c).
- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this article. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

  1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
  2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer or Licensed Professional Surveyor.
  3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional Engineer who prepared the plans in (1) above, stating that the finished structure, together with attendant utility and sanitary facilities is designed so that:
    - a. The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
    - b. The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

- C. For Appurtenant structures constructed of flood resistant materials used solely for parking of vehicles or limited storage, (Appurtenant Structures only)
1. A site plan prepared by a Licensed Professional Surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed. The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.
  2. An elevation certificate, based on finished construction, must be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate confirm that the structure in question, together with attendant utilities is designed so that:
    - a. Flood resistant materials as detailed in FEMA Technical Bulletin 2 are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
    - b. Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
      - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
      - ii. The bottom of all openings shall be no higher than one foot above grade.
      - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  3. In addition, the applicant shall sign a non-conversion agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the non-conversion agreement to any new owner at closing via notarized signature. A signed copy of the transferred non-conversion agreement shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1741.08(c).

(d) Site Plan Criteria.

- (1) Site plans are required for all development, new construction and substantial improvements determined to be located in a special flood hazard area and all proposed Subdivisions and Manufactured Home Parks. These proposals shall be reviewed by the Floodplain Administrator to assure that they are consistent with the need to minimize flood damage.
- (2) The owner or developer shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:
  - A. A map showing the location of the proposed subdivision and/or development with respect to special flood hazard areas, proposed lot sites, and fills.
  - B. Name of Registered Professional Engineer, Licensed Professional Surveyor or other qualified person responsible for providing the information required in this section.
  - C. Where the subdivision or manufactured home park lie partially or completely in the special flood hazard areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the special flood hazard areas. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.
  - D. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway when directed to do so by the Floodplain Administrator.
    1. When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study shall be used to substantiate the base flood.
    2. If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
    3. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.

- E. Where the subdivision or other development site lies partially in the special flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the approximated floodplain area (Zone "A") boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet, depending on the slope, and clearly delineate the area to be developed and the location of the special flood hazard boundary area as scaled from the FEMA map. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.

(e) Restrictions to Subdivision of Land in Special Flood Hazard Areas. Subdivision of land in the special flood hazard area shall result in lots that include a buildable portion outside of the special flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the special flood hazard area limits. All new structures shall be sited on the portion of the subdivided lot that is located outside of the special flood hazard area. (Passed 1-15-13.)

#### **1741.06 SPECIFIC REQUIREMENTS.**

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Special flood hazard area.

(a) Basements and Lowest Floors.

- (1) Residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
- (2) Non-residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
- (3) Openings - For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:

- A. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - B. The bottom of all openings shall be no higher than one foot above grade.
  - C. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) A non-conversion agreement shall be signed by the applicant on all flood-proofed structures and any elevated structures when the City of Willamstown determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
  - A. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this article.
  - B. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1741.08(c).
- (b) **Manufactured Home Placement.** Certain unique characteristics of manufactured homes installed in special flood hazard areas pose an elevated risk to safety and substantial damage to property. Therefore;
  - (1) All manufactured homes to be sited within the special flood hazard areas of City of Willamstown shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The Licensed Manufactured Home Installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be placed or substantially improved within the special flood hazard areas shall be installed in accordance with the following standards:
    - A. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation
    - B. Elevation shall be on reinforced piers on a permanent foundation, or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in special flood hazard areas.
    - C. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4 or the most recent revisions thereof. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- D. Permanently attached rigid skirts and/or perimeter wall skirts of brick or block shall have openings to prevent collapse and damage to supporting piers. The openings shall be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
  - 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - 2. The bottom of all openings shall be no higher than one foot above grade.
  - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- E. Any additions to a manufactured home shall be similarly anchored and vented.
- (2) The licensed WV Manufactured Home Installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this article.
- (c) Appurtenant Structures.
  - (1) Except as provided in subsection (c)(2) below, appurtenant structures shall be located out of the special flood hazard area or elevated to two feet above the Base Flood Elevation.
  - (2) Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
    - A. Use of the structure shall be restricted to parking or limited storage.
    - B. Structures shall be no more than 200 square feet in size and valued at less than \$5,000.00.
    - C. Floors shall be at or above grade on at least one side.
    - D. Structures shall be located, oriented and constructed to minimize flood damage.
    - E. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
    - F. Flood resistant materials as detailed in FEMA Technical Bulletin 2 shall be used in the portions of the structure below BFE.
    - G. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
    - H. The venting requirements contained in subsection (a) hereof are applicable and shall be strictly adhered to.

