



Codified Ordinances of Harpers Ferry

*Codification as adopted 1 July 1990, with subsequent additions and revisions adopted by the
Town Council of Harpers Ferry, West Virginia.*

Latest revision: June 2023

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CHAPTER ONE – General Provisions.

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- 101.02** General definitions.
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CROSS REFERENCES

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Maximum penalty permitted — see WV Code 8-11-1, 8-12-5 (57)
Authority to impose penalties — see WV Code 8-11-1, 8-12-2 (11)
Codification of ordinances — see WV Code 8-11-4 (b)

101.01 Designation; citation; headings.

- (a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, remembered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Harpers Ferry, West Virginia, 1990, 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 Jefferson County, West Virginia.
- (c) Land or lands and real estate or real property include lands, tenements and hereditaments, and all rights thereto and interest 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. (WV Code 2-2-10.)
- (e) Municipality or Town means the Municipality of Harpers Ferry, West Virginia.
- (f) Offense includes every act or omission for which a fine, forfeiture or punishment is imposed by law. (WV Code 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 evidence thereof.

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- (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. (WV Code 2-2-10.)
- (k) Premises, as applied to property, includes land and building.
- (l) Property or estate embraces both real and personal estate. (WV Code 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 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, provided, or acknowledged. (WV Code 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. (WV Code 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. (WV Code 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. (WV Code 2-2-10.)
- (e) Exceptions. The rules of construction shall not apply to any law which contains any express provisions 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 repeals another is itself repealed, the former law shall not be revived without express words for that purpose. (WV Code 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

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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.

- (c) The repeal by any provision of the Codified Ordinances of an ordinance validating previous acts, contracts or transactions, shall 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.

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. (WV Code 2-2-5.)

101.07 Conflicting provisions.

If the provisions of different codes, articles or sections of the Codified Ordinance 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 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) or imprisoned thirty days, or both. Each day any such violation continues shall constitute a separate offense.

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ARTICLE 103 Elections

- 103.01 Election regulations generally.**
- 103.02 Election official.**
- 103.03 Candidate filing fees.**
- 103.04 Permanent registration of voters.**
- 103.05 Voting by absentees.**

CROSS REFERENCES

Nomination and election – see Charter Sec. 11 *et seq.*
Municipal elections – see WV Code 3-1-2a
Municipal voting precincts – see WV Code 3-1-6
Municipal precinct registration records – see WV Code 3-1-27
Absentee voting in municipal elections – see WV Code 3-3-13
Integration of municipal elections with systems of permanent registration – see WV Code 8-5-13
Special elections – see WV Code 8-5-15a

103.01 Election regulations generally.

The general election laws of the State of West Virginia apply to and control, so far as they are applicable, all procedures regarding elections in and for the Corporation of Harpers Ferry; provided, that such laws regarding balance of political party registration or affiliation among ballot commissioners, poll clerks and commissioners, or other election workers are not applicable to the nonpartisan elections of this Town.

103.02 Election official.

The chief election official of the Town is the Recorder, who performs such duties as required by ordinance and by West Virginia Code Chapter 3.

103.03 Candidate filing fees.

Every candidate for election to Town office must pay, at the time of filing the candidate's certificate of announcement, a filing fee equivalent to one-half of one percent of the total annual salary of the office for which the candidate announces.

103.04 Permanent registration of voters.

All elections of the Town must be held in accordance with and subject to the provisions of the permanent voter registration laws of this State.

103.05 Voting by absentees.

West Virginia Code Article 3-3 is hereby adopted for absentee voting in Town elections.

HISTORY:

Ord. 2018-03 (passed 12-10-2018) amended Article 103 to add general election regulations and clarify candidate filing fees.

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ARTICLE 105 Open Meetings

105.01 Sunshine Law regulations.

CROSS REFERENCES

State provisions – see WV Code 6-9A

105.01 Sunshine Law regulations.

Council does hereby adopt the following rules to make available, in advance, the time and place of all regularly scheduled meetings of Council, and the time, place and purpose of all special meetings of Council to the public and news media:

- (a) A notice shall be posted by the Recorder at the front door of the Town Hall stating the time and place fixed and entered of record by Council for the holding of regularly scheduled meetings. If a particular regularly scheduled meeting is cancelled, a notice of such cancellation shall be posted at the front door of the Town Hall.
- (b) A notice shall be posted by the Recorder at the front door of the Town Hall at least two days before a special meeting is to be held, stating the time, place and purpose for which the special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front door of the Town Hall.

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- Article 111. Council.
- Article 113. Ordinances and Resolutions.
- Article 114. Disposition of Town Property Without Auction.

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ARTICLE 111 Town Council

- 111.01 Membership.
- 111.02 Duty.
- 111.03 Regular meetings.
- 111.04 Agenda.
- 111.05 Special meetings; agenda.
- 111.06 Who to preside at meetings of the Council.
- 111.07 Quorum.
- 111.08 No vote for special interest.
- 111.09 Mayor and Recorder may vote.
- 111.10 Tie vote.
- 111.11 Council to keep records.
- 111.12 Minutes of proceedings; voting.
- 111.13 Contents of minutes.
- 111.14 Conduct of meetings.
- 111.15 Executive sessions.

CROSS REFERENCES

Open meeting law—see WV Code 6-9A
Composition—see WV Code 8-5-7
Oath—see WV Code 8-5-8
Term—see WV Code 8-5-9
Vacancies—see WV Code 8-5-10
Proceedings—see WV Code Art. 8-9
General powers—see WV Code Art. 8-12
Adoption of rules—see WV Code 8-12-5(45)

111.01 Membership.

The Town Council consists of five Councilpersons, plus the Mayor and the Recorder, elected at large by the qualified electors of the Corporation of Harpers Ferry. (Ord. 2011-03, passed 02-14-2011.)

111.02 Duty.

The duties of the Town Council shall be to act as the governing body of the town and to guide growth of the community in accordance with the Harpers Ferry Comprehensive Plan and a Capital Improvement Plan. (Ord. 2011-03, passed 02-14-2011; Ord. 2015-12, passed 01-11-2016.)

111.03 Regular meetings.

Regular meetings of the Town Council shall be held every month on the second Monday unless canceled for cause, including, but not limited to, hazardous weather, homeland security concerns, holiday, or lack of quorum. (WV Code 6-9A-3.)^[111.03]

111.04 Agenda.

The agenda for regular meetings of the Town Council shall be posted by the Recorder in a public place for a minimum of three business days before the scheduled meeting time. (WV Code 6-9A-3. Ord. 2011-03, passed 02-14-2011.)

FOOTNOTES:

- 111.03 Ord. 2019-01 (passed 05-13-2019) amended the section originally enacted by Ord. 2011-03 (passed 02-14-2011) to include provisions to permit cancelling regular meetings for cause.

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111.05 Special meetings; agenda.

Special meetings of the Town Council may be called by the Mayor or by a majority of the Council. The agenda of such special meetings shall be posted by the Recorder in a public place for a minimum of two business days before the scheduled meeting time. (Ord. 2011-03, passed 02-14-2011.)

111.06 Who to preside at meetings of the Council.

The Town Council shall be presided over at its meetings by the Mayor, or, in his absence, by the Recorder, or, in the absence of both the Mayor and the Recorder, by one of its members selected by a majority of the members of the Council present. (WV Code 8-9-1. Ord. 2011-03, passed 02-14-2011.)

111.07 Quorum.

A majority of the members of the Council shall be necessary to constitute a quorum for the transaction of business. (WV Code 8-9-1. Ord. 2011-03, passed 02-14-2011.)

111.08 No vote for special interest.

No member of the Council shall vote upon any ordinance, order, measure, resolution or proposition, in which he may be interested other than as a citizen of the town. (WV Code 8-9-1. Ord. 2011-03, passed 02-14-2011.)

111.09 Mayor and Recorder may vote.

The Mayor and Recorder shall have votes as members of the Town Council. (WV Code 8-9-2. Ord. 2011-03, passed 02-14-2011.)

111.10 Tie vote.

In case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted. (WV Code 8-9-2. Ord. 2011-03, passed 02-14-2011.)

111.11 Council to keep records.

The Town Council shall cause to be kept, in a well-bound book, an accurate record of all of its proceedings, ordinances, orders, bylaws, acts, resolutions, rules and regulations which shall be fully indexed and open to inspection by anyone who is required to pay taxes to such municipality. (WV Code 8-9-3. Ord. 2011-03, passed 02-14-2011.)

111.12 Minutes of proceedings; voting.

At each meeting of the Town Council, a journal of the proceedings of the last meeting shall be read, and corrected, if erroneous, and signed by 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 the 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. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the journal. (WV Code 8-9-3. Ord. 2011-03, passed 02-14-2011.)

111.13 Contents of minutes.

Minutes shall include, at least, the following information:

- (a) The date, time and place of the meeting;
- (b) The name of each member of the Council present and absent;
- (c) All motions, proposals, resolutions, orders, ordinances and measures proposed, the

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- name of the person proposing the same and their disposition; and
- (d) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the Council for recording roll call votes, the vote of each member, by name. (WV Code 6-9A-5. Ord. 2011-03, passed 02-14-2011.)

111.14 Conduct of meetings.

Unless otherwise specified in these Ordinances or the laws of this State, meetings of the Town Council shall be conducted in accordance with the procedures specified in the current edition of the publication entitled "Robert's Rules of Order Newly Revised", published by the Robert's Rules Association. (Ord. 2011-03, passed 02-14-2011.)

111.15 Executive sessions.

- (a) The Town Council may hold an executive session during a regular, special or emergency meeting, in accordance with the laws of this State.
- (b) During the open portion of the meeting, prior to convening an executive session, the presiding officer of the Town Council shall identify the authorization under subsection 6-9A-4(b) of WV Code for holding the executive session and present it to the Town Council and to the general public.
- (c) An executive session may be held only upon a majority affirmative vote of the members present of the Town Council.
- (d) No decision may be made in the executive session. (WV Code 6-9A-4. Ord. 2011-03, passed 02-14-2011.)

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ARTICLE 113 Ordinances and Resolutions

EDITOR'S NOTE: There are no sections in Article 113. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

To make powers effective – see WV Code 8-11-1

Delegating discretion – see WV Code 8-11-2

Action required to be by ordinance – see WV Code 8-11-3, 8-5-12

Procedures – see WV Code 8-11-4

Penalty limitations – see WV Code 8-12-5(57), 8-11-1

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ARTICLE 114 Disposition of Town Property Without Auction

- 114.01 Authorization to convey property to private purchasers without auction at fair market value.**
- 114.02 Authorization to lease property to private parties for less than fair market value.**
- 114.03 Authorization to convey property to nonprofit organizations for less than fair market value.**
- 114.04 Authorization to lease property to nonprofit organizations for less than fair market value.**

CROSS REFERENCES

114.01 Authorization to convey property to private purchasers without auction at fair market value.

- (a) The Corporation of Harpers Ferry may sell its real or personal property valued in excess of \$1,000.00 for fair market value to private purchasers, without public auction, provided that the Town Council has made a factual determination that the property is to be used to facilitate specific economic development projects and/or to provide a specific necessary and convenient resource for the benefit of the citizenry.
- (b) Conditions.
 - (1) Prior to the approval by the Town Council of any conveyance of Town property pursuant to this section, the Town Council shall be provided with documentation evidencing that all project plans have been approved by all necessary and relevant state and/or municipal committees and departments, all necessary and relevant state and/or municipal permits are in place or are approved subject to purchase of the property, and funding for the project has been secured, or
 - (2) If the Town Council and Private Purchaser are in agreement, the conveyance will be subject to a reverter clause requiring that the property revert back to the Town if the Grantee fails to get all approvals of necessary and relevant state and/or municipal committees and departments, all necessary and relevant state and/or municipal permits and funding for the project has been secured within an agreed to period.
- (c) Any proposed conveyance of Town property pursuant to this section shall be published as a Class II legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for the publication shall be the Corporation of Harpers Ferry. (Ord. 2020-02, passed 12-17-2020.)

114.02 Authorization to lease property to private parties for less than fair market value.

- (a) The Corporation of Harpers Ferry may lease its real or personal property to private lessees for less than fair and adequate consideration provided that the Town Council has made, by resolution authorizing the lease and containing terms and conditions therefor, a factual determination that the property is to be used to facilitate specific economic development projects and/or to provide a specific necessary and convenient

HISTORY:

Ord. 2020-02 (passed 12-17-2020) created Article 114 under the authority granted through the Town's Municipal Home Rule Application and Plan dated 11-10-2015 and approved by the West Virginia Home Rule Board on 11-16-2015.

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resource for the benefit of the citizenry.

- (b) In the event the private lessee ceases to use the leased property in the facilitation of economic development projects or to provide a specific necessary and convenient resource for the benefit of the citizenry, the lease shall terminate and such private lessee shall thereafter have no right, title, or interest therein or thereto.
- (c) Any lease executed pursuant to this subsection 114.02 shall contain the reversion wording in subsection 114.02(b). (Ord. 2020-02, passed 12-17-2020.)

114.03 Authorization to convey property to nonprofit organizations for less than fair market value.

- (a) The Corporation of Harpers Ferry may convey real or personal Town property to nonprofit organizations for less than fair market value, and without public auction, when the nonprofit organization is providing services that benefit the public and are services that the Town could lawfully provide; provided that the Town Council has made a factual determination that:
 - (1) There is a lack of need for such property by the Town in comparison to the benefit to the Town if property is conveyed; and
 - (2) There is a demonstrable need for such property by the nonprofit organization to be able to perform the services benefiting the public.
- (b) In the event the nonprofit organization should cease to provide such services to the public, the property shall by operation of law, revert to and vest in the Town, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.
- (c) Any deed or other instrument of property transfer executed pursuant to this subsection 114.03 shall contain the reversion wording in subsection 114.03(b). (Ord. 2020-02, passed 12-17-2020.)

114.04 Authorization to lease property to nonprofit organizations for less than fair market value.

- (a) The Corporation of Harpers Ferry may lease its real or personal property to nonprofit organizations for less than fair and adequate consideration when the nonprofit organization is providing services that benefit the public and are services that the Town could lawfully provide; provided that the Town Council has made, by resolution authorizing the lease and containing terms and conditions therefor, factual determinations that:
 - (1) There is a lack of need for such property by the Town in comparison to the benefit to the Town if property is leased; and
 - (2) There is a demonstrable need for such property by the nonprofit organization to be able to perform the services benefiting the public.
- (b) In the event the nonprofit organization ceases to use the leased property to benefit the public, the lease shall terminate, and such nonprofit organization shall thereafter have no right, title, or interest therein or thereto.
- (c) Any lease executed pursuant to this subsection 114.04 shall contain the reversion wording in subsection 114.04(b). (Ord. 2020-02, passed 12-17-2020.)

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- Article 133. Planning Commission.
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ARTICLE 121 Mayor

EDITOR'S NOTE: There are no sections in Article 121. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Position established – see WV Code 8-5-7
Oath – see WV Code 8-5-8
Term – see WV Code 8-5-9
Vacancy – see WV Code 8-5-10
Voting rights – see WV Code 8-9-2
Powers and duties generally – see WV Code 8-10-1
Acting Mayor – see WV Code 8-10-3

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ARTICLE 123 Recorder

EDITOR'S NOTE: There are no sections in Article 123. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Position established – see WV Code 8-5-7

Oath – see WV Code 8-5-8

Term – see WV Code 8-5-9

Vacancy – see WV Code 8-5-10

Voting Rights – see WV Code 8-9-2

Powers and duties generally – see WV Code 8-10-3

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ARTICLE 125 Town Attorney

EDITOR'S NOTE: There are no sections in Article 125. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Hiring special council – see WV Code 8-10-1a

Notice of suit against municipality – see WV Code 8-12-2

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ARTICLE 126 Ordinance Compliance Officer

- 126.01 Establishment.**
- 126.02 Duties.**
- 126.03 Power to stop work on structures being constructed, renovated or remodeled.**
- 126.04 Right of entry.**
- 126.99 Penalty.**

CROSS REFERENCES

126.01 Establishment.

There is hereby created the position of Ordinance Compliance Officer (OCO), whose hiring shall be approved by the Harpers Ferry Town Council and who shall serve under the direction of the Mayor, or his or her designee.

126.02 Duties.

- (a) The Ordinance Compliance Officer is hereby authorized and directed to enforce the provisions of all applicable Articles of the Codified Ordinances of Harpers Ferry.
- (b) It shall be the duty of the Ordinance Compliance Officer to see to the enforcement of all ordinance provisions relating to zoning, licensing, property maintenance and upkeep, nuisances, and to inspect all buildings or structures being erected or altered, as frequently as may be necessary to insure compliance with Harpers Ferry ordinances. The Ordinance Compliance Officer shall have the authority to issue citations for civil violations of applicable Town ordinances.

126.03 Power to stop work on structures being constructed, renovated or remodeled.

The Ordinance Compliance Officer shall have the authority to order all work stopped on construction or alteration or repair of buildings or structures in the Town when such work is not in compliance with any provision of any ordinance relating thereto.

126.04 Right of entry.

Where it is necessary to make an inspection to enforce the provisions of the Town's applicable ordinances, the Ordinance Compliance Officer, upon obtaining consent from the owner and / or occupant, may enter the premises at reasonable times to inspect or to perform the duties imposed by the Town's codified ordinances. If consent is denied, the Ordinance Compliance Officer shall have recourse to the remedies provided by law to secure entry.

126.99 Penalty.

- (a) The Ordinance Compliance Officer may impose penalties provided in the Codified Ordinances of Harpers Ferry under the purview of the Ordinance Compliance Officer when a violation is determined.
- (b) The imposition of the penalties herein prescribed shall not preclude the Town Attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, addition, alteration, conversion, removal, demolition,

HISTORY:

Ord. 2014-03 (passed 09-08-2014) created Article 126.

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maintenance or use, or to restrain, correct or abate a violation, or to prevent the occupancy of a building or structure or portion thereof, or of the premises, or to prevent an illegal act, conduct, business or use in or about any premises.

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ARTICLE 127 Police Department

127.01 Civil Service referendum.

CROSS REFERENCES

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

127.01 Civil Service referendum.

An ordinance to place upon the ballot a referendum for the people to decide the issue of conversion of the two Harpers Ferry Police Patrolmen to Civil Service.

WHEREAS, the Council of the Corporation of Harpers Ferry, West Virginia, deem it advisable to consider placing the two patrolmen of the Municipality under Civil Service; and, **WHEREAS**, pursuant to West Virginia State Code Chapter 8, Article 14, Section 21, it is necessary for the issue of police civil service to be brought in an election before the people. Now therefore, be it ordained by the Council of the Corporation of Harpers Ferry, that: On the election ballot in the upcoming municipal election of Tuesday, June 8, 1993, there shall be placed for vote of the citizens of the Corporation the issue of whether or not the Corporation's two police patrolmen should be placed under civil service in accordance with West Virginia Code Chapter 8, Article 14, Section 14, Section 21 *et seq.* The Ordinance shall become effective immediately upon passage and approval by the Mayor.

HISTORY:

Ord. 93-2 (passed 03-26-1993) created Article 127.

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ARTICLE 129 Fire Department

EDITOR'S NOTE: There are no sections in Article 129. This article has been established to provide a place for cross references and future legislation.

CROSS REFERENCES

Power of governing body – see WV Code 8-15-1
Fire protection contracts – see WV Code 8-15-3, 8-12-5(56)
Volunteer fire companies – see WV Code 8-15-4 *et seq.*
Paid fire departments – see WV Code 8-15-9 *et seq.*
Civil service – see WV Code 8-15-11 *et seq.*
Pension and relief fund – see WV Code 8-22
Authority of local fire departments – see WV Code 29-3A

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ARTICLE 130

Uniform Removal of Members of Commissions, Committees and Boards

130.01 Removal of members of commissions, committees and boards.

CROSS REFERENCES

130.01 Removal of members of commissions, committees and boards.

The Town Council may remove a member of any commission, committee or board for cause such as inactivity, neglect of duty or malfeasance, or to achieve compliance with West Virginia Code and Harpers Ferry Codified Ordinances. The reasons for removal must be provided to the person being removed in a written statement, and the person must be given an opportunity to be heard on the matter at a regular meeting of the Town Council.

HISTORY:

Ord. 2015-09 (passed 11-09-2015) created Article 130.

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ARTICLE 131 Historic Landmarks Commission

- 131.01 Established; objectives.
- 131.02 Membership and term of service; removal from office.
- 131.03 Regular and special meetings.
- 131.04 Quorum.
- 131.05 Offices and expenses; other appropriations.
- 131.06 Election of officers.
- 131.07 Assistants; professional services.
- 131.08 Powers and authority.
- 131.09 Certificates of Appropriateness.
- 131.10 Designation for review of Certificates of Appropriateness.
- 131.11 Voluntary restrictions on Historic Landmarks.
- 131.12 Notice to County Assessor of designation of historic district.
- 131.13 Coordination.
- 131.14 Notice and public hearing.
- 131.15 Priorities.
- 131.16 Parliamentary procedure.

CROSS REFERENCES

Historic Landmark Commission—see WV Code 8-26A
Planning Commission—see Ord. Art. 133

131.01 Established; objectives.

- (a) There is hereby established, in the Corporation of Harpers Ferry, the Harpers Ferry Historic Landmarks Commission, hereafter referred to as the Historic Landmarks Commission, in order to preserve, protect and foster the rehabilitation and maintenance of its historic edifices and to insure that the growth of the community is commensurate with its historic significance and for such other objectives as set forth in West Virginia Code 8-26A.
- (b) In accomplishing these foregoing objectives, the Historic Landmarks Commission shall, to the extent authorized by the foregoing Code provisions, function as a regulatory agency with respect to construction, alteration, repair, enlargement, restoration or relocation of buildings or structures identified and classified by the Federal, State or local government as historic buildings or located within a historic district. The Historic Landmarks Commission shall be independent of the Planning Commission; provided that no rule or regulation of the Historic Landmarks Commission shall conflict with any plan of such Planning Commission.

131.02 Membership and term of service.

- (a) The Historic Landmarks Commission shall have five members. The members of the Historic Landmarks Commission first selected shall serve respectively for one year, two years, three years, four years and five years. Thereafter, the members shall be selected for terms of five years each, with one new member being selected each year, commencing at the first regular meeting in calendar year 1981, and in like manner at the first regular meeting in each subsequent calendar year. Vacancies shall be filled

HISTORY:

Ord. 2014-06 (passed 01-05-2015, effective 02-16-2015) superseded Ord. 80-1 (passed 02-21-1980, amended 07-09-2012) to bring the structure and function of the Historic Landmarks Commission into compliance with current WV Code.

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for the unexpired term only, in the same manner as original selections are made. All members shall be residents of the Corporation of Harpers Ferry and shall be nominated and confirmed by Town Council. Members shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

- (b) Members of the Historic Landmarks Commission may be removed in accordance with the provisions of Ordinance Article 130.^[131.02]

131.03 Regular and special meetings.

- (a) The Historic Landmarks Commission may fix the time for holding regular meetings but until same is accomplished by unanimous vote of the Historic Landmarks Commission it shall meet at least once a month commencing in May 1980.
- (b) Special meetings of the Historic Landmarks Commission may be called by the Chairman or by at least two members upon written request to the Secretary-Treasurer. Whether called by the chairman or by two or more members, the Secretary-Treasurer shall send to all of the members, at least two days in advance of a special meeting, written notice fixing the date, time and place of a the meeting, but written notice of a special meeting is not required if the date, time and place of a special meeting have been fixed in a regular meeting, or if all the members are present at a special meeting.

131.04 Quorum.

A majority of the members of the Historic Landmarks Commission shall constitute a quorum. No action of the Historic Landmarks Commission shall be official unless authorized by a majority of all members of the Historic Landmarks Commission at a properly constituted regular or special meeting.

131.05 Offices and expenses; other appropriations.

The Town Council shall provide the Historic Landmarks Commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide for the operating expenses of the Historic Landmarks Commission by appropriating a sum sufficient to defray such expenses. Town Council shall have plenary power and authority to appropriate funds for expenditure by the Historic Landmarks Commission to accomplish the purposes of this article.

131.06 Election of officers.

At its first regular meeting in each calendar year, the Historic Landmarks Commission shall elect from its members a chairman, vice-chairman and secretary-treasurer. The vice-chairman shall have the power and authority to act as the chairman of the Historic Landmarks Commission during the absence or disability of the chairman.

131.07 Assistants; professional services.

- (a) The Historic Landmarks Commission may appoint and prescribe the duties and fix the compensation of a secretary and such employees or agents as are necessary for the discharge of the duties and responsibilities of the Historic Landmarks Commission.
- (b) The Historic Landmarks Commission may make contracts for special or temporary services, within the limits of funds available, for such employees, assistants, technical personnel and consultants as are necessary to discharge the duties and responsibilities of the Historic Landmarks Commission.

FOOTNOTES:

131.02 Ord. 2015-09 (passed 11-09-2015) added subsection (b), concerning removal from office.

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131.08 Powers and authority.

The Historic Landmarks Commission shall have the power and duty to:

- (a) Make a survey of, and designate as historic landmarks, buildings, structures and sites which constitute the principal historical and architectural sites of local, regional, statewide or national, significance. No building, structure, or site shall be designated a historic one unless it has been prominently identified with, or best represents, some major aspect of cultural, political, economic, military or social history of the locality, region, State or nation, or has had a major relationship with the life of a historic personage, or event representing some major aspect of, or ideals related to, history of the locality, region, State or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times;
- (b) Prepare a register of buildings, structures and sites which meet the requirements of subsection (a) hereof, publish lists of such properties and, with the consent of the property owners, inspect such properties from time to time and publish a register thereof from time to time, setting forth the appropriate information concerning the registered buildings, structures and sites;
- (c) Review applications for certificates of appropriateness and grant or deny the same in accordance with Section 131.09 hereof and West Virginia law;
- (d) With the consent of the property owners, certify and mark the appropriately designated markers, buildings, structures and sites which it has registered;
- (e) Establish standards for care and management of certified landmarks and withdraws such certification for failure to maintain the standards so prescribed;
- (f) Acquire by purchase, gift, or lease and administer registered landmarks and easements and interests therein, both real and personal;
- (g) Lease or sell property so acquired under terms and conditions designated to insure the proper preservation of the landmark in question;
- (h) Establish historic districts for registered landmarks utilizing the same guidelines set forth in subsection (a) hereof, and designate the area thereof by appropriate markers;
- (i) Identify a historic district or districts for registered landmarks and aid and encourage the Town to adopt rules and regulations for the preservation of historical and architectural value;
- (j) Prepare and place historical markers on or along a highway or street closest to the location which is intended to be identified by such marker;
- (k) Seek the advice and assistance of individuals, groups and departments and agencies of government who or which are conducting historical preservation programs and coordinate the same insofar as possible;
- (l) Seek and accept gifts, bequest, endowments and funds from any and all sources for the accomplishments of the functions of the Historic Landmarks Commission;
- (m) Adopt rules and regulations concerning the operation of the Historic Landmarks Commission, the functions and responsibilities of its officers, employees, assistants and other personnel and such other matters as may be necessary to carry out the purposes of this article; and
- (n) Adopt such other rules and regulations as are necessary to effectuate the purposes of this article, but no such rules and regulations shall be inconsistent with the provisions of this article or with any plan of the Planning Commission, or with the provisions of

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West Virginia Code 8-26A

131.09 Certificates of Appropriateness.

The Historic Landmarks Commission may exercise authority to issue certificates of appropriateness to regulate new construction, alteration, removal or demolition of buildings, sites or structures within a historic district or individually designated as a historic landmark or site according to the following provisions:

- (a) No private building, site or structure shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission in accordance with Design Standards as the Historic Landmarks Commission adopts them from time to time, except as otherwise provided by the Town Council or as provided by rules, regulations, policies, procedures and standards adopted and published by the commission. For the purposes of this section, "exterior architectural features" shall include such portion of the exterior of a structure as is open to view from a public street, way or place.
- (b) Similarly, if earthworks of historical or archaeological importance exist in the historic district there shall be no excavating or moving of earth, rock or subsoil or any development upon or around earthworks without a certificate of appropriateness.
- (c) The style, material, size and location of outdoor advertising signs and bill posters shall be under the control of the Commission.
- (d) The Commission may request such plans, elevations, specifications, drawings, photographs and other information as may be reasonably deemed necessary to enable it to make a determination on the application for a certificate of appropriateness.
- (e) The Commission shall hold a public hearing upon each application for a certificate of appropriateness. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least seven days before such hearing, and by posting such notice on or near the main entrance of any hall or room where the Commission usually meets. The Commission shall take such action as required to inform the owners of any property likely to be affected by the application and shall give the applicant and such owners an opportunity to be heard.
- (f) The Commission shall consider an application for a certificate of appropriateness within 45 days after the filing thereof by the owner or occupant of a historic property or a building, site or structure located within a historic district. Evidence of approval shall be by a certificate of appropriateness issued by the Commission.
- (g) In passing upon the appropriateness of proposed action, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural integrity and significance; architectural style; design, arrangement, texture and materials of exterior architectural features; and the relationship and general compatibility thereof to the historical value and exterior architectural style and pertinent features of other structures in the surrounding area.
- (h) The Commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed action would be appropriate. In the event an application is rejected, the Commission shall put the rejection and the reasons therefor in writing, and shall transmit such written record to the applicant. The written record may include recommendations relative to design, arrangement, texture, material and similar features. The applicant may make modifications to the plans and resubmit the application at any time after doing so.
- (i) In cases where the application covers a material change in the appearance of a

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structure which would require the issuance of a Project Permit, the rejection of an application for a certificate of appropriateness by the Commission shall be binding upon the Ordinance Compliance Officer and / or other administrative office charged with issuing Project Permits.

- (j) Where such action is reasonably necessary or appropriate for the preservation of a unique historic property, the Commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise of the property or any interest therein.
- (k) If the strict application of any provision of this section would result in exceptional practical difficulty or undue economic hardship upon any owner of any specific property, the Commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provision so as to relieve such difficulty or hardship: provided, that such variance, modification or interpretation shall remain in harmony with the general purpose and intent of the provisions so that architectural or historical integrity or character of the property shall be conserved and substantial justice done. In granting variations, the Commission may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this section.
- (l) The Commission shall keep a record of all applications for certificates of appropriateness and of all its proceedings.
- (m) Any person adversely affected by any determinations made by the Commission relative to the issuance or denial of a certificate of appropriateness may appeal such determination to the Circuit Court of Jefferson County.
- (n) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property, which maintenance or repair does not involve a material change in design, material or outer appearance thereof, nor to prevent any property owner from making any use of his property not prohibited by other laws, ordinances or regulations.
- (o) Undertakings permitted, funded, licensed or otherwise assisted by the state shall be reviewed in accordance with West Virginia Code 29-1-5e or a similar statute and shall be considered exempt from review for certification of appropriateness as described in this section.

131.10 Designation for review of Certificates of Appropriateness.

- (a) Before the designation of a historic landmark or historic district that includes review of certificates of appropriateness by the Historic Landmarks Commission, the Commission shall make or cause to be made a report on the historical, cultural, architectural significance of each building, structure, site and district proposed for designation, based upon the following standards:
 - (1) No building, structure, site or district shall be deemed to be a historic one unless it has been prominently identified with or best represents, some major aspect of the cultural, political, economic, military or social history of the city, region, state or nation, or has had a major relationship with the life of a historic personage or event representing some major aspect of, or ideals related to, the history of the city, region, state or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times.

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- (2) The Historic Landmarks Commission shall submit such report, including maps and photographs as necessary, to the State Historic Preservation Office and the West Virginia Division of Culture and History. In the case of a report for a proposed historic district, the Historic Landmarks Commission shall submit with the report a map showing boundaries of the proposed district.
- (b) In the event that a historic district or historic property is to be subject to review of certificates of appropriateness by the Historic Landmarks Commission, then upon a nomination by the Historic Landmarks Commission, the Town Council shall hold a public hearing on the proposed designation of the historic property or historic district, and any proposed regulations and requirements for the historic district. Notice of the hearing shall be published at least two times in the principal newspaper of general circulation within the city; and written notice of the hearing shall be mailed by certified mail with signed return receipt required by the Historic Landmarks Commission to all owners and occupants of such properties. All the notices shall be published or mailed not less than ten nor more than 20 days before the date set for the public hearing. Following the public hearing, unless the owner of a proposed property or 50 percent of the ownership interest in a proposed district objects in writing by a notarized letter to such designation or regulations and requirements within thirty days following the public hearing, the local governing body may designate the property or properties as historic, and approve, amend or reject the proposed regulations or requirements. The notarized letter must state the party is the sole or partial owner of the property.
- (c) Within 30 days following such designation or approval, the owners and occupants of each designated historic property shall be given written notification of such designation or approval by the Town Council, which notice shall apprise said owners and occupants of the necessity of obtaining a certificate of appropriateness before undertaking any material change in the appearance of the historic site, property or landmark designated or within a historic district.
- (d) Any such designated historic landmark or district designated under this division shall be shown on the official zoning map of the city and kept by the city as a public record to provide notice of such designation in addition to other such notification requirements of this section.
- (e) Any regulations of the Historic Landmarks Commission hereunder and enforcement actions of the Town are intended to identify, study, preserve and protect historic buildings, structures, sites and districts within the boundaries of a zoning district. Such properties also would be subject to the regulations for the base zoning district and the historic district or property. If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements prevail.
- (f) The Town and Historic Landmarks Commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this division or to prevent any illegal acts or conduct with respect to such historic property or historic district.
- (g) Violations of any such ordinance adopted in conformity with this section shall be punishable by a fine of not greater than \$500, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

131.11 Voluntary restrictions on Historic Landmarks.

Whenever the Historic Landmarks Commission, with the consent of the property owner,

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certifies a property as a registered landmark, it may obtain from such property owner an agreement as to the restrictions upon the use of property as the Historic Landmarks Commission finds reasonable and are calculated to perpetuate and preserve the features which lead it to designate such property as a historic landmark. All such agreements between such Historic Landmarks Commission and property owner shall be in writing and acknowledged, and shall be recorded in the office of the Clerk of the County Commission of Jefferson County, and when so recorded shall be notification to the Assessor of Jefferson County of the restrictions therein set forth.

131.12 Notice to County Assessor of designation of historic district.

When the Historic Landmarks Commission establishes a historic district, it shall notify the Assessor of Jefferson County of the fact of such establishment and the boundaries of the historic district, together with the restrictions that are applicable to the properties located in the district. The agreement shall be recorded in the same manner as the recordation of agreements between the Historic Landmarks Commission and the owners of designated landmarks entered into under the provisions of Section 131.08.

131.13 Coordination.

The Historic Landmarks Commission shall cooperate and coordinate its activities with public and private agencies or organizations, including, without limitation, the West Virginia Department of Archives and History, the West Virginia Historical Society and the State Historic Preservation Office of West Virginia, with a view toward enhancing its ability to identify, study, preserve and protect all historic buildings, structures and sites within the Town.

131.14 Notice and public hearing.

- (a) Prior to the designation of a historic district or landmark, the Historic Landmarks Commission shall give notice, as hereinafter in this section specified, and hold a public meeting on the matter.
- (b) At least thirty days prior to the date set for the hearing, the Historic Landmarks Commission shall publish a notice of the date, time and place of the hearing as a class one legal advertisement in compliance with the applicable provisions of the West Virginia Code.

131.15 Priorities.

In addition to such other matters as may be from time to time hereafter specifically requested by the Town Council, the Historic Landmarks Commission shall make and recommend to Town Council a comprehensive plan to protect and foster the preservation and rehabilitation of historic edifices, and to insure the growth of the community commensurate with its historic significance.

131.16 Parliamentary procedure.

The Historic Landmarks Commission shall adopt such rules and hold such meetings as shall be necessary or convenient for the transaction of its business under established rules of parliamentary procedure.

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ARTICLE 133 Planning Commission

- 133.01** Creation; objectives.
- 133.02** Membership and term of service; removal from office.
- 133.03** Regular and special meetings.
- 133.04** Quorum.
- 133.05** Offices and expenses.
- 133.06** Election of officers.
- 133.07** Powers and authority.
- 133.08** Comprehensive plan.
- 133.09** Jurisdiction.
- 133.10** Enforcement.

CROSS REFERENCES

Authority to establish—see WV Code 8-2-1
General provisions—see WV Code 8A-2-3 *et seq.*
Adoption of comprehensive plan—see WV Code 8A-3
Approval of subdivision plats—see WV Code 8A-5-1 *et seq.*
Zoning recommendations—see WV Code 8A-8-1 *et seq.*
Historic Landmarks Commission—see Ord. Art. 131

133.01 Creation; objectives.

- (a) There is hereby created, in the Corporation of Harpers Ferry, the Harpers Ferry Planning Commission. The purposes of the Planning Commission are to:
 - (1) Promote the orderly development of the Town and its environs;
 - (2) Preserve, protect and foster the rehabilitation of historic properties within the Town;
 - (3) Provide healthy surroundings for family life;
 - (4) Plan areas so that adequate light, air, convenience of access, and safety from fire, flood and other dangers may be secured, that congestion in the public streets may be lessened or avoided, and that the public health, safety, comfort, morals, convenience and general public welfare may be promoted;
 - (5) Ensure that growth of the community is balanced with its historic significance;
 - (6) Ensure that growth is environmentally sound;
 - (7) Encourage conservation of natural resources;
 - (8) Guide growth of the community in accordance with the Harpers Ferry Comprehensive Plan;
 - (9) Make recommendations for capital improvements in accordance with the Harpers Ferry Comprehensive Plan;
 - (10) Review proposed development for consistency with building ordinances and guidelines; and
 - (11) For such other objectives as set forth in West Virginia Code 8A-2.
- (b) In accomplishing this objective, the Planning Commission shall serve only in an advisory capacity to the Town Council, unless otherwise provided for by the codified ordinances of Harpers Ferry or pursuant to State law. (Ord. 2014-07, passed 01-05-2015; Ord. 2015-12, passed 01-11-2016.)

HISTORY:

Ord. 2014-07 (passed 01-05-2015, effective 02-16-2015) superseded Ord. 77-3 (passed 12-12-1977; amended 04-11-2005, 12-11-2006 and 02-14-2011) to bring the structure and function of the Planning Commission into compliance with current WV Code.

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133.02 Membership and term of service; removal from office.

(a) Membership and term of service.

- (1) The Planning Commission shall have seven members, at least five of whom shall have been residents of the Town for at least three years before the commencement of their service. One member must be a member of the Town Council or its designee, and one member must be a member of the administrative office of the Mayor or the Mayor's designee. The terms of membership for these two members are the same as their terms of office. All confirmed members shall have the right to vote on issues before the Planning Commission.
- (2) The remaining members of the Planning Commission first selected shall serve respectively for one year, two years, and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall be selected for terms of three years each.
- (3) Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made.
- (4) All members shall be residents of the Corporation of Harpers Ferry.
- (5) Nominations for Planning Commission membership shall be appointed and confirmed by the Town Council.
- (6) Members shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(b) Removal from office. Members of the Planning Commission may be removed in accordance with the provisions of Ordinance Article 130. ^[133.02]

133.03 Regular and special meetings.

- (a) The Planning Commission shall fix the time for holding regular meetings, but shall meet at least once in the months of January, April, July, and October.
- (b) Special meetings of the Planning Commission may be called by the president or by at least two members upon written request to the president. Whether called by the president or by two or more members, the president shall send to all of the members, at least two days in advance of a special meeting, a written notice fixing the date, time, and place of the meeting. Public notice must be posted at least two days in advance of a special meeting. Notice of a special meeting is not required if the date, time, and place of a special meeting were set in a regular meeting.

133.04 Quorum.

The Planning Commission must have a quorum to conduct a meeting. A majority of appointed and serving members of the Planning Commission shall constitute a quorum. No action of the Planning Commission shall be official, unless authorized by a majority of members present at a regular or properly called special meeting.

133.05 Offices and expenses.

The Town Council shall provide the Planning Commission with suitable offices for the holding of meetings and preservation of plans, maps, documents, and accounts, and shall provide this by appropriating a sum sufficient to defray the reasonable expense of the Planning Commission. The Planning Commission is authorized to accept gifts, funds and donations

FOOTNOTES:

- 133.02 Ord. 2015-09 (passed 11-09-2015) added subsection (b), concerning removal from office. Ord. 2021-03 (passed 11-18-2021) amended subsection (a) to bring it into compliance with WV Code § 8A-2-3. (See also WV Code §§ 8-3A-1 and 8-3-2.)

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which will be deposited with the Town Council in a special non-reverting Planning Commission fund to be available for expenditures by the Planning Commission for the purpose designated by the donor.

133.06 Election of officers.

At its first regular meeting in each calendar year the Planning Commission shall elect from its members a president, vice-president, and secretary. The vice president shall have the power and authority to act as president of the Planning Commission during the absence or disability of the president.

133.07 Powers and authority.

The Planning Commission shall have the power, authority and duty to:

- (a) Exercise general supervision for the administration of the affairs of the Planning Commission;
- (b) Prescribe uniform rules and regulations pertaining to administration, investigations and hearings; provided, that the rules and regulations are adopted by the Town Council;
- (c) Supervise the fiscal affairs and responsibilities of the Planning Commission;
- (d) With consent from the Town Council, prescribe the qualifications of, appoint and remove employees necessary to carry out the duties and responsibility of the Planning Commission; provided, that the Town Council sets the salaries;
- (e) Keep an accurate and complete record of Planning Commission proceedings;
- (f) Record and file all bonds and contracts;
- (g) Assume responsibility for the custody and preservation of all papers and documents of the Planning Commission;
- (h) Make an annual report to the Town Council concerning the operation of the Planning Commission and the status of planning within its jurisdiction;
- (i) Prepare, publish, and distribute reports, ordinances and other material relating to the activities authorized under this article;
- (j) Adopt a seal, and certify all official acts;
- (k) Invoke any legal, equitable, or special remedy for the enforcement of the provisions of this article or any ordinance, rule, and regulation or any action taken thereunder;
- (l) Prepare an annual budget and submit it to Town Council at the beginning of the year. The Planning Commission shall be limited in all expenditures to the provisions made therefore by Town Council;
- (m) If necessary, establish an advisory committee or committees;
- (n) Delegate to a committee composed of one or more members of the Planning Commission the power to hold any public hearings or conferences required or permitted under this article to be held by the Planning Commission. A written record of the substance of the hearing or conference shall be made and preserved with the records of the Planning Commission. The committee shall have the authority only to conduct the hearing and report to the Planning Commission;
- (o) Contract for special or temporary services and professional counsel with the approval of the Town Council. Upon request, a county prosecuting attorney, the county surveyor, the county engineer or any other county employee may render assistance and service to the Planning Commission without compensation;
- (p) Approve a minor subdivision or land development application within the Town;
- (q) Exempt an application for a minor subdivision or land development within the Town; and
- (r) Approve a major subdivision or land development application within the Town. ^[133.07]

FOOTNOTES:

133.07 Ord. 2023-01 (passed 03-13-2023) amended this section to comply with WV Code § 8A-2-11.

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133.08 Comprehensive plan.

In addition to such other matters that the Town Council may direct, the Planning Commission shall make and recommend to the Town Council a comprehensive plan as described in West Virginia Code 8A-3.

133.09 Jurisdiction.

The jurisdiction of the Planning Commission shall not extend beyond the corporate limits of the Town.

133.10 Enforcement.

- (a) To enforce any provision of the Zoning Ordinance, decision of the Ordinance Compliance Officer, Planning Commission or order or ruling of the Board of Zoning Appeals the Town may:
 - (1) Enforce penalties to the extent permitted under West Virginia law for failure of any person to comply with the provisions of any ordinance or rule or regulation adopted under the provisions of West Virginia Code 8A; and
 - (2) Declare that any buildings erected, raised or converted, or land or premises uses in violation of any provision of any ordinance or rule or regulation adopted under the authority of West Virginia Code 8A shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.
- (b) The Planning Commission, Board of Zoning Appeals or the Ordinance Compliance Officer may seek an injunction in the Circuit Court of Jefferson County to restrain a person or unit of government from violating the provisions of any ordinance or rule or regulation under its jurisdiction or to direct a person or unit of government to remove a structure erected in violation of the provisions of any ordinance or rule or regulation under its jurisdiction. If the Planning Commission, Board of Zoning Appeals or the Ordinance Compliance Officer is successful in any such action in which an injunction is issued the respondent shall bear the costs of the action.
- (c) The Planning Commission, Board of Zoning Appeals or the Ordinance Compliance Officer may seek an injunction in the Circuit Court of Jefferson County to direct a person or persons or any government with jurisdiction and power to remove a structure erected in violation of the provisions of any ordinance or rule or regulation under its jurisdiction. If the Planning Commission, Board of Zoning Appeals or the Ordinance Compliance Officer is successful in any such action in which an injunction is issued the respondent shall bear the costs of the action.