- (3) A non-conversion agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this article. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 1741.08(c).
- (d) **Recreational Vehicle Placement.** Recreational vehicles to be placed within any special flood hazard area shall either:
  - (1) Be on site for fewer than 180 consecutive days. Or,
  - (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
  - (3) Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.
- (e) **Fill.** The City of Willamstown officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Therefore:
  - (1) Placement of fill in the special flood hazard area is discouraged and should be minimized.
  - (2) No fill shall be permitted in the floodway.
  - (3) Placement of fill in other areas of the special flood hazard area shall be restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill.
  - (4) No fill shall be permitted unless it meets the requirements of Section 1741.04(a). All fill placed in the special flood hazard area shall meet or exceed the following standards:
    - A. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Willamstown may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by Registered Professional Engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the City of Willamstown. During permit review the City of Willamstown shall consider the following issues that have the potential to cause adverse impact to adjacent properties:

1. Unacceptable increases in flood heights.
  2. Blocking drainage from adjacent property.
  3. Deflection of floodwaters onto adjacent existing structures.
  4. Increases to stream velocity initiating or exacerbating erosion problems.
  5. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.
- B. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
- C. Filled site shall be contoured to drain properly (avoid ponding)
- D. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
- E. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
- F. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards shall be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
- G. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
- H. Fill site and fill shall be protected from erosion.
1. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
  2. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second will be protected from erosion by armoring them with stone or rock slope protection.
- I. All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.



- J. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.
- (f) Placement of Structures and Other Development. All structures and other development shall be constructed or placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
- (1) Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
  - (2) So far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.
- (g) Anchoring.
- (1) All structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
  - (2) All air ducts, large pipes, swimming pools and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- (h) Flood Protection Setback.
- (1) A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks, enhance flood protection and benefit aquatic resources.
  - (2) Necessary public works and temporary construction may be exempted from this subsection.
  - (3) The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.
- (i) Storage.
- (1) No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
  - (2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
  - (3) Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

(j) Utility and Facility Requirements.

- (1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (2) All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (3) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- (4) Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(k) Drainage.

- (1) Adequate drainage shall be provided to reduce exposure to flood hazard.
- (2) Adequate drainage paths are required around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures.

(l) Backflow Preventers. Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the special flood hazard area. (Passed 1-15-13.)

**1741.07 ADMINISTRATION.**

(a) Designation of Floodplain Administrator. The Building Official is hereby appointed as Floodplain Administrator and is vested with the responsibility, authority and means to implement the commitments made in our agreement with the Federal Government to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning the City of Willamstown's participation in the National Flood Insurance Program.

(b) Development Permits and Site Plan Approvals Required. It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within City of Willamstown, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

(c) Approval of Permits and Plans.

- (1) The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
- (2) All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.
- (3) The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.

- (4) The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
- (5) The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
- (6) The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
- (7) The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
- (8) The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- (9) The City of Willamstown shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

(d) Application Procedures. Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Willamstown, and shall include all information stipulated under Article V of this ordinance.

(e) Changes. After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

(f) Permit Placards. The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

(g) Start of Construction. Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development shall be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- (1) Has the developer diligently pursued the completion of the proposed development during the 18 months?
- (2) Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

(h) Inspections, Stop-Work Orders, Violation Notice and Revocations

(1) Inspections.

- A. Upon learning of a potential violation of this article, the Floodplain Administrator or staff shall investigate to determine whether a violation has occurred.
- B. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.
- C. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this article.

(2) Stop-Work Orders. The Floodplain Administrator shall immediately issue, or cause to be issued, a "Stop-Work Order" for any development found ongoing without having obtained a floodplain determination or a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

(3) Violation Notice and Revocations. When it appears after investigation that a permitted development is non-compliant with the provisions of this law and/or the conditions of the permit, the Floodplain Administrator shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation be corrected within fifteen (15) days from the date appearing on the notice. Failure to correct the violation within this time period shall be cause for revocation of the permit and the governing body, or authorized employee or agent to:

- A. Seek an injunction in the Circuit Court of Wood County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
- B. Seek a misdemeanor conviction in magistrate court or circuit court.

(i) Certificate of Compliance.

(1) In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 1741.08(c).

(2) In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 1741.08(c).

- (3) In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 1741.08(c).
  - (4) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
  - (5) Issuance of the certificate shall be based upon the inspections conducted as prescribed in this article or local administrative procedures, and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of permit approval.
- (j) Fees.
- (1) A Floodplain Determination fee shall be assessed on all proposed development. This shall be a flat fee approved by the City of Williamstown.
  - (2) Proposed development determined to be occurring in a special flood hazard area regulated by this article shall be assessed an additional fee, payable to the City of Williamstown based upon a set schedule approved by the City of Williamstown using the estimated value of the proposed construction as determined by the Floodplain Administrator.
  - (3) In addition, the applicant shall be responsible for reimbursing the City of Williamstown for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
  - (4) Due to the increased cost of processing, when any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this article in the execution of the work or from other penalties prescribed herein.  
(Passed 1-15-13.)

#### **1741.08 APPEALS AND PENALTIES.**

(a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the City Council of the City of Williamstown which shall be known as the Appeals Board. Such appeal shall be filed with the City Council of the City of Williamstown, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and place not less than (ten (10) nor more than (sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

(b) Appeal Review Criteria.

- (1) All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- (2) All decisions on appeals to all other provisions of this article shall adhere to the following criteria:
  - A. Affirmative decisions shall only be issued by the Appeals Board upon a showing of good and sufficient cause, a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
  - B. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
  - C. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - D. The Appeals Board shall notify the applicant in writing over the signature of a City of Willamstown official that the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
  - E. The Appeals Board shall maintain a record of all decisions including justification for their issuance, and report such decisions issued in its biannual report to the Federal Emergency Management Agency (FEMA).
  - F. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

(c) Penalties. Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the City of Willamstown, shall be unlawful and shall be referred to the prosecuting attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the City of Willamstown of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. Each day during which any violation of this

ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the Town Council of the City of Williamstown to be a public nuisance and abatable as such. (Passed 1-15-13.)

**1741.09 GOVERNMENT ACTIONS.**

(a) Jurisdictional Boundary Changes.

- (1) The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets or exceeds the requirements for participation in the National Flood Insurance Program.
- (2) Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- (3) All plats or maps of annexation shall show the special flood hazard area boundaries, Base Flood Elevation and location of floodway where determined.
- (4) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities will notify the Federal Emergency Management Agency (FEMA) and the State Coordinating Office in writing whenever the boundaries of the City of Williamstown have been modified by annexation or the City of Williamstown has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the City of Williamstown's boundaries, a copy of a map of the City of Williamstown suitable for reproduction, clearly delineating the new corporate limits or new area for which the City of Williamstown has assumed or relinquished flood plain management regulatory authority shall be included with the notification.

(b) Permits for Government Entities. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance shall provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption. (Passed 1-15-13.)

**1741.10 SEVERABILITY AND MUNICIPAL LIABILITY.**

(a) Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this article shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this article which shall remain in full force and effect and for this purpose the provisions of this article are hereby declared to be severable.

(b) Liability. The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Williamstown, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Williamstown. (Passed 1-15-13.)