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ARTICLE 134 Board of Zoning Appeals

- 134.01 Establishment; objectives.**
- 134.02 Membership and term of service; removal from office.**
- 134.03 Alternate members.**
- 134.04 Meetings.**
- 134.05 Quorum.**
- 134.06 Office and expenses.**
- 134.07 Election of officers.**
- 134.08 Powers, duties and authority.**

CROSS REFERENCES

Board of Zoning Appeals—see WV Code 8A-8-1 *et seq.*

Appeals to the Board of Zoning Appeals—see Ord. Art. 1328

134.01 Establishment; objectives.

For the purpose of hearing and determining appeals and reviewing any order, requirements, decisions or determination made by an administrative official or board charged with the enforcement of any Ordinance or Rule and Regulation regarding zoning within the incorporated areas of the Town, a Board of Zoning Appeals is hereby created, consisting of 5 members appointed by the Town Council. ^[134.01]

134.02 Membership and term of service; removal from office.

- (a) The members of the Board shall be residents of the Town for at least three years preceding his or her appointment; cannot be a member of the Planning Commission; cannot hold any other elective or appointive office in the Town government. Members of the Board and alternates shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (b) Upon creation of the Board, its members shall be appointed for the following terms: two for a term of one year, two for a term of 2 years, and one for a term of 3 years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be a term of 3 years.
- (c) If a vacancy occurs, by resignation or otherwise among the members of the board, the Town Council shall appoint a member for the unexpired term.
- (d) Members of the Board of Zoning Appeals may be removed in accordance with the provisions of Ordinance Article 130. ^[134.02]

134.03 Alternate members.

- (a) The Town Council may appoint up to three additional members to serve as alternate members of the Board of Zoning Appeals.
- (b) The alternate members must meet the same eligibility requirements as regular

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) created this article, which was recodified as Article 134 by Town Council action on 02-09-2015.

FOOTNOTES:

- 134.01 Ord. 2021-04 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-1.
- 134.02 Ord. 2015-09 (passed 11-09-2015) added subsection (d), concerning removal from office.

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members and will serve a three-year term, although the Town Council may appoint alternate members on a staggered term schedule.

- (c) An alternate member shall serve on the board when one of the regular members is unable to serve and shall serve until a final determination is made in the matter to which the alternate member was initially called to serve.
- (d) An alternate member shall have the same powers and duties of a regular board member.
- (e) The Town Council may remove an alternate member of the Board to meet the requirements of Article 134.01(a) above or when the scope of Board responsibilities changes substantially or for cause such as inactivity, neglect of duty, or malfeasance. The reason(s) for removal must be provided to the person being removed in a written statement of the reason(s) for removal and the person must be given an opportunity to be heard on the matter.

134.04 Meetings.

- (a) The Board of Zoning Appeals shall meet quarterly and may meet more frequently at the written request of the chairperson or by two or more members.
- (b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.
- (c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

134.05 Quorum.

The Board of Zoning Appeals must have a quorum to conduct a meeting. Three members is a quorum. No action of a Board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

134.06 Office and expenses.

The Town Council shall provide the Board of Zoning Appeals with:

- (a) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and
- (b) Appropriate money to defray the reasonable expenses of the board.

134.07 Election of officers.

At its first regular meeting each calendar year, the Board of Zoning Appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

134.08 Powers, duties and authority.

The Board of Zoning Appeals has the following powers and duties:

- (a) Hear, review and determine appeals from an order, requirement, decision or determination made by the Planning Commission or an administrative official charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;
- (b) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
- (c) Hear and decide conditional uses of the zoning ordinance upon which the Board is

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- required to act under the zoning ordinance;
- (d) Authorize, upon appeal in specific cases, a variance to the zoning ordinance;
- (e) Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or the Planning Commission from which the appeal was taken;
- (f) Adopt rules and regulations concerning:
 - (1) The filing of appeals, including the process and forms for the appeal;
 - (2) Applications for variances and conditional uses;
 - (3) The giving of notice; and
 - (4) The conduct of hearings necessary to carry out the Board's duties under the terms of this article.
- (g) Keep minutes of its proceedings;
- (h) Keep an accurate and complete audio record of all the Board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within 24 hours of demand, for three years;
- (i) Record the vote on all actions taken;
- (j) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the Board and shall be public records;
- (k) With consent from the Town Council, hire employees and consultants necessary to carry out the duties and responsibilities of the Board provided that the Town Council sets the compensation; and
- (l) Supervise the fiscal affairs and responsibilities of the board. ^[134.08]

FOOTNOTES:

134.08 Ord. 2021-04 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-9.

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ARTICLE 135 Library Board of Directors

- 135.01 Public library established.**
- 135.02 Library Commission.**
- 135.03 Powers and duties.**
- 135.04 Annual report.**
- 135.05 Board a legal entity.**
- 135.06 Fees; charges.**
- 135.07 Cooperation with Jefferson County Court.**
- 135.08 Cooperation with the State Library Commission.**

CROSS REFERENCES

Authority to establish library – see WV Code 8-12-5(38)
Public libraries – see WV Code 10-1

135.01 Public library established.

The Town of Harpers Ferry, in cooperation with the Town of Bolivar, hereby establishes a public library to be known as the Public Library, which shall be free for the use of all persons living within Jefferson County, West Virginia. (Passed 10-11-1976)

135.02 Library Commission.

The operation of the library shall be under the authority and jurisdiction of a board of directors who shall be known as the Public Library Commission. Such directors shall be chosen from the citizens at large, two from Harpers Ferry, two from the Town of Bolivar and one appointed by the County Court of the outlying Election District not a resident of either Town, with reference to their fitness for such office. Their term of office shall be for a term of five years from the first day of January following their appointment, and until their successors are appointed and qualified; provided, however, that upon their first appointment under this section a proportionate number shall be appointed for one year, for two years, for three years, for four years and for five years; after which all appointments shall be for terms of five years. Vacancies in the Board shall be immediately reported by the Board to the Town Councils and filled by appointment in like manner, and if an unexpired term, for the remainder of the term only. The director may be removed for just cause in the manner provided by the by-laws of the Library Board. No compensation shall be paid or allowed any director. (Passed 10-11-1976. Amended 1-14-2008.)

135.03 Powers and duties.

The Board of Directors of the Public Library established or maintained under this article shall:

- (a) Immediately after appointment, meet and organize by electing one member as President and one as Secretary, and such other officers as may be necessary. All officers shall hold office for one year and shall be eligible for reelection.
- (b) Adopt such by-laws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all its property belonging thereto as may not be inconsistent with the provisions of this article.
- (c) Supervise the expenditure of all money credited to the Library Fund. All money appropriated or collected for Public Library purposes shall be deposited as the Library's Board of Directors shall direct and be disbursed by the officer designated by that Board, such officer before entering upon his duties to give bond payable to and in

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an amount fixed by the Board of Directors of the Library, conditioned for the faithful discharge of his official duties. The cost of such bond shall be paid from the Library Fund. The books, records and accounts of the Library Board shall be subject to audit and examination by the office of the State Tax Commissioner of West Virginia.

- (d) Lease or purchase and occupy suitable quarters, or erect upon ground secured through gift or purchase, an appropriate building for the use of such Library; and have supervision, care and custody of the grounds, rooms or buildings constructed, leased, or set apart for Library purposes.
- (e) Employ a head librarian and upon his recommendation employ such other assistants as may be necessary for the efficient operation of the Library. (Passed 10-11-1976.)

135.04 Annual report.

The Board of Directors shall make an annual report for the fiscal year ending December 31, to the governing authority or authorities appointing it, stating the conditions of the Library property, the various sums of the money was expended, the number of books and periodicals on hand, the number of registered users of such library, with other statistics, information and suggestions as may be deemed of general interest. A copy of this report shall be sent to the West Virginia Library Commission. (Passed 10-11-1976.)

135.05 Board a legal entity.

- (a) The Board of Directors of the Public Library shall be sued, plead and be impleaded, and shall have and use a common seal.
- (b) The title to all bequests or donations of cash or other personal property or real estate for the benefit of such Library shall be vested in the Board of Directors to be held in trust and controlled by such Board according to the terms and for the purposes set forth in the deed, gift, devise or bequest; or donation or cash or other personal property or real estate for the benefit of such Library shall have the right and privilege to vest the title thereto to a Trustee, or Trustees, of his own selection, and to provide for the selection of successor Trustees, and to designate the manner in which fund or property shall be invested and used. (Passed 10-11-1976.)

135.06 Fees; charges.

The Board of Directors of the Library established or maintained under this article may fix, establish, and collect such reasonable fees, service and rental charges as may be appropriate; may assess fines, penalties, damages, or replacement cost for the loss or, injury to, or failure to return any Library property or material; and may sell surplus, duplicated, obsolete, or other unwanted materials or equipment belonging to the Library. All moneys received from these and other sources in the Library shall be deposited in the Library Fund and shall be disbursed by the Board of Directors in the manner prescribed elsewhere in this article. (Passed 10-11-1976.)

135.07 Cooperation with Jefferson County Court.

The Public Library Commission shall have the right to cooperate with the Jefferson County Court in the Establishment of branch Libraries within the county and to offer free use of the Library to persons in Jefferson County and to receive funds from the Jefferson County Court for such purposes. (Passed 10-11-1976.)

135.08 Cooperation with the State Library Commission.

The Public Library Commission shall have the right and power to cooperate with the West Virginia Library Commission. (Passed 10-11-1976.)

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ARTICLE 137 Human Rights Commission

- 137.01 Title.**
- 137.02 Declaration of policy.**
- 137.03 Definitions.**
- 137.04 Human Rights Commission.**
- 137.05 Unlawful discriminatory practices.**
- 137.06 Complaint and hearing procedures; issuance of cease and desist order; judicial review.**
- 137.07 Fair housing.**
- 137.08 Exemptions.**
- 137.99 Penalty.**

CROSS REFERENCES

Human Rights Act—see WV Code 5-11

Authority to prohibit housing discrimination—see WV Code 8-12-9

See footnote for history.

137.01 Title.

This ordinance shall be known, and may be cited and referred to, as the *Harpers Ferry Human Rights Ordinance*. (Ord. 2013-03, passed 03-11-2013.)

137.02 Declaration of policy.

Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human and civil right of all persons without regard to race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information. Equal opportunity in the sale, lease, rental and financing of housing accommodations is hereby declared to be a human and civil right of all persons without regard to race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information.

The denial of these rights of properly qualified persons is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society. (Ord. 2013-03, passed 03-11-2013.)

137.03 Definitions.

When used in this ordinance:

- (a) “Age” means 40 years of age or more.
- (b) For the purpose of this article, a person is considered blind only if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his or her visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.
- (c) “Chair” means the Chair of the Harpers Ferry Human Rights Commission.
- (d) “Commission” means the Harpers Ferry Human Rights Commission.
- (e) “Corporation” means the Corporation of Harpers Ferry.

FOOTNOTE:

Ordinance 2013-03 (“The Harpers Ferry Human Rights Ordinance”, passed 11 March 2013) replaced Ordinance 79-4 (“Human Relations Commission”, passed 28 February 1979) in its entirety.

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- (f) “Disability” means:
- (1) A mental or physical impairment which substantially limits one or more of such person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
 - (2) A record of such impairment; or
 - (3) Being regarded as having such an impairment.

For the purposes of this article, "disability" does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

- (g) “Discriminate” or “discrimination” means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information, and includes to “separate” or “segregate”.
- (h) “Employee” includes any individual employed by his parents, spouse or child, or in the domestic service of any person.
- (i) “Employer” means any person or business employing 12 or more persons within the Corporation and includes an agent of such person, and its agencies; provided, that such term shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.
- (j) “Employment agency” includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business is not deemed to be an employment agency.
- (k) “Familial status” means one or more individuals (who have not attained the age of 18 years) being domiciled with:
- (1) A parent or another person having legal custody of such individual or individuals; or
 - (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

- (l) “Genetic information” includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e., family medical history).
- (m) “Housing accommodations” means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article applies to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented.
- (n) “Labor organization” includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in

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- relation to employment.
- (o) "Mayor" means the mayor of the Corporation of Harpers Ferry.
 - (p) "Owner" includes the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the Corporation or any agent of any of these.
 - (q) "Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.
 - (r) "Place of public accommodations" means any establishment or person, as defined herein, including the Corporation and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are in their nature private.
 - (s) "Purchaser" includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.
 - (t) "Real estate broker" includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business is not deemed to be a real estate broker.
 - (u) "Real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell real estate, or any parts thereof, in lots or other parcels.
 - (v) "Real property" includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended.
 - (w) "Rooming house" means a house or building where there is one or more bedrooms

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which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

- (x) "Sexual orientation" means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, appearance, or behavior of an individual, with or without regard to the individual's assigned sex at birth.
- (y) "Unlawful discriminatory practices" includes only those practices specified in Section 137.05.
- (z) "Veteran" means any person who has served in the active duty of any branch of the Armed Forces of the United States for a period of at least 180 consecutive days of peacetime service, or a period of at least 90 consecutive days, at least one day of which is during wartime, and who was released under a condition other than dishonorable. Active duty service shall not include active duty for basic training, advanced individual training or equivalent. It is not necessary that an individual completed the minimum service for wartime or peacetime if he or she was awarded the Purple Heart or suffered a service-connected disability as noted in the individual's discharge certificate. (Ord. 2013-03, passed 03-11-2013.)

137.04 Human Rights Commission.

- (a) Establishment. There is hereby established the Harpers Ferry Human Rights Commission. The Commission shall be vested with the power and authority, and shall perform the functions and services, as prescribed in this Ordinance and as otherwise provided by law. In connection therewith, the Commission may promulgate and issue regulations.
- (b) Objectives. The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the Corporation. The Commission shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information, and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, color, ancestry, national origin, religion, creed, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information.
- (c) Composition and appointment. The Commission shall be composed of three members, all residents of the Corporation and broadly representative of the groups protected by this Ordinance, to be appointed by the Town Council, provided that in the event that any vacancy on the Commission is not filled by the Town Council within 90 days of the occurrence thereof, the Mayor shall, within 60 days, take such action as is necessary to fill such vacancy. No member shall hold office in any political party.
- (d) Term of office. Members of the Commission shall be appointed for terms of three years, commencing on the first day of January of the year of their appointments, except that one member first appointed hereunder shall be appointed until the 30th day of the following December, one until the 30th day of the second December, and one until the 30th day of the third December, so that the term of one member shall expire on the 30th day of December of each year. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Each member shall be eligible for reappointment at the expiration of his or her term.
- (e) Compensation. No member of the Commission shall receive any salary or compensation for his or her services as such, except that reasonable and necessary expenses previously approved by Town Council incurred by Commission members in

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- connection with their duties may be reimbursed upon presentation of evidence thereof.
- (f) Office and expenses. The Town Council shall provide the Human Rights Commission with suitable offices for the holding of meetings, and shall have plenary power and authority to appropriate funds for expenditure by the Commission to accomplish the purposes of this Ordinance.
 - (g) Election of officers. At its first regular meeting in each calendar year, the Commission shall elect from its voting members a chairperson and a secretary.
 - (h) Operation. The secretary shall keep a written record of the Commission's proceedings. All three Commission members shall be present for the transaction of business. The Commission shall meet as often as is deemed necessary by its members. Meetings may be called by the Mayor or the chairperson, but not less than seven calendar days after such call to meet. All meetings must comply with the Open Governmental Proceedings Act.
 - (i) Assistance to Commission; legal services. The Town Attorney is authorized to assist the commission in the investigation and prosecution of claims, to recommend the appointment of retained legal counsel and / or investigators to prosecute claims or provide advice and guidance to the Commission, and to recommend the appointment of independent hearing examiners or counsel, all of which as may be necessary and proper. The Commission, through the Mayor or the Town Council, may also request other officers or departments of the Corporation to assist in the hearing of complaints before the Commission and any other activity under this article which is reasonable and necessary.
 - (j) Procedure for discrimination complaints. The Mayor is authorized to receive complaints alleging discrimination in employment or places of public accommodations because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness or disability, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information. The Mayor shall promptly forward the complaints to the chairperson of the Commission for handling as authorized by this Ordinance. The Mayor shall also promptly forward a copy of all complaints to the Town Attorney.
 - (k) Powers; functions; services. The Human Rights Commission is authorized and empowered to:
 - (1) Cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this Corporation;
 - (2) Enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the Corporation in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and people;
 - (3) Refer to the West Virginia Human Rights Commission for its handling and adjudication all complaints alleging discrimination in employment or places of public accommodations, because of race, color, ancestry, national origin, religion, creed, age, sex, blindness or disability, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, color, ancestry, national origin, religion, creed, age, sex, blindness, disability or familial status;

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- (4) Investigate and adjudicate all complaints filed within the Corporation alleging discrimination in employment or places of public accommodations, because of sexual orientation, veteran status or genetic information, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of sexual orientation, veteran status or genetic information;
- (5) Request, as authorized by this Ordinance, that the Town Attorney assist the Commission in the investigation and prosecution of claims, recommend the appointment of retained legal counsel and / or investigators to prosecute claims or provide advice and guidance to the Commission, and recommend the appointment of independent hearing examiners or counsel, all of which as may be necessary and proper;
- (6) Hold and conduct public or private hearings on complaints, matters and questions properly before the Commission, so long as consistent with state law and as authorized by this Ordinance, relating to discrimination in employment or places of public accommodations, because of sexual orientation, veteran status or genetic information, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of sexual orientation, veteran status or genetic information. The Commission may in furtherance of the objectives, functions and services contemplated by the provisions of this Ordinance:
 - A. Issue cease and desist orders against any person or business found, after a public or private hearing, to have violated the provisions of this Ordinance or the rules and regulations of the Commission;
 - B. Apply to the Circuit Court of Jefferson County to issue subpoenas and subpoenas duces tecum upon the concurrence all three members of the Commission, and administer oaths and take the testimony of any person under oath;
 - C. Furnish copies of hearing records to parties involved therein upon their payment of the reasonable costs thereof to the Corporation;
 - D. Apply to any court of competent jurisdiction, or any federal, state or local agency, for injunctive or other relief, on behalf of the Corporation, in any matters falling within the scope of the Commission's functions, upon the concurrence of all three members of the Commission.
- (7) Recommend to the Mayor and Town Council policies, procedures, practices and legislation in matters and questions affecting human relations;
- (8) To prepare a written report of its work, functions and services for each year ending on the 31st day of December and to deliver the report to the Mayor and Town Council on or before the 31st day of January thereafter;
- (9) Request, as authorized by this Ordinance, that the office of the Mayor receive complaints alleging discrimination in employment or places of public accommodations, because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property, because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information, and to promptly forward the complaints to the Chair of the Commission and to the Town Attorney for handling as authorized by this Ordinance;

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- (10) Promulgate administrative rules and regulations implementing the powers and authority hereby vested in the Commission, including, but not limited to, such rules governing the filing, investigation and adjudication of all complaints, alternative dispute resolution methods, hearings, appeals, final order and certifications;
- (11) Do all other acts and deeds necessary and proper to carry out and accomplish effectively the objectives, functions and services contemplated by the provisions of this Ordinance;
- (12) Seek and enlist the cooperation of private, charitable, religious, labor and civic and benevolent organizations for the purposes of this section;
- (13) Issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination; however, the identities of the parties involved shall not be disclosed. (Ord. 2013-03, passed 03-11-2013.)

137.05 Unlawful discriminatory practices.

It is an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States, the State of West Virginia or the Corporation of Harpers Ferry:

- (a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information, if the individual is able and competent to perform the services required; provided, that it is not an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection (a);
- (b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to:
 - (1) Elicit any information, or make or keep a record of, or use any form of application or application blank containing questions or entries concerning the race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information of any applicant for employment or membership, except for such forms which are kept separate from the application blanks for the administration of any bona fide affirmative action plan, that is in accordance with any federal or state statute, or rule or regulation issued by any agency of the federal or state government, or for the purpose of making reports required by agencies of the federal or state governments;
 - (2) Print or publish, or cause to be printed or published, any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information; or
 - (3) Deny or limit, through a quota system, employment or membership because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information.
- (c) For any labor organization, because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information of any individual, to deny full and equal membership rights to any individual

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or otherwise to discriminate against such individual with respect to hire, tenure, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

- (d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:
 - (1) Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review;
 - (2) Discriminate against any individual with respect to his or her right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;
 - (3) Discriminate against any individual in his or her pursuit of such programs, or to discriminate against such a person in the terms, conditions or privileges of such program;
 - (4) Print or circulate, or cause to be printed or circulated, any statement, advertisement or publication, or to use any form of application for such programs, or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification.
- (e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information.
- (f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:
 - (1) Refuse, withhold from or deny to any individual because of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;
 - (2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of such place are refused, withheld from or denied to any individual on account of race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information, or that the patronage or custom thereof of any individual belonging to or purporting to be of any race, color, ancestry, national origin, religion, creed, age, sex or sexual orientation, or who is a veteran, blind or disabled is unwelcome, objectionable, not acceptable, undesired or not solicited.
- (g) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:
 - (1) Engage in any form of threats or reprisal, or to engage in, hire or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss, or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this Ordinance;
 - (2) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the Commission or any of its members or representatives in the performance of duty under this Ordinance;

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- (3) Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this Ordinance, or because he or she has filed a complaint, testified or assisted in any proceeding under this Ordinance. (Ord. 2013-03, passed 03-11-2013.)

137.06 Complaint and hearing procedures; issuance of cease and desist order; judicial review.

- (a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the Commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission's rules and regulations. The Commission, upon its own initiative, shall, in like manner, make, sign and file such complaint. The Commission or the complainant shall have the power reasonably fairly to amend any complaint, and the respondent shall have like power to amend his or her answer. However, the Commission shall not accept a complaint from any person who has filed a complaint directly with the West Virginia Human Rights Commission with respect to the same grievance. Any complaint filed pursuant to this Ordinance must be filed within 90 days after the alleged act of discrimination.
- (b) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith. In connection with such investigation, the Chair of the Commission, the Town Attorney or other legal counsel acting on behalf of and with the authorization of the Commission shall have authority to apply to the Circuit Court of Jefferson County, West Virginia to issue subpoenas and subpoenas duces tecum upon the concurrence of a majority of the members of the Commission.
- (c) If it is determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination; and the complainant or his or her attorney may, within ten days after such service, file with the Commission a written request for a meeting with the Commission to show probable cause for substantiating the allegations of the complaint. If after such hearing the Commission or its representative(s) determine(s) that there is no basis for the allegations, the complaint shall be dismissed. If it is determined after such investigation or meeting that probable cause does exist for substantiating the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference and persuasion. The members of the Commission shall not disclose what has transpired in the course of such endeavors; provided, that the Commission may publish or release the terms of settlement when the complaint has been settled.
- (d) If the Commission, in its discretion, finds it is not feasible to eliminate such unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as originally filed or as the same may have been amended by the Commission, requiring the party named in such complaint, hereinafter referred to as the respondent, to answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice; provided, however, that such notice shall be served at least ten days prior to the time set for the hearing. The Commission may designate one or more of its members to

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- preside at such meeting, or it may at its election conduct such hearing en banc.
- (e) The case in support of the complaint shall be presented to the Commission by its attorney or by a member of its staff. The respondent may file a written, verified answer to the complaint and may appear at such hearing in person, with or without counsel, and submit testimony and evidence. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and shall be transcribed.
 - (f) If upon all the evidence at the hearing the Commission shall find that the respondent has been or is engaged in any unlawful practice, the Commission shall state its findings of fact, and shall issue and caused to be served on the respondent an order requiring the respondent to cease and desist from such unlawful practice or practices, and to take such affirmative action, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property denied in violation of this Ordinance, which in the judgment of the Commission will effectuate the purpose of this Ordinance, and including a requirement for report by the respondent of the manner of compliance, payment of expenses and lost wages of any witness called by the complainant or Commission, payment to the complainant of any reasonable attorney fees, expert witness fees, and legal costs, and payment to the Commission of its costs in conducting the hearing; and any other legal or equitable relief as the Commission deems appropriate. Such order shall be accompanied by findings of fact and conclusions of law as specified in West Virginia Code §29A-5-3.
 - (g) If upon all the evidence the Commission shall find that the respondent has not engaged in any unlawful practice, the Commission shall state its findings of fact and shall dismiss the complaint. Notice of such action shall be given to the complainant and respondent.
 - (h) In the event any person fails to obey a lawful cease and desist order of the Commission, the Commission may seek an order of a court of competent jurisdiction for its enforcement in a proceeding as provided in this Ordinance. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the entire record of the hearing before the Commission. Notice of the filing of such petition, together with a copy thereof, shall be served upon the respondent in the manner provided by law for the service of summons in civil actions. No hearing shall be held on such petition within 20 days of the date of service thereof on the respondent. The court may grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. All such proceedings shall be heard and determined by the court.
 - (i) Judicial review of a final decision of the Commission shall be by a certiorari as set forth in West Virginia Code §§ 53-3-1 through 53-3-6, or in such other manner as may be allowed under the laws of this state. (Ord. 2013-03, passed 03-11-2013.)