**ARTICLE 1751**  
**Signs and Outdoor Display Structures**

<b>1751.01</b>	<b>Permit and bond requirements.</b>	<b>1751.03</b>	<b>Alterations.</b>
<b>1751.02</b>	<b>"Display sign" defined.</b>	<b>1751.04</b>	<b>Construction, location and design.</b>

**CROSS REFERENCES**

Authority to regulate - see W.Va. Code 8-12-5(31)  
Unauthorized signs - see TRAF. 313.06

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**1751.01 PERMIT AND BOND REQUIREMENTS.**

(a) Except as otherwise provided in subsection (b) of this section, no display sign shall be erected, attached to, suspended from or supported on a building or structure until a permit therefore has been issued by the Building Official.

(b) No permit shall be required for a wall sign not more than ten square feet in area; nor for a projecting sign not exceeding two and one-half square feet of display surface; nor for a ground sign advertising either the sale or rental of the premises upon which it is maintained when such sign does not exceed twenty-five square feet of display surface. However, the exemption from a permit shall not be construed as relieving the owner or person in control of the sign from erecting and maintaining the sign in a safe condition.

(c) The owner or persons in control of a display sign suspended over a street or extending into a street more than fifteen inches beyond the building line may be required to execute a bond, in a sum to be fixed by the Building Official with sureties approved by such Official, indemnifying the City against all loss, cost, damage or expense incurred or sustained by or recovered against the City by reason of the construction or maintenance of such display sign.

**1751.02 "DISPLAY SIGN" DEFINED.**

For the purpose of this article, a "display sign" means a structure that is arranged, intended, designated or used as an advertisement, announcement or direction; and includes a sign, sign screen, billboard and advertising devices of every kind.

**1751.03 ALTERATIONS.**

(a) Structural. No display sign shall be altered, rebuilt, enlarged, extended or relocated except in conformity with the provisions of this article.

(b) Moveable Parts. The changing of movable parts of signs that are designed for changes, or the repainting of display matter shall not be deemed to be alterations within the meaning of this section.

**1751.04 CONSTRUCTION, LOCATION AND DESIGN.**

(a) Wall Signs.

- (1) Display signs placed against the exterior walls of buildings or structures shall not extend more than fifteen inches out from the wall surface.
- (2) Wall signs shall not extend beyond the top or ends of the wall surface on which they are placed.
- (3) Wall signs exceeding forty square feet in area shall be of noncombustible material except that such signs placed against a building or structure which is of wood frame construction or which could be of wood frame construction under this Code may be of combustible material. Cappings, decorations, lettering and mouldings may be of combustible material on any wall sign.
- (4) Wall signs shall be securely attached to the building or structure by means of metal anchors, bolts or expansion screws. No wood blocks or anchorage with wood used in connection with screws or nails shall be considered proper anchorage, except in the case of wall signs attached to buildings or structures with walls of wood. No wall sign shall be entirely supported by an unbraced parapet wall.
- (5) Wall signs shall not be constructed so as to close off the effective use of any of the wall openings required for accessibility purposes.

(b) Projecting Signs.

- (1) No projecting sign shall project from the face of the building or structure over a street, alley or other public space beyond a line drawn perpendicularly upward from two feet inside the curb line.
- (2) A clear space of not less than nine feet shall be provided below all parts of projecting signs.
- (3) Projecting signs exceeding two and one-half square feet in area shall be made of noncombustible material except that decorations, facings and lettering set in or attached to noncombustible material may be of combustible material.
- (4) Projecting signs shall be securely attached to the building or structure by bolts, anchors, chains, rods or guys. No nails or staples shall be used to secure any projecting sign to a building or structure.

(c) Ground signs.

- (1) Ground signs shall not exceed forty feet in height above the ground on which they rest. The height shall be measured to the top of the sign.
- (2) Lighting reflectors may project beyond the top or face of the sign.
- (3) An open space at least thirty inches high shall be maintained between the bottom of the sign and the ground; provided, that necessary supports extending through such space, and the filling of such space with lattice or slats leaving at least fifty percent of the space open shall not be prohibited.
- (4) Within the fire limits, ground signs more than fifteen feet high shall be made of noncombustible material, except that cappings, decorations, lettering and mouldings may be of combustible material.

(d) Roof Signs.