137.07 Fair housing.

- (a) The Corporation of Harpers Ferry hereby adopts by reference West Virginia Code Article 5-11A, "The West Virginia Fair Housing Act", as presently and as the same may

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be amended from time to time hereafter, and incorporates it completely as if set out in full, subject to the particular additions, deletions and amendments set forth in this Ordinance.

(b) The following amendments and deletions to West Virginia Code Article 5-11A, "The West Virginia Fair Housing Act", are adopted for use within the Corporation of Harpers Ferry:

- (1) WV Code Article 5-11A is amended throughout by striking out the words "West Virginia Fair Housing Act" and inserting in lieu thereof the words "Harpers Ferry Fair Housing Ordinance".
- (2) WV Code Article 5-11A is amended throughout by striking out the words "Attorney General" and inserting in lieu thereof the words "Town Attorney".
- (3) WV Code Article 5-11A is amended throughout by striking out the words "Administrative Law Judge" and inserting in lieu thereof the words "Hearing Examiner".
- (4) WV Code §5-11A-2 is amended by striking out the entire section and inserting in lieu thereof the following:

Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human and civil right of all persons without regard to race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability or genetic information. Equal opportunity in the sale, lease, rental and financing of housing accommodations is hereby declared to be a human and civil right of all persons without regard to race, color, ancestry, national origin, religion, creed, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information.

The denial of these rights of properly qualified persons is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

- (5) WV Code §5-11A-9 is amended in the second paragraph, line 7, following the words "held in the", by striking out the word "county" and inserting in lieu thereof the words "Corporation of Harpers Ferry".
- (6) WV Code §5-11A-12 is amended by striking out the first paragraph and inserting in lieu thereof the following:

The Commission may request the Circuit Court of Jefferson County to issue subpoenas and order discovery in aid of investigations and hearings under this chapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Circuit Court of Jefferson County.

- (7) WV Code §5-11A-17 is amended following the words "published in the" by striking out the words "state register" and inserting in lieu thereof the words "Harpers Ferry Town Hall".
- (8) WV Code §5-11A-20 is amended in the last sentence by striking out the following:

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The commission shall comply with article three, chapter twenty-nine-a of this code when promulgating rules.

(Ord. 2013-03, passed 03-11-2013.)

137.08 Exemptions.

Nothing in this Ordinance bars any religious or denominational institution or organization, or other entity which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination, or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained, as long as such selection or preference is not on the basis of race, color, ancestry, national origin, age, sex, sexual orientation, veteran status, blindness, disability, familial status or genetic information. (Ord. 2013-03, passed 03-11-2013.)

137.99 Penalty.

- (a) In the event a respondent refuses or fails to comply with any order of the Commission or violates any of the provisions of this Ordinance, the Commission shall certify the case and the entire record of its proceedings to the Town Attorney, who may certify the case and record to an appropriate court and seek enforcement or compliance with the order of the Commission. If an appeal has been made by the respondent, the Town Attorney may move to consolidate the appeal and enforcement proceedings.
- (b) In addition to the remedies provided in subsection (a) hereof, the Town Attorney is authorized in an appropriate action to seek imposition by the appropriate court of the penalties set forth in subsection (c).
- (c) Any person who willfully resists, prevents, impedes or interferes with the Commission, its members, agents or agencies in the performance of duties pursuant to this Ordinance, or who violates any order of the Commission, is subject to a penalty of five-hundred dollars (\$500.00), or imprisonment for a period not exceeding 30 days, or both, in addition to such order or decree that may be issued by any court; but, seeking judicial review of an order is not deemed to be such willful conduct. (Ord. 2013-03, passed 03-11-2013.)

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ARTICLE 138 Building Commission

138.01 Building Commission established.

CROSS REFERENCES

Authority to establish—see WV Code 8-33

138.01 Building Commission established.

Pursuant to West Virginia Code 8-33, there is hereby established and created a Municipal Building Commission for the Corporation of Harpers Ferry, to be known and designated as the Harpers Ferry Building Commission, with all the powers and duties as provided therein. (Ord. 06-09, passed 10-9-2006.)

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ARTICLE 139 Employment Provisions

139.01 Social Security.

CROSS REFERENCES

Compensation of officers and employees – see WV Code 8-5-12

Conflict of interest – see WV Code 8-5-19

Bonds – see WV Code 8-12-5(46), (47); 6-2-11

Reimbursement of employment applicant – see WV Code 8-12-5(53)

Employee benefit fund – see WV Code 8-12-5(55)

Insurance and indemnification – see WV Code 8-12-7 *et seq.*

Retirement benefits – see WV Code 8-22

139.01 Social Security.

Pursuant to an ordinance passed October 11, 1965, the Town shall provide for social security for the employees of the Town of Harpers Ferry pursuant to the provisions of the West Virginia Code.

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ARTICLE 140 Parks and Recreation Commission

- 140.01** Creation; objectives.
- 140.02** Membership and terms of service.
- 140.03** Regular and special meetings.
- 140.04** Quorum.
- 140.05** Office and expenses.
- 140.06** Election of officers.
- 140.07** Bond of officers.
- 140.08** Annual report.
- 140.09** Powers and authority.

CROSS REFERENCES

Authority to establish – see WV Code 8-21-1
General provisions – see WV Code 8-21-2 *et seq.*
Powers – see WV Code 8-21-7 *et seq.*
Financing – see WV Code 8-21-11 *et seq.*

140.01 Creation; objectives.

There is hereby created in the Corporation of Harpers Ferry, the Harpers Ferry Parks and Recreation Commission, for the purpose of establishing, improving, developing, administering, operating and maintaining the Town's parks and recreational activities.

140.02 Membership and terms of service.

The Parks and Recreation Commission shall have five members, all of whom shall be residents of Harpers Ferry and shall be nominated and confirmed by the Town Council. The members of the Commission serve terms of three years, staggered and divided as equally as possible among terms. Vacancies shall be filled for the unexpired term only, in the same manner as original selections are made. Members shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. ^[140.02]

140.03 Regular and special meetings.

- (a) The Commission shall fix the time for holding regular meetings, but it shall meet at least once a month.
- (b) Special meetings of the Commission may be called by the Chairman or by one member upon written request to the Secretary-Treasurer. Whether called by the Chairman or by a member, the Secretary-Treasurer shall send to each member, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written of a special meeting, is not required if the date, time and place of a special meeting have been fixed in a regular meeting, or if all the members are present at the special meeting.

140.04 Quorum.

A majority of the members of the Commission shall constitute a quorum. No action of the

HISTORY:

Ord. 95-3 (passed 12-11-1995) established the Parks and Recreation Commission.

FOOTNOTES:

140.02 Ord. 2023-03 (passed 03-13-2023) increased the membership of the Parks and Recreation Commission from three to five.

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Commission shall be official, however, unless authorized by a majority of all of the members of the Commission at a regular or properly called special meeting.

140.05 Office and expenses.

The Town Council shall provide the Commission with suitable office space for the holding of meetings and the storage of records, documents and accounts.

140.06 Election of officers.

At its first regular meeting in each year, the Commission shall elect from its members a Chairman, Vice-Chairman and Secretary-Treasurer. The Vice-chairman shall have the power and authority to act as the Chairman of the Commission during the absence or disability of the Chairman.

140.07 Bond of officers.

Before acting, the Chairman, Vice-Chairman and the Secretary-Treasurer shall execute an official bond conditioned upon such officer's accountability for the funds of the Commission, with proper surety thereon to be approved by the Town Council, and filed with the Secretary thereof.

140.08 Annual report.

The Commission shall make an annual report to include financial information, signed by the members, at the conclusion of each calendar year for submission to the Mayor and Town Council concerning the operation of the Commission.

140.09 Powers and authority.

The commission shall have the power, authority and duty to:

- (a) Exercise general supervision of and make rules and regulations for the administration of the affairs of the Commission;
- (b) Prepare and submit to the Mayor and Town Council for adoption, rules and regulations regulating the use of any parks and recreational properties and facilities under the control of the Commission and to carry out such regulations as may be adopted;
- (c) Prepare and submit to the Mayor and Town Council for adoption plans and specifications for improving, developing, operating and maintaining the Town's parks and recreation activities;
- (d) Supervise the fiscal affairs and responsibilities of the Commission, to also include acceptance of funds donated by individuals and local community organizations;
- (e) Conduct fund raising activities, the proceeds from which shall be used for improving, developing, administering, operating and maintaining the Town's park and recreational facilities;
- (f) Cooperate with individuals and local community organizations offering donations of equipment and services; and
- (g) Keep accurate and complete records of all the Commission's proceedings and actions.

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CHAPTER SEVEN – Judicial.

Article 171. Municipal Court.

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ARTICLE 171 Municipal Court

171.01 Established.

171.02 Contempt of Municipal Court.

CROSS REFERENCES

Establishment – see WV Code 8-10-2

General rights of appeal – see WV Code 8-24-1

Cost for crime victims reparation fund – see WV Code 14-2A-4

Cost for funding law enforcement training academies – see WV Code 30-29-4

171.01 Established.

As of the enactment date of this section the entire judicial authority granted to the Mayor of Harpers Ferry by the laws of West Virginia, and in particular by Section One of Article Ten of Chapter Eight as amended, shall be exercised by the Municipal Court of Harpers Ferry in accordance with the provisions set forth as follows:

- (a) Council shall appoint by resolution and shall fix the compensation in like manner, in accordance with whatever terms and conditions are considered necessary, one or more persons to sit as Judge(s) of the Municipal Court.
- (b) Any person so appointed shall serve as Judge at the pleasure of Council or until such person shall resign.
- (c) Any person so appointed as Judge shall have the same jurisdiction and judicial powers as that granted to the Mayor of Harpers Ferry by the laws of West Virginia, in particular by Section One of Article Ten of Chapter Eight of the West Virginia Code as amended.
- (d) Pursuant to WV Code 8-10-2 and 8-12-2(a)(11), the Municipal Court shall assess a court cost of \$50.00 in addition to all other fines levied for any infraction or conviction.
- (e) The Municipal Court shall convene for the purpose of hearing cases brought by the Corporation of Harpers Ferry at least once per month, and as often as required additionally for providing prompt judicial remedies and speedy trial. ^[171.01]

171.02 Contempt of Municipal Court.

If any person by threats, force or otherwise, intimidates or impedes, or attempts to intimidate or impede the judge of the Municipal Court, or any witness in the discharge of his duty as such, or by any means obstructs or impedes, or attempts to obstruct or impede, the administration of justice in the Court, he shall be guilty of a misdemeanor, and, upon conviction thereof, may be fined not more than two hundred dollars (\$200.00). ^[171.02]

HISTORY:

- 171.01 Ordinance 2017-02 (passed 08 May 2017) abolished the Police Court Fund. Previous versions: Ordinance 2013-11 (passed 11 November 2013), Ordinance 96-1 (passed 11 March 1996), Ordinance 80-3 (passed 16 June 1980).
- 171.02 Ordinance 2013-11 (passed 11 November 2013). Previous versions: Ordinance 96-1 (passed 11 March 1996), Ordinance 80-3 (passed 16 June 1980).

PART THREE — TRAFFIC CODE

PART THREE — TRAFFIC CODE

CHAPTER ONE – Traffic.
CHAPTER THREE – Parking.

PART THREE — TRAFFIC CODE

CHAPTER ONE – Traffic.

- Article 301. Meaning of Words and Phrases; Definitions.
- Article 302. Administration.
- Article 303. Traffic Control Devices.
- Article 304. Accidents.
- Article 305. Driving Under the Influence; Reckless Driving.
- Article 306. Speed Restrictions.
- Article 307. Driving on Right; Passing.
- Article 308. Turning; Starting; Signals.
- Article 309. Right of Way.
- Article 310. Grade Crossings; Special Stops.
- Article 311. Safety and Equipment.
- Article 312. Vehicle Weights, Loads and Towing.
- Article 313. Restrictions on Vehicle Operations.
- Article 314. Vehicle Registration; Driver's License.
- Article 315. Commercial Driver's License.
- Article 316. All-Terrain Vehicles.
- Article 317. Pedestrians.
- Article 318. Bicycles.
- Article 319. Motorcycles.

PART THREE — TRAFFIC CODE

ARTICLE 301

Meaning of Words and Phrases; Definitions

301.01	Meaning of words and phrases.
301.02	Authorized emergency vehicle.
301.03	Bicycle.
301.04	Bus.
301.05	Business district.
301.06	Controlled-access highway.
301.07	Crosswalk.
301.08	Driver.
301.081	Driveway.
301.082	Electric personal assistive mobility device.
301.09	Explosives.
301.10	Flammable liquid.
301.11	Gross weight.
301.12	Intersection.
301.13	Laned roadway.
301.14	Moped.
301.15	Motorcycle.
301.16	Motor-driven cycle.
301.17	Motor vehicle.
301.18	Owner.
301.182	Paper street.
301.19	Park.
301.20	Parking area.
301.201	Passenger van.
301.21	Pedestrian.
301.22	Person.
301.23	Pole trailer.
301.24	Police officer.
301.25	Private road or driveway; private property.
301.26	Railroad.
301.27	Railroad sign or signal.
301.28	Railroad train.
301.29	Residence district.
301.30	Residential street.
301.31	Right of way.
301.311	Right of way width.
301.32	Roadway.
301.321	Road; public road; highway.
301.33	Safety zone.
301.34	School bus.
301.35	School grounds.
301.36	Semi-trailer.
301.37	Sidewalk.
301.38	Stop.
301.39	Stop, stopping or standing.
301.40	Street or highway; alley.

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- 301.401** Street lawn.
- 301.41** Through street or through highway.
- 301.42** Traffic.
- 301.43** Traffic control devices.
- 301.44** Traffic control signal.
- 301.45** Trailer.
- 301.46** Truck.
- 301.47** Vehicle.
- 301.48** Wheelchair.

CROSS REFERENCES

See sectional histories for similar State law.

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. (WV Code 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. (WV Code 17C-1-6. Amended 02-11-2013.)

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. (WV Code 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. (WV Code 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. (WV Code 17C-1-45.)

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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. (WV Code 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. (WV Code 17C-1-43.)

301.08 Driver.

“Driver” means every person who drives or is in actual physical control of a vehicle. (WV Code 17C-1-31.)

301.081 Driveway access.

“Driveway access” means a portion of a public street or of the full width right of way which provides an unobstructed passage from the roadway to a private road and / or an off street area used for parking motor vehicles. (Ord. 2013-01, passed 02-11-2013.)

301.082 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. (WV Code 17C-1-66. Ord. 2013-01, passed 02-11-2013.)

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 combustive 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 destroying life or limb. (WV Code 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 closed-cup test device. (WV Code 17C-1-25.)

301.11 Gross weight.

“Gross weight” means the weight of a vehicle without load plus the weight of any load thereon. (WV Code 17C-1-26.)

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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. (WV Code 17C-1-42. Amended 02-11-2013.)

301.13 Laned roadway.

“Laned roadway” means a roadway which is divided into two or more clearly marked lanes for vehicular traffic. (WV Code 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. (WV Code 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. (WV Code 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. (WV Code 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. (WV Code 17C-1-3. Amended 02-11-2013.)

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

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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. (WV Code 17C-1-32.)

301.182 Paper street.

"Paper street" means a public right-of-way platted as a street on the Howell Brown map of Harpers Ferry dated 26 April 1869 which has not been subsequently improved by the Town for vehicular access, nor has been ceded to the US Government as part of the National Park. (Ord. 2013-01, passed 02-11-2013.)

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. (WV Code 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. (WV Code 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. (WV Code 17C-1-64. Ord. 2013-01, passed 02-11-2013.)

301.21 Pedestrian.

"Pedestrian" means any person afoot or any person using a wheelchair. (WV Code 17C-1-30. Ord. 2013-01, passed 02-11-2013.)

301.22 Person.

"Person" means every natural person, firm, copartnership, association or corporation. (WV Code 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. (WV Code 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. (WV Code 17C-1-33.)

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301.25 Private road or driveway; private property.

- (a) "Private road" or "private 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. (WV Code 17C-1-36.)

301.26 Railroad.

"Railroad" means a carrier of persons or property, upon cars, other than streetcars, operated upon stationary rails. (WV Code 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. (WV Code 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. (WV Code 17C-1-22. Amended 02-11-2013.)

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. (WV Code 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. (WV Code 17C-1-62.)

301.31 Right of way.

"Right of way" means the privilege of the immediate use of the street or highway. (WV Code 17C-1-51.)

301.311 Right of way width.

"Right of way width" means the full width of the street or highway between the adjacent boundary lines of every public way as shown on survey maps including the roadway and adjoining public property. (WV Code 17-1-3. Ord. 2013-01, passed 02-11-2013.)

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. (WV Code 17C-1-37.)

301.321 Road; public road; highway.

The words or terms "road", "public road", or "highway" shall be deemed to include, but shall not be limited to, the right-of-way, roadbed and all necessary culverts, sluices, drains, ditches,

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waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway shall be taken to include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law. Any road shall be conclusively presumed to have been established when it has been used by the public for a period of ten years or more, and public monies or labor has been expended thereon, whether there be any record of its conveyance, dedication or appropriation to public use or not. For those roads established by ten or more years of use and in the absence of any other mark or record, the center of the traveled way shall be taken as the center of the road and the right-of-way shall be designated therefrom an equal distance on each side, but a road may be constructed on any part of the located right-of-way when it is deemed advisable so to do. (WV Code 17-1-3. Ord. 2013-01, passed 02-11-2013.)

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. (WV Code 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. (WV Code 17C-1-7. Amended 02-11-2013.)

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. (WV Code 17C-1-55.)

301.36 Semi-trailer.

“Semi-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 some part of its weight and that of its load rests upon or is carried by another vehicle. (WV Code 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. (WV Code 17C-1-38.)

301.38 Stop.

“Stop”, when required, means complete cessation from movement. (WV Code 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. (WV Code 17C-1-53.)

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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. (WV Code 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.

301.401 Street lawn.

"Street lawn" means the strip of grass or plants between the roadway or curb and the boundary of a road. (Ord. 2013-01, passed 02-11-2013.)

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. (WV Code 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. (WV Code 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. (WV Code 17C-1-47.)

301.44 Traffic control signal.

"Traffic control signal" means any device, weather manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed. (WV Code 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. (WV Code 17C-1-15.)

301.46 Truck.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property. (WV Code 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. (WV Code C17-1-2. Amended 02-11-2013.)

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301.48 Wheelchair.

“Wheelchair” means a motorized or non-motorized wheeled device designed for, and used by, a person with disabilities, that is incapable of a speed in excess of eight miles per hour. (WV Code 17C-1-65. Ord. 2013-01, passed 02-11-2013.)

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Article 302 Administration

- 302.01 Authority of police and fire department officials.**
- 302.011 Authority of Chief of Police.**
- 302.012 Powers of Mayor during an emergency.**
- 302.02 Application to vehicles upon streets and highways; exceptions.**
- 302.03 Obedience to police officers; fleeing.**
- 302.04 Application to government vehicles; exceptions.**
- 302.05 Authorized emergency vehicles.**
- 302.06 Application to persons riding animals or driving animal-drawn vehicles.**
- 302.07 Impounding of vehicles; redemption.**
- 302.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

See footnotes for section history.

Disposition of abandoned vehicles—see WV Code 17-24-5 *et seq.*

Uniform application of West Virginia traffic law—see WV Code 17C-2-7

Power of local authorities—see WV Code 17C-2-8

302.01 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 the Corporation and all of the State vehicle laws applicable to street traffic in the Corporation.
- (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. (Ord. 2013-01, passed 02-11-2013.) ^[302.01]

302.011 Authority of Chief of Police.

In regulating traffic and the use of the streets, avenues, alleys and public thoroughfares of the Corporation by motor vehicles, the Chief of Police, with the approval of the Mayor and Town Council, is hereby authorized to use such signs or devices upon such streets as he may deem necessary. The failure to comply with any such sign, device or instructions so displayed shall be in violation of this section. (Ord. 2013-01, passed 02-11-2013.) ^[302.011]

302.012 Powers of Mayor during an emergency.

During any emergency declared by proclamation of the Mayor, the Mayor is given express power to regulate traffic on or over any streets, alleys, roads, avenues, or driveways within the Corporation. No person shall violate any regulation prescribed by the Mayor under this section. (Passed 05-11-1981. Ord. 2013-01, passed 02-11-2013.) ^[302.012]

FOOTNOTES:

302.01 This section was previously codified as 303.01.

302.011 This section was previously codified as 305.02.

302.012 This section was previously codified as 305.01.

PART THREE — TRAFFIC CODE

302.02 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 312 shall apply upon streets and highways as defined in Section 314.06. (WV Code 17C-2-1. Ord. 2013-01, passed 02-11-2013.) ^[302.02]

302.03 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. (WV Code 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. (Ord. 2013-01, passed 02-11-2013.) ^[302.03]

302.04 Application to government vehicles; exceptions.

- (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. (WV Code 17C-2-4. Ord. 2013-01, passed 02-11-2013.) ^[302.04]

302.05 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 311.18 which is visible under normal atmospheric conditions from a distance of 500 feet to the front of such

FOOTNOTES:

- 302.02 This section was previously codified as 303.02.
- 302.03 This section was previously codified as 303.03.
- 302.04 This section was previously codified as 303.04.

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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. (WV Code 17C-2-5. Ord. 2013-01, passed 02-11-2013.)^[302.05]

302.06 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. (WV Code 17C-2-6. Ord. 2013-01, passed 02-11-2013.)^[302.06]

302.07 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, snow removal operations, fuel delivery, trash removal or emergency vehicles.
- (b) When any vehicle has been abandoned or junked on private or public property as provided in West Virginia Code Article 17-24A. For definitions of abandoned and junked vehicles, see section 320.07.
- (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 and the current lawfully required inspection sticker.
- (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 an accident 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 violation 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) here of shall be disposed of as provided under West Virginia Code Article 17-24A. 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,

FOOTNOTES:

302.05 This section was previously codified as 303.05.

302.06 This section was previously codified as 303.06.

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reasons therefore 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 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. (Ord. 2013-01, passed 02-11-2013.) ^[302.07]

302.99 Penalty.

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). (Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

302.07 This section was previously codified as 303.07.

Appendix Ord. 2018-01 (passed 04-09-2018) removed the Appendix to Part Three at the request of the municipal judge, noting that the bonds and fines listed in the Appendix were incorrect when compared to other sections of the Codified Ordinances and West Virginia Code.

PART THREE — TRAFFIC CODE

ARTICLE 303 Traffic Control Devices

- 303.01** Obedience to traffic control devices.
- 303.02** Obedience to traffic control instructions at street construction.
- 303.03** Traffic control signal terms and lights.
- 303.04** Pedestrian control signals.
- 303.05** Flashing traffic signals.
- 303.06** Unauthorized signs and signals, hiding from view, advertising.
- 303.07** Alteration, injury, removal of traffic control devices.
- 303.08** Traffic violations in construction zones.
- 303.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to place traffic control devices – see WV Code 17C-2-8(a)(2), 17C-3-3

Placing traffic control devices on State highways – see WV Code 17C-2-8(b), 17C-3-2

Local regulations requiring traffic control devices – see WV Code 17C-2-8(c)

Traffic violations in construction zones—see WV Code 17C-3-4b

Traffic control devices defined – see Ord. 301.43

Traffic control signal defined – see Ord. 301.44

303.01 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. (WV Code 17C-3-4. Ord. 2013-01, passed 02-11-2013.) ^[303.01]

303.02 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. (WV Code 17C-3-4a. Ord. 2013-01, passed 02-11-2013.) ^[303.02]

303.03 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:

FOOTNOTES:

303.01 This section was previously codified as 313.01.

303.02 This section was previously codified as 313.02.

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- (a) Green alone or “go”:
 - (1) Vehicular traffic facing the signal, except when prohibited under Section 310.02, 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

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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. (WV Code 17C-3-5. Ord. 2013-01, passed 02-11-2013.) ^[303.03]

303.04 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 crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing. (WV Code 17C-3-6. Ord. 2013-01, passed 02-11-2013.) ^[303.04]

303.05 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. (WV Code 17C-3-7. Ord. 2013-01, passed 02-11-2013.) ^[303.05]

303.06 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. (WV Code 17C-3-8. Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

- 303.03 This section was previously codified as 313.03.
- 303.04 This section was previously codified as 313.04.
- 303.05 This section was previously codified as 313.05.

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[303.06]

303.07 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. (WV Code 17C-3-9. Ord. 2013-01, passed 02-11-2013.) ^[303.07]

303.08 Traffic violations in construction zones.

- (a) At each and every location where street or highway construction work is to be conducted a sign shall be posted at least 1,000 feet from the construction site, or as close to 1,000 feet from the construction site as is practicable given the location of the site when workers are present, notifying all motorists as to the speed limit and displaying the words "construction work".
- (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. (WV Code 17C-3-4b. Ord. 2013-01, passed 02-11-2013.) ^[303.08]

303.99 Penalty.

(EDITOR'S NOTE: See Section 302.99 for general Traffic Code penalty if no specific penalty is provided.)

- (a) General penalty. Whoever violates Section 303.01, 303.02 or 303.04 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 303.08 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 303.08 by fifteen miles per hour or more shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both.

FOOTNOTES:

- 303.06 This section was previously codified as 313.06.
- 303.07 This section was previously codified as 313.07.
- 303.08 This section was previously codified as 335.06.

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ARTICLE 304 Accidents

- 304.01** Immediate reports of accidents.
- 304.02** When driver unable to report.
- 304.03** Garages to report bullet damage.
- 304.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to require local accident report – see WV Code 17C-4-15

304.01 Immediate reports of accidents.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars (\$500.00) or more shall immediately by the quickest means of communication, whether oral or written, give notice of such accident to the Police Department. (WV Code 17C-4-6. Ord. 2013-01, passed 02-11-2013.) ^[304.01]

304.02 When driver unable to report.

Whenever the driver of a vehicle is physically incapable of making an immediate report of an accident as required in Section 304.06 and there was another occupant in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made such report not made by the driver. (WV Code 17C-4-8. Ord. 2013-01, passed 02-11-2013.) ^[304.02]

304.03 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. (WV Code 17C-4-8. Ord. 2013-01, passed 02-11-2013.) ^[304.03]

304.99 Penalty.

(EDITOR'S NOTE: See Section 302.99 for general Traffic Code penalty.)

Any person violating the provisions of Section 304.01 after being involved in an accident resulting in physical injury but not death to any person shall be imprisoned for not more than thirty days, or fined not more than one thousand dollars (\$1,000) or both. (WV Code 17C-4-1. Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

- 304.01 This section was previously codified as 331.06.
- 304.02 This section was previously codified as 331.07.
- 304.03 This section was previously codified as 331.08.

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ARTICLE 305

Driving Under the Influence; Reckless Driving

305.01 Driving under the influence.

305.02 Reckless driving.

305.03 Hazardous driving.

305.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to prohibit driving under the influence – see WV Code 8-12-5(21)

Compliance with State law – see WV Code 17C-5-11a

Implied consent – see WV Code 17C-5

305.01 Driving under the influence.

(a) Any person who:

- (1) Drives a vehicle in this Corporation 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;
 - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent (0.08%) 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, upon conviction thereof, shall be confined in jail for not less than thirty days nor more than one year and shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).

(b) Any person who:

- (1) Drives a vehicle in this Corporation 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 (0.08%) 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, upon conviction thereof, shall be confined in jail for not less than one day nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000).

(c) Any person who:

- (1) Drives a vehicle in this Corporation while he or she:
 - A. Is under the influence of alcohol;
 - B. Is under the influence of any controlled substance;

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- 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 (0.08%) or more, by weight, but less than fifteen hundredths of one percent (0.15%), by weight; and
- (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for up to thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (d) Any person who drives a vehicle in this State while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent (0.15%) or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this State is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than thirty days, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). A person sentenced pursuant to this subdivision shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.
- (f) Any person who:
- (1) Knowingly permits his or her vehicle to be driven in this Corporation 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;
 - E. Has an alcohol concentration in his or her blood of eight hundredths of one percent (0.08%) or more, by weight; and
 - (2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (g) Any person who knowingly permits his or her vehicle to be driven in this Corporation by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than thirty days and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (h) Any person under the age of twenty-one years who drives a vehicle in this Corporation while he or she has an alcohol concentration in his or her blood of two hundredths of one percent (0.02%) or more, by Weight, but less than eight hundredths of one percent (0.08%), by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor

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more than one hundred dollars (\$100). For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). 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 in WV 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) or 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 Corporation 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 (0.08%) 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 is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than thirty days, which jail term is to include actual confinement of not less than forty-eight hours and shall be fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000).

- (j) 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 period 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.
- (k) The fact that any person charged with a violation of subsection (a), (b), (c), (d), (e) or (f) of this section, or any person permitted to drive as described under subsection (g) or (h) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section.
- (l) For purposes of this section, the term "controlled substance" has the meaning ascribed to it in West Virginia Code Chapter 60A.
- (m) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation; provided, that the court may apply the provisions of West Virginia Code article eleven-a, chapter sixty-two to a

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person sentenced or committed to a term of one year or less for a first offense under this section. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense; provided, however, that for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two of WV Code; provided further, that for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than ten days of the total period of home confinement ordered and the offender may not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two of WV Code.

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 formal adjudication of the charges for the alleged previous offense. In such 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.

- (n) For purposes of this section, the phrase “in this Corporation” means anywhere within the physical boundaries of the Corporation of Harpers Ferry, 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.
- (o) 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.
- (p) 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 (o) hereof, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against him. (WV Code 17C-5-2, 17C-5-2a. Ord. 2013-01, passed 02-11-2013.) ^[305.01]

305.02 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 Corporation's 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 Corporation within the park and recreation system for exclusive use by motorcycles or other recreational vehicles. (WV Code 17C-5-3)

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- (c) Every person convicted of reckless driving may be punished upon a first conviction by imprisonment for a period of not less than five days nor more than thirty days, or by a fine of not more than five hundred dollars (\$500.00), or by both such fine and imprisonment, and on a second or subsequent conviction may be punished by imprisonment for not less than ten days nor more than thirty days, or by a fine of not more than one thousand dollars (\$1,000.00), or by both such fine and imprisonment. (Ord. 2013-01, passed 02-11-2013.) ^[305.02]

305.03 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.

305.99 Penalty.

- (a) Whoever violates Section 305.02 shall for a first offense be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or imprisoned not less than five nor more than thirty days; for a second or subsequent offense shall be fined not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000), or imprisoned not less than ten nor more than thirty days, or both.
- (b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of Section 305.02 who in doing so proximately causes another to suffer serious bodily injury shall be confined in jail not less than ten days nor more than thirty days or 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. (Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

- 305.01 This section was previously codified as 333.01.
305.02 This section was previously codified as 333.02.
305.03 This section was previously codified as 333.03.
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ARTICLE 306 Speed Restrictions

- 306.01 Maximum speed limits.**
- 306.02 Slow speed.**
- 306.03 Special speed limitations.**
- 306.04 Racing on streets and highways prohibited.**
- 306.05 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Authority to regulate speed – see WV Code 17C-2-8, 17C-6-3

Minimum speed regulations – see WV Code 17C-6-3(a)

Special speed limitations – see WV Code 17C-6-4 *et seq.*

306.01 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) Ten miles per hour on Potomac Street.
 - (3) Twenty-five miles per hour in any other business or residential district.
 - (4) Fifty-five miles per hour on open country streets and highways, except as otherwise provided by this article.
 - (5) Forty-five miles per hour on US Highway 340, from the southern end of the Shenandoah River Bridge to the Harpers Ferry town limit just before Union Street.
- The speed 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.

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- (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. (WV Code 17C-6-1. Ord. 2018-02, passed 09-10-2018.) ^[306.01]

306.02 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. (WV Code 17C-6-3a[a]. Ord. 2013-01, passed 02-11-2013.) ^[306.02]

306.03 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) Forty miles per hour on open country highway;
 - (4) Trucks licensed at 8,000 pounds gross vehicle weight or less shall be permitted the same speed as passenger cars. (WV Code 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. (WV Code 17C-6-5. Ord. 2013-01, passed 02-11-2013.) ^[306.03]

306.04 Racing on streets and highways prohibited.

- (a) 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 Corporation. For the purposes of this section, "speed race" means:
- (1) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or
 - (2) The operation of a motor vehicle in speed acceleration competition against time; or
 - (3) The operation of a motor vehicle in speed competition with another motor vehicle or motor vehicles where the speed exceeds the lawful speed limit. (WV Code 17C-6-8 (a).)
- (b) Any person who violates the provisions of subsection (a) hereof shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), and for a second offense by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for not less than six days nor more than thirty days, or by both. (Ord. 2013-01, passed 02-11-2013.) ^[306.04]

FOOTNOTES:

- 306.01 This section was previously codified as 335.01 (Ord. 1984-4, passed 10-08-1984). Amended and recodified by Ord. 2013-01, passed 02-11-2013.
- 306.02 This section was previously codified as 335.02.
- 306.03 This section was previously codified as 335.03.
- 306.04 This section was previously codified as 335.04.
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306.99 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 306.01 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).
 - (2) Any person who violates the provisions of Section 306.01(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 306.01(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). (WV Code 17C-6-1.)
- (c) Street racing. Whoever violates Section 306.04 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), or by imprisonment for not less than six days nor more than thirty days, or both; 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), or by imprisonment for not more than thirty days or both. 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 306.04 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 314.10 shall be applicable. (WV Code 17C-6-8. Ord. 2013-01, passed 02-11-2013.)

PART THREE — TRAFFIC CODE

ARTICLE 307 Driving on Right; Passing

- 307.01 Driving on right side of roadway; exceptions.
- 307.02 Passing to right when proceeding in opposite directions.
- 307.03 Overtaking, passing to left; driver's duties.
- 307.04 Overtaking, passing upon right.
- 307.05 Overtaking, passing to left of center.
- 307.06 Additional restrictions on driving upon left side of roadway.
- 307.07 Hazardous or no-passing zones.
- 307.08 One-way roadways and rotary traffic islands.
- 307.09 Driving in marked lanes or continuous lines of traffic.
- 307.10 Following too closely.
- 307.11 Driving upon divided roadways.
- 307.12 Entering and exiting controlled-access highway.
- 307.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to establish one-way streets – see WV Code 17C-2-8(4)

307.01 Driving on 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. (WV Code 17C-7-1. Ord. 2013-01, passed 02-11-2013.) ^[307.01]

307.02 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. (WV Code 17C-7-2. Ord. 2013-01, passed 02-11-2013.) ^[307.02]

307.03 Overtaking, passing to left; driver's duties.

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

FOOTNOTES:

307.01 This section was previously codified as 337.01.

307.02 This section was previously codified as 337.02.

PART THREE — TRAFFIC CODE

- (a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.
- (b) 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 shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle. (WV Code 17C-7-3. Ord. 2013-01, passed 02-11-2013.) ^[307.03]

307.04 Overtaking, 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. (WV Code 17C-7-4. Ord. 2013-01, passed 02-11-2013.) ^[307.04]

307.05 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. (WV Code 17C-7-5. Ord. 2013-01, passed 02-11-2013.) ^[307.05]

307.06 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. (WV Code 17C-7-6. Ord. 2013-01, passed 02-11-2013.) ^[307.06]

FOOTNOTES:

- 307.03 This section was previously codified as 337.03.
- 307.04 This section was previously codified as 337.04.
- 307.05 This section was previously codified as 337.05.

PART THREE — TRAFFIC CODE

307.07 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. (WV Code 17C-7-7. Ord. 2013-01, passed 02-11-2013.) ^[307.07]

307.08 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. (WV Code 17C-7-8[b-c]. Ord. 2013-01, passed 02-11-2013.) ^[307.08]

307.09 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. (WV Code 17C-7-9. Ord. 2013-01, passed 02-11-2013.) ^[307.09]

307.10 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 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

FOOTNOTES:

- 307.06 This section was previously codified as 337.06.
- 307.07 This section was previously codified as 337.07.
- 307.08 This section was previously codified as 337.08.
- 307.09 This section was previously codified as 337.09.

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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. (WV Code 17C-17-10. Ord. 2013-01, passed 02-11-2013.) ^[307.10]

307.11 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. (WV Code 17C-7-11. Ord. 2013-01, passed 02-11-2013.) ^[307.11]

307.12 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. (WV Code 17C-7-12. Ord. 2013-01, passed 02-11-2013.) ^[307.12]

307.99 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). (Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

307.10	This section was previously codified as 337.10.
307.11	This section was previously codified as 337.11.
307.12	This section was previously codified as 337.12.
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PART THREE — TRAFFIC CODE

ARTICLE 308 Turning; Starting; Signals

- 308.01** **Conformity with provisions required.**
- 308.02** **Right turns.**
- 308.03** **Left turns on two-way roadways.**
- 308.04** **Left turns on other than two-way roadways.**
- 308.05** **Specified turns at intersections.**
- 308.06** **U-turns prohibited.**
- 308.07** **Starting vehicle.**
- 308.08** **Signals before changing course, turning or stopping.**
- 308.09** **Signals to be given by hand and arm or signal device.**
- 308.10** **Hand and arm signals.**
- 308.99** **Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Authority to regulate the turning of vehicles—see WV Code 17C-2-8(a)(9)

Authority to specify different courses for turns—see WV Code 17C-8-5

308.01 Conformity with provisions required.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article. (WV Code 17C-8-1. Ord. 2013-01, passed 02-11-2013.) ^[308.01]

308.02 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. (WV Code 17C-8-2. Ord. 2013-01, passed 02-11-2013.) ^[308.02]

308.03 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. (WV Code 17C-8-3. Ord. 2013-01, passed 02-11-2013.) ^[308.03]

308.04 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. (WV Code 17C-8-4. Ord.

FOOTNOTES:

308.01 This section was previously codified as 339.01.

308.02 This section was previously codified as 339.02.

308.03 This section was previously codified as 339.03.

PART THREE — TRAFFIC CODE

2013-01, passed 02-11-2013.) ^[308.04]

308.05 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. (WV Code 17C-8-5. Ord. 2013-01, passed 02-11-2013.) ^[308.05]

308.06 U-turns prohibited.

- (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. (WV Code 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. (Ord. 2013-01, passed 02-11-2013.) ^[308.06]

308.07 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. (WV Code 17C-8-7. Ord. 2013-01, passed 02-11-2013.) ^[308.07]

308.08 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 308.02 to 308.05, 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 such movement may affect turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic.
- (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. (WV Code 17C-8-8. Ord. 2013-01, passed 02-11-2013.) ^[308.08]

308.09 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

FOOTNOTES:

- 308.04 This section was previously codified as 339.04.
- 308.05 This section was previously codified as 339.05.
- 308.06 This section was previously codified as 339.06.
- 308.07 This section was previously codified as 339.07.

PART THREE — TRAFFIC CODE

of such vehicle then such signals must be given by such a lamp or lamps or signal device. (WV Code 17C-8-9. Ord. 2013-01, passed 02-11-2013.) ^[308.09]

308.10 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. (WV Code 17C-8-10. Ord. 2013-01, passed 02-11-2013.) ^[308.10]

308.99 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).

FOOTNOTES:

- 308.08 This section was previously codified as 339.08.
- 308.09 This section was previously codified as 339.09.
- 308.10 This section was previously codified as 339.10.

PART THREE — TRAFFIC CODE

ARTICLE 309 Right of Way

- 309.01** Right of way at intersections.
- 309.02** Right of way when turning left.
- 309.03** Right of way at through street or highway or stop intersections.
- 309.04** Driving onto roadway from private road or driveway; duty to yield.
- 309.05** Right of way of emergency vehicle.
- 309.06** Turning into private driveway, alley or building.
- 309.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to designate through streets and stop intersections—see WV Code 17C-2-8(a)(6), 17C-12-5

309.01 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. (WV Code 17C-9-1. Ord. 2013-01, passed 02-11-2013.) ^[309.01]

309.02 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. (WV Code 17C-9-2. Ord. 2013-01, passed 02-11-2013.) ^[309.02]

309.03 Right of way at through street or highway or stop intersections.

- (a) The driver of a vehicle shall stop as required by Section 310.05 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. (WV Code 17C-9-3. Ord. 2013-01, passed 02-11-2013.) ^[309.03]

FOOTNOTES:

309.01 This section was previously codified as 341.01.

309.02 This section was previously codified as 341.02.

PART THREE — TRAFFIC CODE

309.04 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. (WV Code 17C-9-4. Ord. 2013-01, passed 02-11-2013.) ^[309.04]

309.05 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 311.18, 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. (WV Code 17C-9-5. Ord. 2013-01, passed 02-11-2013.) ^[309.05]

309.06 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.
- (d) 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 or driveway or building. (Ord. 2013-01, passed 02-11-2013.) ^[309.06]

309.99 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). (WV Code 17C-9-6. Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

- 309.03 This section was previously codified as 341.03.
- 309.04 This section was previously codified as 341.04.
- 309.05 This section was previously codified as 341.05.
- 309.06 This section was previously codified as 341.06.

PART THREE — TRAFFIC CODE

ARTICLE 310 Grade Crossings; Special Stops

- 310.01 Driving across grade crossing.
- 310.02 Stop at dangerous grade crossing.
- 310.03 Stopping at grade crossing.
- 310.04 Moving heavy equipment across grade crossings.
- 310.05 Through streets and stop intersections.
- 310.06 Driving onto roadway from place other than roadway; stopping at sidewalk.
- 310.07 Stopping for school bus; signs and warning lights; sale of school bus.
- 310.08 Stopping for passenger van; signs and warning lights.
- 310.09 Obstructing intersection or crosswalk.
- 310.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to designate through streets and stop intersections – see WV Code 17C-2-8(a)(6), 17C-12-5

310.01 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 close. (WV Code 17C-12-1. Ord. 2013-01, passed 02-11-2013.) ^[310.01]

310.02 Stop at dangerous grade crossing.

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. (WV Code 17C-12-2. Ord. 2013-01, passed 02-11-2013.) ^[310.02]

310.03 Stopping at grade crossing.

FOOTNOTES:

310.01 This section was previously codified as 343.01.

PART THREE — TRAFFIC CODE

- (a) Except as provided in subsection (g) 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.
- (b) 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.
- (c) 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).
- (d) 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.
- (e) 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.
- (f) 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.
- (g) No stop need be made at:
 - (1) Any crossing where a police officer, crossing flamer 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

FOOTNOTES:

310.02 This section was previously codified as 343.02.

PART THREE — TRAFFIC CODE

- 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.
- (h) 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. (WV Code 17C-12-3. Ord. 2013-01, passed 02-11-2013.) ^[310.03]

310.04 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. (WV Code 17C-12-4. Ord. 2013-01, passed 02-11-2013.) ^[310.04]

310.05 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. (WV Code 17C-12-5. Ord. 2013-01, passed 02-11-2013.) ^[310.05]

FOOTNOTES:

- 310.03 This section was previously codified as 343.03.
310.04 This section was previously codified as 343.04.

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310.06 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. (WV Code 17C-12-6. Ord. 2013-01, passed 02-11-2013.) ^[310.06]

310.07 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. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of this subsection shall be subject to the penalty provided for a violation of this subsection provided, however, that such conviction shall not subject such owner or lessee to farther administrative or other penalties for such offense, notwithstanding other provisions of the West Virginia Code or this Traffic Code to the contrary.
- (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. (WV Code 17C-12-7. Ord. 2013-01, passed 02-11-2013.) ^[310.07]

310.08 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).

FOOTNOTES:

- 310.05 This section was previously codified as 343.05.
310.06 This section was previously codified as 343.06.
310.07 This section was previously codified as 343.07.
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- (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. (WV Code 17C-12-7a. Ord. 2013-01, passed 02-11-2013.)

310.09 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. (Ord. 2013-01, passed 02-11-2013.) ^[310.09]

310.99 Penalty.

- (a) Driving onto roadway from place other than roadway. Whoever violates Section 310.06 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 or passenger van. Any driver acting in violation of Section 310.07(a) or 310.08(b) shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), or imprisoned not more than thirty days, or both. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of Section 310.07(a) or 310.08(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. (Ord. 2013-01, passed 02-11-2013.)