- (1) Display signs that are placed above or supported on the top of a building or structure shall be made of noncombustible material, except that cappings, decorations, lettering and mouldings may be of combustible material.
- (2) An open space of not less than four feet shall be maintained below the bottom of the sign, except for necessary vertical supports.

(e) Location. No sign shall be so placed as to obstruct or interfere with any required exit way or so as to prevent free passage from one part of a roof to any other part thereof, or so as to interfere with any required light and ventilation or so as to obstruct any opening in an exterior wall required for Fire Department access.

(f) Design.

- (1) All signs shall be designed and constructed so as to be reasonably safe to persons and property, and shall conform to nationally recognized safe and acceptable standards and specifications of design, construction and materials.
- (2) For the purpose of determining wind pressures all signs shall be classified as either open or solid. Signs in which the projected area exposed to wind consists of seventy percent or more of the gross area as determined by the over all dimensions shall be classed as solid signs; those in which the projected exposed area is derived from open letters, figures, strips, and structural framing members, the aggregate total area of which is less than seventy percent of the gross area so determined, shall be classed as open signs.
- (3) All signs shall be designed and constructed to withstand wind pressures applied to the projected exposed area, allowing for wind in any direction, in accordance with the following table:

Height from ground to top of sign, in feet	Wind pressure, pounds per square foot	
	Solid signs	Open signs
Less than 30	17	23
30-49	22	31
50-99	28	39
100-499	33	46

For ground signs 30-49 feet in height the tabular values for heights of less than 30 feet may be used.

- (4) The design loads of any sign shall be distributed to the structural members of the building or structure, on which it is supported, in such way that these members will not be overstressed.

**ARTICLE 1761  
Dangerous Structures**

<b>1761.01</b>	<b>"Building" defined.</b>	<b>1761.08</b>	<b>Rehearing by Commission.</b>
<b>1761.02</b>	<b>Purpose.</b>	<b>1751.09</b>	<b>Responsibility for costs of repair; lien on property.</b>
<b>1761.03</b>	<b>Interpretation.</b>	<b>1751.10</b>	<b>Restrictions as to spending City funds.</b>
<b>1761.04</b>	<b>Building Safety Commission.</b>	<b>1761.11</b>	<b>Violations.</b>
<b>1761.05</b>	<b>Order to repair, close or demolish; appeal to circuit court.</b>		
<b>1761.06</b>	<b>Authority to enter buildings.</b>		
<b>1761.07</b>	<b>Right to repair, close or demolish unsafe or unsanitary buildings.</b>		

**CROSS REFERENCES**

Authority to regulate - see W.Va. Code 8-12-16

**1761.01 "BUILDING" DEFINED.**

When used in this article, the word "building" shall mean and include:

- (a) A structure of any kind or character;
- (b) Any part of a structure;
- (c) The remains or residue of any structure;
- (d) Collections or piles of debris, lumber, stones, brick or trash.

**1761.02 PURPOSE.**

It is deemed by Council to be in the best interests of the health, safety and general welfare of the citizens of the City to regulate dwellings, buildings and structures which are dangerous, unhealthy, and unfit for human habitation, and it is the purpose of this article to provide such regulations.

**1761.03 INTERPRETATION.**

This article is enacted pursuant to authority contained in the Code of West Virginia, Section 8-12-16, and nothing herein contained shall be construed to abrogate or impair the power of any department of the City to enforce any provision of its Charter or this code or other ordinance or regulation; nor to prevent or punish violations, and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law of the State or ordinance of the City.

**1761.04 BUILDING SAFETY COMMISSION.**

(a) A Building Safety Commission of the City of Williamstown is hereby established.

(b) The Building Safety Commission shall consist of the Mayor, the Building Official, Fire Chief, one member at large, to be selected by and to serve at the pleasure of the Mayor, and such person designated by the Mayor as the ranking Health Officer of the City. Three members of the Building Safety Commission present and voting shall constitute a quorum.  
(Passed 3-19-13.)