FOOTNOTES:

310.09 This section was previously codified as 343.08.

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ARTICLE 311 Safety and Equipment

- 311.01 Driving unsafe vehicles; application; farm and road equipment exceptions.**
- 311.02 When lighted lights required.**
- 311.03 Measurements of distances and heights.**
- 311.04 Headlights on motor vehicles and motorcycles.**
- 311.05 Tail light; illumination of rear license plate.**
- 311.06 Red light or flag on extended loads.**
- 311.07 Lights on parked or stopped vehicles.**
- 311.08 Lights on slow-moving vehicles.**
- 311.09 Spotlights and auxiliary lights.**
- 311.10 Signal lamps and signal devices.**
- 311.11 Cowl, fender and back-up lights; flashing hazard lights.**
- 311.12 Multiple-beam road lighting equipment requirements.**
- 311.13 Use of headlight beams.**
- 311.14 Single-beam road-lighting equipment.**
- 311.15 Lights on motorcycles, motor-driven cycles and mopeds.**
- 311.16 Alternate road-lighting equipment.**
- 311.17 Number of driving lights required or permitted.**
- 311.18 Special restrictions on lights.**
- 311.19 Motor vehicle or motorcycle brakes.**
- 311.20 Inspection of brakes on motorcycles, motor-driven cycles and mopeds.**
- 311.21 Horn, siren and theft alarm signal.**
- 311.22 Muffler; muffler cutout; excessive smoke, gas or noise.**
- 311.23 Rear-view mirror.**
- 311.24 Windshield to be unobstructed; windshield wiper.**
- 311.25 Tire equipment restrictions.**
- 311.26 Safety glass in motor vehicles.**
- 311.27 Vehicles transporting explosives.**
- 311.28 Television receiver in driver's view prohibited.**
- 311.29 Safety equipment for motorcyclists, motorcycles, motor-driven cycles and mopeds.**
- 311.30 Certification labels on mopeds.**
- 311.31 Child passenger safety devices required; child safety seats and booster seats.**
- 311.32 Certificate of inspection and approval.**
- 311.33 Alteration of suspension system.**
- 311.34 Sun screening devices.**
- 311.35 Operation of vehicle with safety belts.**
- 311.36 Use of engine compression brakes prohibited.**
- 311.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.
Obscured light on vehicles in combination – see WV Code 17C-15-13
Warning devices for commercial vehicles – see WV Code 17C-15-39
Bicycle equipment – see Ord. 318

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311.01 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 311.02 display a red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of Section 311.02. (WV Code 17C-15-1. Ord. 2013-01, passed 02-11-2013.) ^[311.01]

311.02 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 311.07(c). Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the street or highway. (WV Code 17C-15-2. Ord. 2013-01, passed 02-11-2013.) ^[311.02]

311.03 Measurements 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 311.02 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. (WV Code 17C-15-3. Ord. 2013-01, passed 02-11-2013.) ^[311.03]

311.04 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

FOOTNOTES:

- 311.01 This section was previously codified as 345.01.
- 311.02 This section was previously codified as 345.02.
- 311.03 This section was previously codified as 345.03.

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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 311.03. (WV Code 17C-15-4. Ord. 2013-01, passed 02-11-2013.) ^[311.04]

311.05 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 311.03(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. (WV Code 17C-15-5. Ord. 2013-01, passed 02-11-2013.) ^[311.05]

311.06 Red light or 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 311.02, 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. (WV Code 17C-15-14. Ord. 2013-01, passed 02-11-2013.) ^[311.06]

311.07 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

FOOTNOTES:

- 311.04 This section was previously codified as 345.04.
- 311.05 This section was previously codified as 345.05.
- 311.06 This section was previously codified as 345.06.

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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. (WV Code 17C-15-15. Ord. 2013-01, passed 02-11-2013.) ^[311.07]

311.08 Lights on slow-moving vehicles.

All vehicles including animal-drawn vehicles and including those referred to in Section 311.01

- (c) not hereinbefore specifically required to be equipped with lamps, shall at the times specified in Section 311.02 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. (WV Code 17C-15-16. Ord. 2013-01, passed 02-11-2013.) ^[311.08]

311.09 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

FOOTNOTES:

311.07 This section was previously codified as 345.07.

311.08 This section was previously codified as 345.08.

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operated on any road or highway. (WV Code 17C-15-17. Ord. 2013-01, passed 02-11-2013.) ^[311.09]

311.10 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 311.02. (WV Code 17C-15-18. Ord. 2013-01, passed 02-11-2013.) ^[311.10]

311.11 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 Corporation, 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 backup 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

FOOTNOTES:

311.09 This section was previously codified as 345.09.

311.10 This section was previously codified as 345.10.

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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. (WV Code 17C-15-19. Ord. 2013-01, passed 02-11-2013.) ^[311.11]

311.12 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. (WV Code 17C-15-20. Ord. 2013-01, passed 02-11-2013.) ^[311.12]

311.13 Use of headlight beams.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto

FOOTNOTES:

311.11 This section was previously codified as 345.11.

311.12 This section was previously codified as 345.12.

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during the times specified in Section 311.02, 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 311.12(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 311.12(a). (WV Code 17C-15-21.)
- (c) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00). (Ord. 2013-01, passed 02-11-2013.) ^[311.13]

311.14 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 roadlighting 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. (WV Code 17C-15-22. Ord. 2013-01, passed 02-11-2013.) ^[311.14]

311.15 Lights on motorcycles, motor-driven cycles and mopeds.

- (a) Every vehicle other than a motorcycle, motor-driven cycle or moped operated upon a highway within the Corporation of Harpers Ferry at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated. Every motorcycle, motor-driven cycle, and moped shall display lighted head lamps at all times when upon the highway.
- (b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars (\$100.00). (Ord. 2013-01, passed 02-11-2013.) ^[311.15]

311.16 Alternate road-lighting equipment.

Any motor vehicle may be operated under the conditions specified in Section 311.02 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 311.12, or Section 311.14,

FOOTNOTES:

- 311.13 This section was previously codified as 345.13.
311.14 This section was previously codified as 345.14.

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provided that at no time shall it be operated at a speed in excess of twenty miles per hour. (WV Code 17C-15-24. Ord. 2013-01, passed 02-11-2013.) ^[311.16]

311.17 Number of driving lights required or permitted.

- (a) At all times specified in Section 311.02 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. (WV Code 17C-15-25. Ord. 2013-01, passed 02-11-2013.) ^[311.17]

311.18 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 shall drive or move any vehicle or equipment upon any street or highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) hereof.
- (c) Except as authorized in subsections (d) and (f) of this section and Section 311.11, 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 311.11, 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 17A10-1 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

FOOTNOTES:

- 311.15 This section was previously codified as 345.15. Reference WV Code 17C-15-23, which is somewhat different.
- 311.16 This section was previously codified as 345.16.
- 311.17 This section was previously codified as 345.17.

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- 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; and
 - 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.
- (3) 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. The use of red flashing warning lights shall be 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

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- response vehicles shall be designated by the Commissioner or 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 311.11;
 - 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; and
 - 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

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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. 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. (WV Code 17C-15-26. Ord. 2013-01, passed 02-11-2013.) ^[311.18]

311.19 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.

FOOTNOTES:

311.18 This section was previously codified as 345.18.

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- (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.
- (7) 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.
- (8) 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:

	<u>Feet to stop from 20 mph</u>	<u>Deceleration in feet per second</u>
Vehicle or combination of vehicles having brakes on all wheels	30	14
Vehicle or combination 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. (WV Code 17C-15-31. Ord. 2013-01, passed 02-11-2013.) ^[311.19]

311.20 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. (WV Code 17C-15-32. Ord. 2013-01, passed 02-11-2013.) ^[311.20]

FOOTNOTES:

- 311.19 This section was previously codified as 345.19.
311.20 This section was previously codified as 345.20.

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311.21 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.
- (d) 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. (WV Code 17C-15-34. Ord. 2013-01, passed 02-11-2013.) ^[311.21]

311.22 Muffler; muffler cutout; excessive smoke, gas or noise.

- (a) No person shall drive or move on any street or highway within the Corporation of Harpers Ferry any motor vehicle, trailer, semi-truck or pole trailer or any combination thereof, unless the equipment upon every such vehicle is in good working order and adjustment and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any street or highway within the Corporation. Any person violating the provisions of this section shall be guilty of a misdemeanor.
- (b) 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 within the Corporation of Harpers Ferry. The engine and power mechanisms of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke. Any person violating the provisions of this section shall be guilty of a misdemeanor. (WV Code 17C-15-34. Ord. 2013-01, passed 02-11-2013.) ^[311.22]

311.23 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. (WV Code 17C-15-35. Ord. 2013-01, passed 02-11-2013.) ^[311.23]

FOOTNOTES:

- 311.21 This section was previously codified as 345.21.
- 311.22 This section was previously codified as 345.22.
- 311.23 This section was previously codified as 345.23.

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311.24 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.
- (d) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). ^[311.24]

311.25 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.
 - (4) No studded tires or chains shall be sold or used within the Corporation which do not meet the specifications established by the rules and regulations which the Commissioner of Highways shall promulgate.
- (d) 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. (WV Code 17C-15-37. Ord. 2013-01, passed 02-11-2013.) ^[311.25]

311.26 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

FOOTNOTES:

- 311.24 This section was previously codified as 345.24.
- 311.25 This section was previously codified as 345.25.

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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. (WV Code 17C-15-38. Ord. 2013-01, passed 02-11-2013.) ^[311.26]

311.27 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. (WV Code 17C-15-41. Ord. 2013-01, passed 02-11-2013.) ^[311.27]

311.28 Television receiver in driver's view prohibited.

No motor vehicle shall be operated on any street or highway in this Corporation when equipped with a television receiver unless such receiver is so placed that the screen or picture tube of such receiver is visible only in the rear seat of such motor vehicle and not in view of the operator of such motor vehicle. (WV Code 17C-15-42. Ord. 2013-01, passed 02-11-2013.) ^[311.28]

311.29 Safety equipment for motorcyclists, motorcycles, motor-driven cycles and mopeds.

- (b) 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.
- (c) 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 eye goggles 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

FOOTNOTES:

- 311.26 This section was previously codified as 311.26.
311.27 This section was previously codified as 345.27.
311.28 This section was previously codified as 311.28.
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Z 26.1.

- (d) 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.
- (e) 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.
- (f) 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. (WV Code 17C-15-44. Ord. 2013-01, passed 02-11-2013.) ^[311.29]

311.30 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. (WV Code 17C-15-45. Ord. 2013-01, passed 02-11-2013.) ^[311.30]

311.31 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.

- (a) 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).
- (b) 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.

FOOTNOTES:

311.29 This section was previously codified as 345.29.

311.30 This section was previously codified as 345.30.

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- (c) 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.
- (d) 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. (WV Code 17C-15-46. Ord. 2013-01, passed 02-11-2013.) ^[311.31]

311.32 Certificate of inspection and approval.

Once each year, every motor vehicle registered in West Virginia is required to be inspected and an official certificate of inspection and approval be obtained and displayed for each such vehicle. This applies to vehicles parked wholly or partially upon public property including any of the full width of the right-of-way. (WV Code 17C-16-9. Ord. 2013-01, passed 02-11-2013.) ^[311.32]

311.33 Alteration of suspension system.

- (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 bumper mounting on the frame more than four inches from the lower edge of the original manufactured bumper configuration for that vehicle. 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 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. 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 shall be disconnected to defeat the safe operation of the suspension system. Front end suspension by the use of lift blocks is expressly prohibited. However, nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs. 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.
- (b) No person shall operate upon a public street or highway any motor vehicle registered in this State if it has been modified by alteration of its altitude 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 trucks whose gross vehicle weight rating is 10,000 pounds or less may be no less than six inches and no more than thirty-one inches. The provisions of this subsection do not apply to trucks with a gross vehicle weight rating in excess of 10,000 pounds. For the purpose of this section, the term "gross vehicle weight ratings" means manufacturer's gross vehicle weight ratings established for that vehicle.
- (c) In the absence of bumpers, and in cases where bumper heights have been lowered or modified more than four inches, height measurements under subsection (a) or (b) shall

FOOTNOTES:

311.31 This section was previously codified as 345.31.

311.32 This section was previously codified as 345.32.

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be made to the bottom of the frame rail.

- (d) This section does not apply to specially designed or modified motor vehicles when operated off the public streets or highways in races and similar events. Such motor vehicles may be lawfully towed on the highways of this State.
- (e) 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 as set out in the provisions of this section unless the tires on the altered motor vehicle meet specifications approved by the United States Department of Transportation. In addition, neither the motor vehicle nor the chassis shall come in contact with the tires under normal operation.
- (f) Modified vehicles must have a special inspection sticker which must be inspected by July 31, 1990. The Police Department shall record on accident report forms whether a modified vehicle was involved in the accident. (WV Code 17C-15-48. Ord. 2013-01, passed 02-11-2013.) ^[311.33]

311.34 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 non-reflective 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 non-reflective 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.

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311.33 This section was previously codified as 345.33.

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- (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 off-road operation.
 - (7) "Non-reflective" 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.
(WV Code 17C-15-36a. Ord. 2013-01, passed 02-11-2013.)

311.35 Operation of vehicle 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

PART THREE — TRAFFIC CODE

passenger in the front seat of the 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 the 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 the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the reason the 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 is not 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 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 may 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 abrogates or alters the provisions of Section 311.31 relating to the mandatory use of child passenger safety devices. (WV Code 17C-15-49)
- (f) Any person who violates the provisions of this section shall be fined not more than twenty-five dollars (\$25.00). No court costs or other fees may be assessed for a violation of this section. (Ord. 2013-06, passed 06-10-2013.) ^[311.35]

311.36 Use of engine compression brakes prohibited.

- (a) It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated, within the corporate limits of the Corporation of Harpers Ferry, any engine brake, compression brake or mechanical exhaust device designed in the aid of braking or decelerating of any vehicle that results in excessive, loud, unusual, or explosive noise from such vehicle on any public ways, including, but not limited to, streets, alleys, easements, and rights-of-way, established for vehicle operation, except when necessary for the protection of persons and/or property which cannot be avoided by application of an alternative braking system. Noise caused by the application of

FOOTNOTES:

- 311.35 This section was previously codified as 345.35 (Ord. 95-2, passed 12-11-1995). Recodified as 311.35 by Ord. 2013-01 (passed 02-11-2013).

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engine compression brakes which is effectively muffled or if the application is necessary for the health, safety, and welfare of the is exempt from the provisions of this section. Noise created by emergency equipment for emergency purposes is also exempt.

- (b) Any person violating this section shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than ten days, or both; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (Ord. 2013-01, passed 02-11-2013.)

311.99 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 311.19 or 311.20 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than ten days, or both; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than twenty days, or both; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WV Code 17C-15-6.)
- (c) Sun screening devices. Whoever violates Section 311.34 shall be fined not more than two hundred dollars (\$200.00). (WV Code 17C-15-36a. Ord. 2013-01, passed 02-11-2013.)

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ARTICLE 312 Vehicle Weights, Loads and Towing

- 312.01** **Oversize or overweight vehicles.**
- 312.02** **Projecting loads on passenger vehicles.**
- 312.03** **Maximum width, height and length.**
- 312.04** **Loads dropping or leaking.**
- 312.05** **Towing requirements.**

CROSS REFERENCES

See sectional histories for similar State law.

Authority to designate weight limits on local streets—see WV Code 17C-2-8(a)(7)

Authority to permit oversized buses—see WV Code 17C-17-2(b)

Red light or flag on extended load—see Ord. Art. 345.07

Transporting explosives—see Ord. Art. 345.27

312.01 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 Corporation, 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 Corporation; however, it shall be unlawful to operate any such vehicle or combination of vehicles upon any roadway within the Corporation 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 312.03 or exceeding a gross weight of five tons, upon any street in the Corporation 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 Corporation. Operators of vehicles so deviating from either a State route or a designated truck route within the Corporation 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 and conditions of operation for such vehicle or combination of vehicles designating the route, hours, speed or such other restrictions as may be necessary for

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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 302.99. (Ord. 2013-01, passed 02-11-2013.) ^[312.01]

312.02 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 312.03, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle. (WV Code 17C-17-3. Ord. 2013-01, passed 02-11-2013.) ^[312.02]

312.03 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

FOOTNOTES:

312.01 This section was previously codified as 347.01.

312.02 This section was previously codified as 347.02.

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- (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 combinations. (WV Code 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. (WV Code 17C-17-2. Ord. 2013-01, passed 02-11-2013.) ^[312.03]

312.04 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

FOOTNOTES:

312.03 This section was previously codified as 347.03.

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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. (WV Code 17C-17-6. Ord. 2013-01, passed 02-11-2013.) ^[312.04]

312.05 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. (WV Code 17C-17-7. Ord. 2013-01, passed 02-11-2013.) ^[312.05]

FOOTNOTES:

- 312.04 This section was previously codified as 347.04.
- 312.05 This section was previously codified as 347.05.

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ARTICLE 313 Miscellaneous Rules

- 313.01 Unattended motor vehicle.
- 313.02 Backing a vehicle.
- 313.021 Safety turnout zones.
- 313.03 Driver's view and control to be unobstructed by load or persons.
- 313.04 Passengers in seat with operator.
- 313.05 Passengers on running board.
- 313.06 Following authorized emergency vehicles.
- 313.061 Approaching authorized emergency vehicles.
- 313.07 Driving over fire hose.
- 313.08 Funeral processions.
- 313.09 Opening door of vehicle on traffic side.
- 313.10 Boarding or alighting from vehicle.
- 313.11 Unlawful riding.
- 313.12 Squealing tires; cracking exhaust noises.
- 313.13 Taking, injuring or tampering with vehicle.
- 313.14 Driving upon sidewalk, street lawn or curb.
- 313.15 Shortcutting; avoiding traffic control devices.
- 313.16 Coasting prohibited.
- 313.17 Driving through safety zone.
- 313.18 Driving upon street posted as closed for repair.
- 313.19 Obstruction of traffic.
- 313.20 Vehicle security.
- 313.21 Motorized scooters.
- 313.22 Play streets.
- 313.23 Toy vehicles on streets.
- 313.24 Parades and assemblages.
- 313.25 Use of an electronic communications device without handheld features while driving.
- 313.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Obedience to traffic control devices – see Ord. Art. 313.01

313.01 Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to set unattended on public, commercial or private property, 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 side, such as to the curb or side of a street or highway. A "written warning" shall be given for the first offense on private property, but no such written warning is required for violations on public or commercial property. (WV Code 17C-14-1. Ord. 2013-01, passed 02-11-2013.) ^[313.01]

313.02 Backing a vehicle.

The driver of a vehicle shall not back the same unless such movement can be made with

FOOTNOTES:

313.01 This section was previously codified as 349.01.

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reasonable safety and without interfering with other traffic. (WV Code 17C-14-2. Ord. 2013-01, passed 02-11-2013.) ^[313.02]

313.021 Safety turnout zones.

“Safety turnout zones” shall be established where feasible on narrow (single lane) roads. The vehicle closest to the “safety turnout zone” shall pull into the turnout zone to allow safe passage of the other vehicle to eliminate where possible unsafe backing. Parking is prohibited in these turnout zones. (Ord. 2013-01, passed 02-11-2013.)

313.03 Driver’s 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. (WV Code 17C-14-4. Ord. 2013-01, passed 02-11-2013.) ^[313.03]

313.04 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 in the Corporation of Harpers Ferry; 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. (WV Code 17C-14-5. Ord. 2013-01, passed 02-11-2013.) ^[313.04]

313.05 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 Corporation. (WV Code 17C-14-9. Ord. 2013-01, passed 02-11-2013.) ^[313.05]

313.06 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. (WV Code 17C-14-9. Ord. 2013-01, passed 02-11-2013.) ^[313.06]

313.061 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

FOOTNOTES:

- 313.02 This section was previously codified as 349.02.
- 313.03 This section was previously codified as 349.03.
- 313.04 This section was previously codified as 349.04.
- 313.05 This section was previously codified as 349.05.
- 313.06 This section was previously codified as 349.06.

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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 non-divided 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. (WV Code 17C-14-9a. Ord. 2013-01, passed 02-11-2013.)

313.07 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. (WV Code 17C-14-10. Ord. 2013-01, passed 02-11-2013.) ^[313.07]

313.08 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 non law 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

FOOTNOTES:

313.07 This section was previously codified as 349.07.

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- 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 non law-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. (WV Code 17C-23. Ord. 2013-01, passed 02-11-2013.) ^[313.08]

313.09 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. (Ord. 2013-01, passed 02-11-2013.) ^[313.09]

313.10 Boarding or alighting from vehicle.

No person shall board or alight from any vehicle while such vehicle is in motion. (Ord. 2013-01, passed 02-11-2013.) ^[313.10]

313.11 Unauthorized riding or jumping onto vehicles.

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. (Ord. 2013-01, passed 02-11-2013.) ^[313.11]

313.12 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." (Ord. 2013-01, passed 02-11-2013.) ^[313.12]

313.13 Injuring or tampering with vehicle.

- (a) No person shall drive a vehicle, not his own, without consent of the owner thereof, and

FOOTNOTES:

- 313.08 This section was previously codified as 349.08.
313.09 This section was previously codified as 349.09.
313.10 This section was previously codified as 349.10.
313.11 This section was previously codified as 349.11.

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with intent temporarily to deprive such owner of his 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. (WV Code 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.
- (c) 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. (WV Code 17A-8-6. Ord. 2013-01, passed 02-11-2013.) ^[313.13]

313.14 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. (Ord. 2013-01, passed 02-11-2013.) ^[313.14]

313.15 Shortcutting; avoiding traffic control devices.

- (a) No driver shall leave the roadway and enter upon a public or private lot, street or any other property to avoid a traffic control device.
- (b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisoned in jail for not more than thirty days, or both fined and imprisoned. (Ord. 2013-01, passed 02-11-2013.) ^[313.15]

313.16 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. (Ord. 2013-01, passed 02-11-2013.) ^[313.16]

313.17 Driving through safety zone.

No operator of a vehicle shall drive the same over or through a safety zone. (Ord. 2013-01, passed 02-11-2013.) ^[313.17]

313.18 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. (Ord.

FOOTNOTES:

- 313.12 This section was previously codified as 349.12.
- 313.13 This section was previously codified as 349.13.
- 313.14 This section was previously codified as 349.14.
- 313.15 This section was previously codified as 349.15.

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2013-01, passed 02-11-2013.) ^[313.18]

313.19 Obstruction of traffic.

No person shall operate, stop, stand or park any motor vehicle or portion thereof on any street, or alley within the Corporation 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 or except if necessary by virtue of a natural disaster as defined in Section 909.01(c).

The Chief of Police may momentarily close a street or streets to the passage of traffic in order to facilitate and permit the presentation of or gathering for a special event of a transient nature otherwise permitted by the Corporation in order that there be an orderly traffic flow during the time allowed for such special event. (See Section 909.01(c).)

Violation of this section shall constitute a crime against the laws of the Corporation of Harpers Ferry and shall be punishable by a fine of one hundred dollars (\$100.00) and / or ten days imprisonment for each such violation. In the event of a violation of this section, each hour thereof shall be deemed to be a separate offense punishable as set forth; provided, however, this section shall not be deemed to be a separate offense punishable as set forth. (See Section 909.01(c).) (Ord. 2013-01, passed 02-11-2013.) ^[313.19]

313.20 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 Corporation 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. (Ord. 2013-01, passed 02-11-2013.) ^[313.20]

313.21 Motorized scooters.

- (a) Definitions. "Motorized scooter" means a scooter that is powered by a gasoline or electric motor.
- (b) Prohibited acts: exemptions.
 - (1) The riding, operation, or other use of motorized scooters for transportation or recreational purposes, within or upon the streets, alleys, sidewalks, parking lots, and other property owned, leased, or controlled by the Corporation of Harpers Ferry and any of its boards, authorities or commissions is prohibited, unless the person using such motorized scooter has a valid drivers license under the provisions of the West Virginia Code.
 - (2) It shall not be an offense for a motorized scooter to be operated upon a designated parade route, when such person is a duly registered and recognized participant in any properly permitted parade, provided that such operation occurs in conjunction with said parade.
 - (3) The Federal government, the State of West Virginia, and the Corporation of Harpers Ferry are exempt from the provisions of this article.
 - (4) The provisions of this section do not apply to an Electric Personal Assistive

FOOTNOTES:

- 313.16 This section was previously codified as 349.16.
- 313.17 This section was previously codified as 349.17.
- 313.18 This section was previously codified as 349.18.
- 313.19 This section was previously codified as 349.19.
- 313.20 This section was previously codified as 349.20.

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Mobility Device as defined in Section 317.09 of the Code and as operated by a mobility impaired person as defined in Section 320.06(a)(1).

- (5) Any licensed driver permitted to operate a motorized scooter, under subsection (a) hereof, shall comply with the required safety equipment set forth in Section 311.29 of the Corporation of Harpers Ferry.

(c) Penalty.

- (1) Any violation shall constitute the commission of a misdemeanor criminal offense, and any officer of the police department of the Corporation of Harpers Ferry or any officer of any other police agency, exercising proper jurisdiction within the corporate limits of Harpers Ferry is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation. Any person convicted of a first offense shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00). Any person convicted of a second or further offense shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).
- (2) The parent or other guardian of any person violating the provisions of this article when such person shall not have attained the age of eighteen years shall not authorize or knowingly permit any such minor to violate any provision of this article. Any such authorization or if such parent or other guardian shall knowingly permit any such minor to violate the provisions of this article shall constitute a criminal violation and shall subject such parent or guardian to the criminal penalties set forth in this article. The citing and conviction of any parent or guardian shall not prohibit the citing and conviction of the operator of such motorized scooter. (Ord. 2013-01, passed 02-11-2013.)

313.22 Play streets.

- (a) No person shall use the public streets, highways, alleys, thoroughfares, roads or avenues of the Corporation for the purpose of engaging in or playing any games, except public ways specifically set aside for such purposes and so indicated by signage.
- (b) When authorized signs are erected indicating any street or part thereof as a play street, no such 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. (Ord. 2013-01, passed 02-11-2013.)

313.23 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. (Ord. 2013-01, passed 02-11-2013.)

313.24 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 three days before the time intended for such parade, procession or assemblage.

The permit may be refused or canceled if:

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- (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 such as interfering with the movement of police vehicles, fire-fighting equipment or ambulance service to the immediate area or to other areas of the Corporation.
- (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 Corporation.
- (c) The parade would unreasonably interfere with another parade for which a permit has been issued.
- (d) The information contained in the application is found to be false, misleading or incomplete in any material detail.
- (e) 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. (Ord. 2013-01, passed 02-11-2013.)

313.25 Use of an electronic communications device without handheld features while driving.

- (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" shall mean 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, two-way messaging device, electronic game, or portable computing device. For the purposes of this section, an "electronic communication device" does not include:
 - (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.

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- (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 the 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; or
 - (3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.
- (d) This section does not supersede or apply to:
 - (1) Any person under the age of eighteen years with a level one or level two graduated driver's license who operates a motor vehicle pursuant to §17B-2-3 (a) of the West Virginia Code, where texting is regulated per §17B-2-3a(2)(F).
 - (2) Any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of West Virginia Code Chapter 17E or federal law or rule.
- (e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined \$100; for a second offense be fined \$200; and for a third or subsequent offense be fined \$300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.
- (f) Notwithstanding any other provision of West Virginia Code or these Codified Ordinances 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 this section, 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.
- (g) Driving or operating a motor vehicle on a public street or highway while texting shall be

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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 1 July 2013, when it shall be enforced as a primary offense for purposes of citation. (WV Code 17C-14-15. Ord. 2013-07, passed 06-10-2013.) ^[313.25]

313.99 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) Taking, injuring or tampering with vehicle. Whoever violates Section 313.13 shall, for a first offense, be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WV Code 17A-11-1.)
- (c) Vehicle security. Whoever violates Section 313.20 shall be fined not less than two hundred dollars (\$200.00) or more than five thousand dollars (\$5,000) or imprisoned not more than thirty days, or both. (WV Code 17D-2A-9.)

FOOTNOTES:

313.25 This section was previously codified as 349.21 (passed 12-10-2012). Recodified as 313.25 by Ord. 2013-01 (passed 02-11-2013).

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ARTICLE 314 Vehicle Registration; Driver's License

- 314.01** **Registration, certificate of title required.**
- 314.02** **Registration card.**
- 314.03** **Display of registration plates.**
- 314.04** **Operation of vehicle without evidence of registration; use of temporary facsimile.**
- 314.05** **Improper use of registration card, plate or permit.**
- 314.06** **Driver or motorcycle license required.**
- 314.07** **Persons exempt from license.**
- 314.08** **License to be carried and exhibited on demand.**
- 314.09** **Certain acts prohibited.**
- 314.10** **Driving under suspension or revocation.**
- 314.11** **Owner or operator allowing another to drive.**
- 314.99** **Penalty.**

CROSS REFERENCES

Impounding unlicensed vehicle—see Ord. Art. 303.07
Illumination of license plate—see Ord. Art. 345.05(c)

314.01 Registration, certificate of title required.

No person shall drive or move or park and no owner shall knowingly permit to be driven, moved or parked 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. (WV Code 17A-3-1. Ord. 2013-01, passed 02-11-2013.) ^[314.01]

314.02 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. (WV Code 17A-3-13. Ord. 2013-01, passed 02-11-2013.) ^[314.02]

314.03 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.

FOOTNOTES:

- 314.01 This section was previously codified as 351.01.
- 314.02 This section was previously codified as 351.02.

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- (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-101 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.(WV Code 17A-3-15. Ord. 2013-01, passed 02-11-2013.) ^[314.03]

314.04 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 Corporation until the owner has notified in writing the State Police of the loss of such registration plate or plates. (WV Code 17A-9-2. Ord. 2013-01, passed 02-11-2013.) ^[314.04]

314.05 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. (WV Code 17A-9-3. Ord. 2013-01, passed 02-11-2013.) ^[314.05]

314.06 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 Corporation or upon any subdivision street, as used in West Virginia Code Article 8-24, when the use of such subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of the West Virginia Code for the type or class of vehicle being driven.
- (b) 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.

FOOTNOTES:

- 314.03 This section was previously codified as 351.03.
- 314.04 This section was previously codified as 351.04.
- 314.05 This section was previously codified as 351.05.

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- (c) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this Corporation or upon any subdivision street, as used in West Virginia Code Article 8-24 when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under West Virginia Code 17B-2-7b for motorcycle operation or has a valid motorcycle instruction permit. (WV Code 17B-2-1. Ord. 2013-01, passed 02-11-2013.) ^[314.06]

314.07 Persons exempt from license.

The following persons are exempt from the license required under Section 314.06:

- (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 17B2-1a;
- (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; or
- (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

FOOTNOTES:

314.06 This section was previously codified as 351.06.

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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. (WV Code 17B-2-2. Ord. 2013-01, passed 02-11-2013.) ^[314.07]

314.08 License to be carried and exhibited on demand.

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, police officer, or an employee of the Division of Motor Vehicles; provided, that no person charged with violating this section shall be convicted if such person produces in court or at the office of the arresting officer a driver's license issued to such person and valid at the time of such person's arrest.

Any person violating the provisions of this section is guilty of a violation of Section 314.08 and, upon conviction thereof, shall be fined not more than, five hundred dollars (\$500.00). (WV Code 17B-2-9. Ord. 2013-01, passed 02-11-2013.) ^[314.08]

314.09 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 non-operator's identification;
- (b) Lend his driver's or commercial driver's license or non-operator'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 non-operator'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 non-operator'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 non-operator'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. (WV Code 17B-4-1. Ord. 2013-01, passed 02-11-2013.) ^[314.09]

314.10 Driving under suspension or revocation.

No person shall drive a motor vehicle on any public street or highway of this Corporation at a time when his privilege so to do has been lawfully suspended or revoked. (WV Code 17B-4-3.)

- (a) Any person who drives a motor vehicle on any public street or highway of or in the Corporation of Harpers Ferry at a time when his or her privilege to do so has been lawfully suspended or revoked by the State of West Virginia or any other jurisdiction is, for the first offense, guilty of a violation of Section 314.10, and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the second offense, the person is guilty of a violation of Section 314.10, and, upon conviction thereof, shall be confined in a county or regional jail for a period of ten days and, in addition to the mandatory jail sentence, shall be

FOOTNOTES:

314.07 This section was previously codified as 351.07.

314.08 This section was previously codified as 351.08.

314.09 This section was previously codified as 351.09.

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fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00); for the third or any subsequent offense, the person is guilty of a violation of Section 314.10, and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed thirty days, and, in addition to the mandatory jail sentence, shall be fined not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00).

- (b) Any person who drives a motor vehicle on any public street or highway of or in the Corporation of Harpers Ferry at a time when his or her privilege to do so has been lawfully revoked or driving under the influence of alcohol, controlled substances or other drugs, or for driving while having an alcoholic concentration in his or her blood of eight hundredths of one percent (0.08%) or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, is, for the first offense, guilty of a violation of Section 314.10, and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed ten 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, the person is guilty of a violation of Section 314.10, and, upon conviction thereof, shall be fined in a county or regional jail for a term not to exceed twenty days and' in addition to the mandatory jail sentence, shall be fined not less than five hundred dollars (\$500.00) nor more than seven hundred and fifty dollars (\$750.00); for the third or any subsequent offense, the person is guilty of a violation of Section 314.10, and, upon conviction thereof, shall be fined in a county or regional jail for a term not to exceed thirty days and, in addition to the mandatory jail sentence, shall be fined not less than seven hundred and fifty dollars (\$750.00) nor more than one thousand dollars (\$1,000).
- (c) Any person who drives a motor vehicle on any public street or highway of or in the Corporation of Harpers Ferry 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 (0.02%) or more, by weight, but less than eight hundredths of one percent (0.08%), by weight, is guilty of a violation of Section 314.10 and, upon conviction thereof, shall be confined in a county or regional jail for twenty-four hours or shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or both. (Ord. 2013-01, passed 02-11-2013.) ^[314.10]

314.11 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. (WV Code 17B-4-4. Ord. 2013-01, passed 02-11-2013.) ^[314.11]

314.99 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) or imprisoned not more than thirty days, or both.
- (b) Driving under suspension or revocation.
- (1) Except as otherwise provided in West Virginia Code 17B-4-3(b) or (d), or

FOOTNOTES:

314.10 This section was previously codified as 351.10 (passed 02-10-1992).

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subsection (b)(2) or (3) hereof, whoever drives a motor vehicle on any street or highway of this Corporation 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 (0.08%) 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 imprisoned thirty days and in addition to the mandatory jail sentence, 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 (0.02%) or more, by weight, but less than eight hundredths of one percent (0.08%), by weight, shall be imprisoned for twenty-four hours or 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 314.02, 314.03, 314.05, 314.09 or 314.11 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

FOOTNOTES:

314.11 This section was previously codified as 351.11.

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ARTICLE 315 Commercial Driver's License

- 315.01** Definitions.
- 315.02** Limitation on number of driver's licenses.
- 315.03** Employer responsibilities.
- 315.04** Commercial driver's license required.
- 315.05** Exemptions.
- 315.06** Drivers prohibited from operating with any alcohol in system.
- 315.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

315.01 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 therefor;
 - (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.

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- (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 115.06 "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, creameries, 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

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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. (WV Code 17E-1-3. Ord. 2013-01, passed 02-11-2013.)

315.02 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 except during the ten-day period beginning on the date the person is issued a driver's license. (WV Code 17E-1-4. Ord. 2013-01, passed 02-11-2013.)

315.03 Employer responsibilities.

- (a) Each employer must 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:
 - (1) In which the driver 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; or
 - (2) In which the driver has more than one driver's license at one time.
 - (3) During any period in which the driver, or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-ofservice order; or
 - (4) In violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or
 - (5) During any period the driver is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing. (WV Code 17E-1-6. Ord. 2013-01, passed 02-11-2013.)

315.04 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. (WV Code 17E-1-7. Ord. 2013-01, passed 02-11-2013.)

315.05 Exemptions.

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- (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) Firefighting 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, firefighters 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. (WV Code 17E-1-8. Ord. 2013-01, passed 02-11-2013.)

315.06 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 (0.04%) or more, by weight, shall be imprisoned for not less than twenty-four hours nor more than thirty days, and 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 shall be imprisoned for a period of thirty days, and the court may, in its discretion, impose a fine of 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

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- 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. (WV Code 17E-1-14. Ord. 2013-01, passed 02-11-2013.)

315.99 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), or imprisoned for not more than thirty days, or both except that for the second violation of Section 115.04, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both. For the third or any subsequent conviction for violation of Section 315.04, the offender shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or imprisoned for not more than thirty days, or both. (WV Code 17E-1-25. Ord. 2013-01, passed 02-11-2013.)

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ARTICLE 316 All-Terrain Vehicles

- 316.01 Prohibition of operation and use of all-terrain vehicles.**
- 316.02 Exceptions.**
- 316.03 Liability.**
- 316.04 Definitions.**
- 316.05 Severability.**

CROSS REFERENCES

Definition of "all-terrain vehicle"—see WV Code 17A-1-1(ii)

316.01 Prohibition of operation and use of all-terrain vehicles.

- (a) The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes, within or upon the street, alleys, sidewalks, parking lots, and other governmentally-owned, leased or controlled property situate within the limits of the Corporation of Harpers Ferry is prohibited.
- (b) Any violation of subsection (a) hereof constitutes the commission of a misdemeanor criminal offense, and the police department of the Corporation of Harpers Ferry, or any other officer of any other police agency exercising proper jurisdiction within the Corporation, is hereby authorized and empowered to issue a citation and to charge any person who commits a violation of subsection (a) hereof, jurisdiction thereof being in the Municipal Court of the Corporation of Harpers Ferry.
- (c) Any person being convicted of a first offense established hereunder shall be fined not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), plus applicable courts costs.
- (d) Any person convicted of a second offense established hereunder shall be fined not less than fifty dollars (\$50.00), nor more than two hundred fifty dollars (\$250.00), plus applicable court costs.
- (e) Any person convicted of a third or further offense established hereunder shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), plus applicable court costs. (Ord. 2013-01, passed 02-11-2013.)

316.02 Exceptions.

Notwithstanding any other provision of this article, it shall not be an offense for any person to lawfully ride, operate, or otherwise use an all-terrain vehicle upon any private property located within the limits of the Corporation of Harpers Ferry with the express permission of the property owner. (Ord. 2013-01, passed 02-11-2013.)

316.03 Liability.

Nothing contained within this article is intended to create, nor shall be construed as to create or form the basis for, any civil or administrative liability whatsoever on the part of the Corporation of Harpers Ferry, or any of its officers, employees or agents, for any injury or damage resulting to any person whomsoever as a consequence of any action or inaction on the part of the Corporation of Harpers Ferry relating in any manner to the enforcement or non-enforcement of this ordinance by City officers, officials, employees, or agents. (Ord. 2013-01, passed 02-11-2013.)

316.04 Definitions.

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For the purpose of this ordinance, the term “all-terrain vehicle” shall be defined as set forth in West Virginia Code 17-A-1-1(ii). (Ord. 2013-01, passed 02-11-2013.)

316.05 Severability.

The provisions of this article are severable and in the event that any provision, or part thereof, shall be held invalid for any reason by any court exercising competent jurisdiction, then such invalidity shall not be deemed to affect or impair any of the other provisions or parts of this article not specifically held to be invalid. (Ord. 2013-01, passed 02-11-2013.)

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ARTICLE 317 Pedestrians

- 317.01** Compliance with traffic regulations.
- 317.02** Right-of-way in crosswalk.
- 317.03** Crossing roadway outside crosswalk.
- 317.04** Drivers to exercise due care.
- 317.05** Moving upon right half of crosswalk.
- 317.06** Walking along streets and highways; soliciting rides.
- 317.07** Persons working on streets and highways.
- 317.08** Protection of blind pedestrians.
- 317.09** Electric personal assistive mobility device.
- 317.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Pedestrian defined—see Ord. 301.21

Pedestrian at traffic signal—see Ord. 303.03

Pedestrian control signal—see Ord. 303.04

317.01 Compliance with traffic regulations.

Pedestrians shall be subject to traffic control signals at intersections as provided in Section 303.03, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article. (WV Code 17C-10-1(a). Ord. 2013-01, passed 02-11-2013.) ^[317.01]

317.02 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 317.03(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. (WV Code 17C-10-2. Ord. 2013-01, passed 02-11-2013.) ^[317.02]

317.03 Crossing roadway outside crosswalk.

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. 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. Between adjacent intersections at which traffic control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk. (WV Code

FOOTNOTES:

317.01 This section was previously codified as 371.01.

317.02 This section was previously codified as 371.02.

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17C-10-3. Ord. 2013-01, passed 02-11-2013.) ^[317.03]

317.04 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. (WV Code 17C-10-4. Ord. 2013-01, passed 02-11-2013.) ^[317.04]

317.05 Moving upon right half of crosswalk.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (WV Code 17C-10-5. Ord. 2013-01, passed 02-11-2013.) ^[317.05]

317.06 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 the 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. (WV Code 17C-10-6. Ord. 2013-01, passed 02-11-2013.) ^[317.06]

317.07 Person 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. (WV Code 17C-10-8. Ord. 2013-01, passed 02-11-2013.) ^[317.07]

317.08 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. (WV Code 5-15-5. Ord. 2013-01, passed 02-11-2013.) ^[317.08]

317.09 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 301.082 and “operator” shall refer to the operator of an electric personal assistive mobility device. (WV Code 17C-10A-1.)
- (b) An electric personal assistive mobility device shall be equipped with: front, rear and side reflectors; a braking system that enables the operator to bring the device to a controlled stop; and, 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.

FOOTNOTES:

- 317.03 This section was previously codified as 371.03.
- 317.04 This section was previously codified as 371.04.
- 317.05 This section was previously codified as 371.05.
- 317.06 This section was previously codified as 371.06.
- 317.07 This section was previously codified as 371.07.
- 317.08 This section was previously codified as 371.08.

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- (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. (WV Code 17C-10A-2. Ord. 2013-01, passed 02-11-2013.)

317.99 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). (WV Code 17C-10-7.)
- (b) An operator who violates a provision of Section 317.09 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). (WV Code 17C-10A-2. Ord. 2013-01, passed 02-11-2013.)

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ARTICLE 318 Bicycles

- 318.01** Compliance; code application to bicycles.
- 318.02** Obedience to traffic rules; exceptions.
- 318.03** Riding upon seats; number of persons.
- 318.04** Attaching bicycle or sled to vehicle.
- 318.05** Riding on roadways and bicycle paths.
- 318.06** Carrying articles.
- 318.07** Lights and reflector on bicycles; signal device; brakes.
- 318.08** Reckless operation; control, course and speed.
- 318.09** Parental duties.
- 318.10** Impounding.
- 318.11** Riding on sidewalk prohibited.
- 318.12** Bicycle helmets for children.
- 318.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to regulate bicycle operation—see WV Code 17C-2-8(a)(8)

Bicycle defined—see Ord. 301.03

Moped equipment and operation—see Ord. 311.29

318.01 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. (WV Code 17C-11-1. Ord. 2013-01, passed 02-11-2013.)^[318.01]

318.02 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. (WV Code 17C-11-2. Ord. 2013-01, passed 02-11-2013.)^[318.02]

318.03 Riding upon seats; number of persons.

A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (WV Code 17C-11-3. Ord. 2013-01, passed 02-11-2013.)^[318.03]

318.04 Attaching bicycle or sled to vehicle.

No person riding upon any bicycle, coaster, skateboard, roller skates, sled or toy vehicle shall

FOOTNOTES:

318.01 This section was previously codified as 373.01.

318.02 This section was previously codified as 373.02.

318.03 This section was previously codified as 373.03.

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attach the same or himself to any vehicle upon a roadway. (WV Code 17C-11-4. Ord. 2013-01, passed 02-11-2013.) ^[318.04]

318.05 Riding on roadways and bicycle paths.

Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (WV Code 17C-11-5. Ord. 2013-01, passed 02-11-2013.) ^[318.05]

318.06 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. (WV Code 17C-11-6. Ord. 2013-01, passed 02-11-2013.) ^[318.06]

318.07 Lights and reflector on bicycles; signal device; 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) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.
- (c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement. (WV Code 17C-11-7. Ord. 2013-01, passed 02-11-2013.) ^[318.07]

318.08 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 318.06;
- (e) At a speed greater than is reasonable and prudent under the conditions then existing. (Ord. 2013-01, passed 02-11-2013.) ^[318.08]

FOOTNOTES:

- 318.04 This section was previously codified as 373.04.
- 318.05 This section was previously codified as 373.05.
- 318.06 This section was previously codified as 373.06.
- 318.07 This section was previously codified as 373.07.

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318.09 Parental duties.

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 article. (Ord. 2013-01, passed 02-11-2013.)

318.10 Impounding.

In case of violation of any provision of this article, the court may, in lieu of or in addition to the penalties provided, impound a bicycle involved in such violation of any person for a period of not more than thirty days. Jurisdiction to enforce this article is specifically vested in the juvenile court of the county in all cases where the age of the persons is within the jurisdiction of the court; in all other cases, jurisdiction is in the Municipal Court of the Corporation of Harpers Ferry. (Ord. 2013-01, passed 02-11-2013.)

318.11 Riding on sidewalk prohibited.

No person shall ride any bicycle upon any sidewalk within the Corporation of Harpers Ferry. (Ord. 2013-01, passed 02-11-2013.)