**1761.05 ORDER TO REPAIR, CLOSE OR DEMOLISH; APPEAL TO CIRCUIT COURT.**

In any case in which the Building Safety Commission determines that a building shall be repaired, closed or demolished, pursuant to the provisions of Section 1761.07, the Commission shall enter an Order requiring such building to be repaired, closed or demolished. Such Order shall further provide that unless the owner repairs, closes or demolishes such building within a designated number of days, not less than 10, the Commission will cause such building to be repaired, closed or demolished. This Order shall further provide that such owner shall have the right to appeal to the Circuit Court of Wood County for a temporary injunction restraining the Commission pending final disposition of the cause. Such order shall be served in accordance with the laws of this State and shall, in addition thereto, be posted in a conspicuous place on the premises affected by such Order. (Passed 3-19-13.)

**1761.06 AUTHORITY TO ENTER BUILDINGS.**

The Building Safety Commission or its duly authorized agents shall have the right and duty to investigate and inspect any building which it has reason to believe may be unsafe, unsanitary, dangerous or detrimental to the public welfare, and for such purpose may enter upon and into premises and buildings at all reasonable times, but in such manner as to cause the least possible inconvenience to the persons in possession.

**1761.07 RIGHT TO REPAIR, CLOSE OR DEMOLISH UNSAFE OR UNSANITARY BUILDINGS.**

In the event it should be deemed expedient to repair, close or demolish any dwelling or other building unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any building to be unsafe, unsanitary, dangerous or detrimental to the public welfare, the building safety commission shall have the right to repair, close or demolish such buildings.

**1761.08 REHEARING BY COMMISSION.**

At any time within ten days after service of the order provided for by Section 1761.07 upon the owner, such owner may make written request to the Building Safety Commission for a hearing upon such order, after which hearing the Commission shall have the right to affirm, vacate, or modify such order as it deems expedient and proper. The owner of the affected property shall have five days from the entry of any order affirming, vacating or modifying the original order within which to appeal to the circuit court as provided by the original order.

**1761.09 RESPONSIBILITY FOR COSTS OF REPAIR; LIEN ON PROPERTY.**

In any case in which the Building Safety Commission causes a building to be repaired, closed or demolished, the costs therefore, after the proceeds of the sale of salvaged material, if any, are credited to the account, shall be a personal obligation of the owner and shall constitute a lien against the real property upon which such cost was incurred; provided, that such costs shall cease to constitute a lien against such property unless within ninety days after completion of such repair, closing or demolition, a certified statement showing the nature of the work, the date and amount thereof, the property affected and the name of the owner thereof, be filed for record in the county clerk's office in the trust deed books.

**1761.10 RESTRICTIONS AS TO SPENDING CITY FUNDS.**

Notwithstanding anything to the contrary herein contained, the Building Safety Commission shall not expend any funds of the City to repair or demolish any building pursuant to the terms hereof until such expenditure has been approved by Council.

**1761.11 VIOLATIONS.**

(a) It shall be unlawful for any owner, occupant, lessee or other person in interest of any such building as determined by the Building Safety Commission to be dangerous, unhealthy or unfit for human habitation to fail to comply with any order to repair, vacate or demolish and remove same, or any other order of the Commission from which no appeal or other remedy has been invoked. The imposition of one penalty for any violation shall not excuse subsequent violations or permit subsequent imposition of fines or imprisonment or both for continuing violations; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time, and when not otherwise specified, each ten days that prohibited conditions shall constitute a separate offense.

(b) It shall be unlawful for any person to remove any notice or order of the Building Safety Commission posted as required under any of the provisions of this article.

(c) It shall be unlawful for any person to willfully obstruct, impede or interfere with the Building Safety Commission, or any representative or officer of the Commission, or with any person who owns or holds any estate or interest in any building which has been ordered by the Commission, to be vacated, demolished or removed, or with any person to whom such building has been lawfully sold pursuant to the provisions of this article, whenever any such representative or officer of the Commission, purchaser or person having an interest or estate in such building, is engaged in repairing, vacating, closing or demolishing any such building, or in performing any necessary act preliminary to or incidental to such work.