318.12 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 Corporation 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 Corporation 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 Corporation 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. (WV Code 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

FOOTNOTES:

318.08 This section was previously codified as 373.08.

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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. (WV Code 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) hereof ("Protective bicycle helmet"), which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WV Code 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. (WV Code 17C-11A-6. Ord. 2013-01, passed 02-11-2013.)

318.99 Penalty.

- (a) Notwithstanding the provisions of Section 302.99, any parent or legal guardian violating any requirement set forth in Section 318.13(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 118.13(b).
- (b) In the case of a first violation of Section 318.13(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 318.13 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. (WV Code 17C-11A-7. Ord. 2013-01, passed 02-11-2013.)

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ARTICLE 319 Motorcycles

- 319.01** **Riding.**
- 319.02** **Noise.**
- 319.03** **Motorcycle packs prohibited.**
- 319.04** **Requirements for helmet use.**
- 319.99** **Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

319.01 Riding.

Any person, or persons operating a motorcycle, or motor-driven vehicles shall ride only upon the permanent and regular seat attached thereto. Operators shall not 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 upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of such vehicle. (Ord. 2013-01, passed 02-11-2013.)

319.02 Noise.

Every motorcycle shall be operated as quietly as possible at all times within the Corporation of Harpers Ferry, and when so operated, shall be equipped with a muffler designed with baffles, resonator cylinder and other factory-made noise reducers. The muffler shall not be altered, changed or designed in any manner which would tend to increase the noise-producing effects above that of the manufacturer's design in the original equipment. A driver, operator or controller of any motorcycle shall not use the cutout of a motor while operating the same within the Corporation, or operate a motor vehicle without a proper muffler functioning in good order, or race the motor of any vehicle, above described, so as to cause a backfire or other loud noise. The provisions of this section shall apply to the operator or operators or controllers of any motor vehicle whether on a street or within private property and in addition to other prescribed penalties, the operators of such motor vehicle in violation of this section shall be hereby declared to be a nuisance. (Ord. 2013-01, passed 02-11-2013.)

319.03 Motorcycle packs prohibited.

Any driver, drivers, operators or controllers of a motorcycle, motor bike or any two-wheeled motor driven vehicle is hereby prohibited from banding together with another driver, or other drivers, operators or controllers of motorcycles, motor bikes or any two-wheeled motor driven vehicles for the purpose of forming a "pack" (i.e., not more than two abreast and with at least twenty—five feet between following motorcycles) and operating such vehicles upon the streets and alleys of the Corporation of Harpers Ferry whereby the pack or number of such two wheeled motor driven vehicles shall cause an excessive amount of noise or create a menace or hazard to the safe flow of traffic within the Corporation, and if pack or grouping of the vehicles shall occur, they shall be deemed to be in violation of this section. (Ord. 2013-01, passed 02-11-2013.)

319.04 Requirements for helmet use.

- (a) Use required. It is unlawful for any person to operate or be a passenger on a motorcycle or any attachment to a motorcycle used on a public roadway or other public

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right of way unless at all times when the person is so engaged he or she wears a protective helmet of good fit, fastened securely upon the head with the straps of the helmet. (WV Code 17C-11A-4.)

- (b) Sale of helmets. Any helmet sold or offered for sale for use by operators and passengers of motorcycles shall be conspicuously labeled in accordance with the standard described in 318(a) ("Protective bicycle helmet"), which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards. (WV Code 17C-11A-5.)
- (c) 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. (WV Code 17C-11A-6. Ord. 2013-01, passed 02-11-2013.)

319.99 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). (Ord. 2013-01, passed 02-11-2013.)

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CHAPTER THREE – Parking.

Article 320. General Parking.

PART THREE — TRAFFIC CODE

ARTICLE 320 General Parking

- 320.01 Prohibition against parking on streets or highways.
- 320.02 Police may remove illegally-stopped vehicles.
- 320.03 Prohibited stopping, standing or parking places.
- 320.04 Vehicles parked on private property.
- 320.05 Manner of angle and parallel parking.
- 320.06 Handicapped parking.
- 320.07 Abandoned and junk vehicles.
- 320.08 Parking for certain purposes prohibited.
- 320.09 Truck loading zones.
- 320.10 Bus stops and taxi cab stands.
- 320.11 Parking in alleys and narrow streets; exceptions.
- 320.12 Registered owner prima-facie liable for unlawful parking.
- 320.13 Parking on Shenandoah Street for church attendance.
- 320.14 Designated parking reserved for residential permit holders only.
- 320.15 Parking of Commercial and Recreational vehicles.
- 320.98 Parking enforcement and citations.
- 320.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to regulate the standing or parking of vehicles—see WV Code 17C-2-8(a)(1)

Authority to regulate parallel and angle parking—see WV Code 17C-13-4

Impounding of abandoned vehicles—see Ord. 302.07

Duty to stop engine, set brake on grade and remove key—see Ord. 313.01

320.01 Prohibition against parking on streets or highways.

- (a) Upon any street or highway no person shall stop, park or leave standing any vehicle whether attended or unattended, upon any portion of 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 no less than 10 feet 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 vehicle 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 any 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. (WV Code 17C-13-1. Ord. 2013-01, passed 02-11-2013.)
[320.01]

320.02 Police may remove illegally-stopped vehicles.

- (a) Whenever any police officer finds a vehicle standing upon a street or highway in violation of Section 320.07, 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

FOOTNOTES:

- 320.01 This section was previously codified as 361.01.

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or in a 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. (WV Code 17C-13-2. Ord. 2013-01, passed 02-11-2013.) ^[320.02]

320.03 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 direction 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) On a crosswalk;
 - (6) Within twenty feet of a crosswalk at an intersection;
 - (7) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic control signal located at the side of the roadway;
 - (8) 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;
 - (9) Within fifty feet of the nearest rail of a railroad crossing;
 - (10) 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);
 - (11) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
 - (12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - (13) Upon any bridge or other elevated structure upon a street or highway or within a street or highway tunnel;
 - (14) At any place where signs prohibit stopping, standing or parking, or where any curbing or street is painted yellow or red, or at any place in excess of the maximum time limited by signs;
 - (15) 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;
 - (16) Upon any controlled-access highway;
 - (17) At any place on any street or highway where the safety and convenience of the traveling public is thereby endangered;
 - (18) Over or across any lines or marks established by the Corporation to indicate parking spaces; or
 - (19) Within a space designated for residential parking unless properly displaying a valid permit to do so.
- (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 it unlawful. (WV Code 17C-13-3. Ord. 2013-01, passed 02-11-2013.) ^[320.03]

FOOTNOTES:

320.02 This section was previously codified as 361.02.

320.03 This section was previously codified as 361.03.

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320.04 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 private road, driveway or private property as above prohibited without liability for the cost of moving any vehicle, nor shall he 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 action shall notify the State Department of Public Safety (State Police) of such action, and, in addition, notify the Police Department. (WV Code 17C-14-13. Ord. 2013-01, passed 02-11-2013.) ^[320.04]

320.05 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. (Ord. 2013-01, passed 02-11-2013.) ^[320.05]

320.06 Handicapped parking.

- (a) As used in this section:
 - (1) "Physically handicapped person" with limited mobility means any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.
 - (2) "Physically disabled person" means any person who has sustained a temporary disability rendering it unduly difficult and burdensome for him or her to walk.
- (b) Free stopping, standing or parking places marked "reserved for disabled persons" shall be designated in close proximity to all State, County and Municipal buildings and other public facilities. Such places shall be reserved solely for physically disabled and handicapped persons during the hours that such buildings are open for business. Any person whose vehicle properly displays a valid special registration plate, mobile windshield placard or decal, 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,

FOOTNOTES:

320.04 This section was previously codified as 361.04.

320.05 This section was previously codified as 361.05.

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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 the Corporation of Harpers Ferry is contrary to the provisions of any ordinance of the Corporation is contrary to the provisions of this section, the provisions of this section shall take precedence and shall apply. The privileges provided for in this subsection shall apply only during those times when the vehicle is being used for the transportation of a physically handicapped or disabled person. No person shall knowingly exercise, or attempt to exercise, such privileges at a time when the vehicle is not being used for the transportation of a physically handicapped or disabled person.

- (c) No person shall stop, stand or park a motor vehicle in an area designated, zoned or marked for the handicapped or physically disabled, when such person is not physically disabled or handicapped and does not have displayed upon his vehicle a distinguishing insignia for the handicapped issued by the Commissioner of Highways; provided, that any person in the act of transporting a handicapped or physically disabled person, as defined by this section, may stop or park a motor vehicle not displaying a distinguishing insignia for the handicapped in an area designated, zoned or marked for the handicapped or physically disabled for the limited purposes of loading or unloading his handicapped or physically disabled passenger; provided, however, that such vehicle shall be promptly moved after the completion of such limited purposes. (WV Code 17C-13-6. Ord. 2013-01, passed 02-11-2013.) ^[320.06]

320.07 Abandoned and junk 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 or private property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard at the business establishment of a demolisher, or any motor vehicle, or major part thereof, which has remained illegally on public or private property for any period of time over five days, 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 three days, or any motor vehicle or major part thereof, which is unattended, discarded, deserted, does not have a valid registration and inspection sticker and is not in an enclosed building, a licensed salvage yard or the actual possession of demolisher.
- (2) "Junked motor vehicle" means a motor vehicle on any part thereof, other than an on-premise farm utility vehicle, which:
- A. Is discarded, inoperable, wrecked, ruined, scrapped or dismantled;
 - B. Cannot pass the State inspection required by the West Virginia Code 17C-16-1 *et seq.*; and
 - C. Is either not serving a functional purpose or use, is not moved every five days under its own power, or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher.
- (3) "Motor vehicle" means a vehicle which is or was self-propelled, including but not limited to automobiles, trucks, buses and motorcycles. (WV Code 17-24-2.)

(b) Abandoning or depositing prohibited.

FOOTNOTES:

320.06 This section was previously codified as 361.06.

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- (1) No person shall abandon a motor vehicle upon any portion of the full public right-of-way width of any public street or highway, upon any other public property, or upon any private property which he does not own, lease, rent or otherwise control unless it be a licensed salvage yard or at the business establishment of a demolisher. (WV Code 17-24-3.)
- (2) No person shall place or deposit any junked, abandoned or inoperable motor vehicle upon the full public right-of-way width of any public street or highway or upon any other public property; nor shall any person place or deposit any junked motor vehicle upon any private property which he does not own, lease, rent or otherwise control unless it be at a licensed salvage yard or at the business establishment of a demolisher. (WV Code 17-24-4. Ord. 2013-01, passed 02-11-2013.) ^[320.07]

320.08 Parking for certain purposes prohibited.

No person shall park any vehicle upon any street within the Corporation 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. (Ord. 2013-01, passed 02-11-2013.) ^[320.08]

320.09 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. (Ord. 2013-01, passed 02-11-2013.) ^[320.09]

320.10 Bus stops and taxi cab 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.

FOOTNOTES:

320.07	This section was previously codified as 361.07.
320.08	This section was previously codified as 361.08.
320.09	This section was previously codified as 361.09.
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- (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. (Ord. 2013-01, passed 02-11-2013.) ^[320.10]

320.11 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. (Ord. 2013-01, passed 02-11-2013.) ^[320.11]

320.12 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 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. (Ord. 2013-01, passed 02-11-2013.) ^[320.12]

320.13 Parking on Shenandoah Street for church attendance.

There shall be no parking allowed on Shenandoah Street except for church attendance. (Ord. 2013-01, passed 02-11-2013.) ^[320.13]

320.14 Designated parking reserved for residential permit holders only.

- (a) Town Council or its designee is hereby authorized to designate, regulate and mark as reserved certain parking spaces for permitted residential use only.
- (b) Town Council or its designee is hereby authorized to issue residential parking permits to qualified residents of the Town pursuant to the policy and procedures enacted by Town Council.
- (c) No person shall stop, stand or park any vehicle within or obstructing a parking space designated for residential use without displaying a valid residential parking permit in accordance with policy and procedures for such permits. Such policy and procedures shall be made available at the Police Department.
- (d) Any vehicle parked in violation of the provisions of this section shall be subject to citation and penalties pursuant to this Code. A separate violation shall occur for each day a vehicle without a valid parking permit is left in a designated space or upon return to such a space at any time.
- (e) It shall be a violation of this section for any person to submit incorrect information on an application for a permit or in seeking a renewal thereof.

FOOTNOTES:

320.10 This section was previously codified as 361.10.

320.11 This section was previously codified as 361.11.

320.12 This section was previously codified as 361.12.

320.13 This section was previously codified as 361.13 (Ord. 86-2, passed 05-22-1986).

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- (f) It shall be a violation of this section for any person to use or display a permit or to make available or allow its use or display, in or on a vehicle not authorized or entitled to use or display the same.
- (g) The Police Department may declare a residential parking permit to be forfeited for repeated violation of parking ordinances, policy or procedures by requiring, in writing, the permit be delivered to the Police Department within 30 days. Such notice may be appealed to the Town Council within the 30 days. Upon such notice and absent appeal within 30 days, the permit shall be considered invalid without refund.
- (h) Permit holders may not use permit spaces for storage of permitted vehicles for longer than five days, except by written permission of the Chief of Police (i.e., residents on vacation).
- (i) Any person found in violation to the provisions of this section shall be subject to a fine of not more than Fifty Dollars (\$50.00); Upon second conviction thereof, not more than One Hundred Dollars (\$100.00); Upon third violation thereof, not more than One Hundred and Fifty Dollars (\$150.00). Fines collected pursuant to this section shall be deposited in the Town's General Fund.
- (j) In any hearing on a charge of violation of this section, testimony that a vehicle bearing a certain license plate was found unlawfully parked, and further testimony or records from the West Virginia Department of Motor Vehicles or a similar agency in another state shows that the license plate is issued to the Defendant shall be prima facie evidence that the unlawfully parked vehicle was so parked by the Defendant.
- (k) The Chief of Police is hereby authorized to cause the removal of an unattended vehicle parked in violation of this section. Removal shall be to a garage or other place of safety. The owner of a removed vehicle shall be responsible to the persons removing said vehicle for all removal costs. The Chief of Police shall ensure notice of removal is shared with any and all interested law enforcement agencies. (Ord. 2013-01, passed 02-11-2013.)

320.15 Parking of Commercial and Recreational vehicles.

- (a) A Commercial vehicle as used in this section means any motor vehicle, truck, bus, tractor-trailer, or other tandem vehicle licensed or used for the transportation of property and / or people, delivery of goods, wares, merchandise, or any other commercial-related service upon any street of the Town.
- (b) A Recreational vehicle as used in this section means any motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational or emergency occupancy.
- (c) No person may park any Commercial or Recreational vehicle as defined in this section on any street of the Town except for the purpose of loading or unloading, and then only for the period of time which is spent in the actual loading or unloading of such vehicle or providing service to a residence or business only for the amount of time spent providing that service.
- (d) No person may park the trailer of any tractor-trailer or the property-carrying unit of any tandem vehicle upon any street in the Town unless the same is fully connected to the tractor or other regular propelling unit so that the same can be immediately moved when required.
- (e) A Commercial truck, or food truck, may be allowed temporary parking for a Town event with prior approval by and from the Town Council. (Ord. 2021-07, passed 10-11-2021.)

320.98 Parking enforcement and citations.

The Town police officers and the police department parking meter enforcement personnel

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shall leave on the windshield of a violating vehicle, a parking ticket in the form of an envelope setting forth thereon a notice to the owner or operator thereof that such vehicle has been stopped or parked in violation of the provisions of this Part and instructing the owner or operator to report to the Town in regard to such violation, or to pay the penalty herein provided. The parking ticket shall also notify the owner or operator that the full amount of the fine is to be placed in such envelope and deposited in the drop box located in the front door at the police station for that purpose or deliver the same to the Town within seven days of the date of violation as a penalty for and in full satisfaction of such violation.

It shall be the duty of the police officers and / or meter enforcement officers of the Town to report all violations of any provision of this Part indicating in each case:

- (a) The Section thereof violated;
- (b) The location where such violation took place, including the parking meter at which the vehicle was illegally parked;
- (c) The State and license number of such vehicle;
- (d) The date and time of violation;
- (e) The date and time of the issuance of the notice of the violation; and
- (f) Other facts deemed necessary for a clear understanding of the circumstances attending the violation. (Ord. 2019-02, passed 01-13-2020.) ^[320.98]

320.99 Penalty.

- (a) Any person who violates any provision of this section, or any person who aids, abets or assists in the violation thereof, shall, upon conviction, be sentenced to pay a fine of not more than fifty dollars (\$50.00) and costs.
- (b) If the applicable fine is not paid within seven days from the time the notice of violation was issued, prosecution will be initiated for said violation, and upon conviction thereof, the driver or operator shall be sentenced to pay a fine of fifty dollars (\$50.00), together with costs of prosecution.

FOOTNOTES:

320.98 This section was previously codified as 320.15.

PART FIVE — GENERAL OFFENSES CODE

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- Article 501. Administration and Law Enforcement.
- Article 505. Animals and Fowl.
- Article 507. Dogs.
- Article 509. Disorderly Conduct and Peace Disturbance.
- Article 513. Gambling.
- Article 517. Indecency and Obscenity.
- Article 521. Liquor Control.
- Article 522. Substance Control.
- Article 525. Minors.
- Article 527. Noise.
- Article 529. Offenses Relating to Persons.
- Article 533. Offenses Relating to Property.
- Article 541. Railroads.
- Article 545. Weapons and Explosives.

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 501 Administration and Law Enforcement

- 501.01 Refusal to aid officer.**
- 501.02 Obstructing officer.**
- 501.03 False fire alarm.**
- 501.04 False reports concerning bombs or other explosive devices.**
- 501.05 Impersonating an official.**
- 501.06 Attempts.**
- 501.07 Citation in lieu of arrest; failure to appear.**
- 501.08 Falsely reporting an emergency incident.**
- 501.09 False report.**
- 501.10 False alarms.**
- 501.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Specific types of bribery—see WV 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 WV Code Chap. 61—see WV Code 8-12-5(57)

Crimes against public justice—see WV Code 61-5

Bribery and corrupt practices generally—see WV Code 61-5A

Failure to comply with lawful order of police officer—see Ord. 303.02

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 apprehension or securing of any person for a breach of the peace or in any case of escape or rescue. (WV Code 61-5-14.)

501.02 Obstructing officer.

No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder, obstruct or oppose, or attempt to obstruct or oppose, or counsel, advise or invite others to hinder, obstruct or oppose any officer in the City in the lawful exercise or discharge of his official duty. (WV Code 61-5-17.)

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. (WV Code 29-3-21.)

501.04 False reports concerning bombs or other explosive devices.

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 or structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt being made or to be made to so place or explode any such bomb or other explosive device. (WV Code 61-6-17.)

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501.05 Impersonating an official.

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 Police or Fire Departments, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the Police or 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. (WV Code 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. (WV Code 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) (d) Without just cause, calls or summons by telephone, fire alarm system or otherwise,

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any firefighting apparatus, rescue vehicles or other emergency vehicles. (WV Code 61-6-20.)

501.09 False report.

No person shall make or give a false report or false information to any police or fire officer of the City.

501.10 False alarms.

Definitions. For the purposes of this section, the following terms, phrases and words shall have the meaning herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- (a) “Town” means the Town of Harpers Ferry.
- (b) “Council” means the Town Council of the Town of Harpers Ferry.
- (c) “Mayor” means the Mayor of the Town of Harpers Ferry.
- (d) “False Alarm” means any alarm signal or message initiated and transmitted through an alarm system to the Jefferson County Central Dispatch office soliciting response by the Police Department when the factual necessity for such response does not in fact exist, however caused, excepting by acts of God.
- (e) “Monitoring System” means the intrusion alarm monitoring or receiving system at the Jefferson County Central Dispatch office.
- (f) “Person” means any person, firm, partnership, association, corporation, company, or organization of any kind.
- (g) “Regulations” means such regulations promulgated by the Mayor necessary to carry out the provisions an intent of this article.
- (h) “Subscriber” means any person, firm, partnership, association, corporation, company, political subdivision, taxing authority or organization of any kind, having a protective alarm system or company which is connected to or notifies the monitoring system at the Jefferson County Central Dispatch office.

Fees for False Alarms. Fees for false alarms and the action available to the Town to reduce false alarms shall be as follows, to take effect 30 days after the completion of the system installation.

Number of false alarms
during any calendar year

Fee / action

One

Two through five

\$20.00 for every occurrence

Six through ten

\$100.00 for every occurrence. The Mayor may require the subscriber to provide certification from the vendor or installer of subscriber's equipment that the equipment is in good working order and/or certification that the subscriber has taken the necessary action to prevent reoccurrence if the false alarm was

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caused by human error.

Eleven or more

\$200.00 for every occurrence. The Mayor may require disconnection of the subscriber's equipment from the monitoring system and may permit the reconnection of the equipment only upon presentation of satisfactory proof that the subscriber has taken necessary corrective action to prevent in excessive number of false alarms from occurring in the future.

(Ord. 2000-01. Passed 4-10-2000.)

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) or imprisoned not more than thirty days, or both. 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) or imprisoned not more than thirty days, or both. (WV Code 61-5-14.)
- (c) Whoever violates Section 501.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both. (Ord. 96-3. Passed 4-8-1996.)

FOOTNOTES:

Appendix Ord. 2018-01 (passed 04-09-2018) removed the Appendix to Part Five at the request of the municipal judge, noting that the bonds and fines listed in the Appendix were incorrect when compared to other sections of the Codified Ordinances and West Virginia Code.

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 505 Animals and Fowl

- 505.01** Cruelty to animals.
- 505.02** Cruelty to dogs and cats.
- 505.03** Nuisance conditions prohibited.
- 505.04** Animal or fowl nuisance vocalizations.
- 505.05** Animals or fowl running at large.
- 505.06** Bird sanctuary.
- 505.07** Hunting.
- 505.08** Urban deer management.
- 505.99** Penalty.

CROSS REFERENCES

Authority to regulate the keeping of animals—see WV Code 8-12-5(26)
Authority to prevent ill treatment of animals—see WV Code 8-12-5(27)
Domestic animal tax—see WV Code 8-13-10
Disposing of dead animals—see WV Code 16-9-3
Diseases among domestic animals—see WV Code 19-9
Dogs generally—see WV Code 19-20
Vaccination of dogs—see WV Code 19-20A
Hunting—see WV Code 20-2
Urban deer management—see WV Legislative Rule, Title 58, Series 45

505.01 Cruelty to animals.

- (a) No person shall cruelly, unnecessarily or needlessly beat, torture, torment, mutilate, kill or overload, overdrive or willfully deprive of necessary sustenance, any horse or other domestic animal, whether such horse or other animal be his own or that of another person, or shall impound or confine any such animal in any place and fail to supply the same with a sufficient, quantity of good, wholesome food and water, or shall carry in or upon any vehicle, or otherwise, any such animal in a cruel or inhuman manner, or knowingly feed a cow on food that produces impure or unwholesome milk, or shall abandon to die any maimed, sick, infirm or diseased animal, or shall be engaged in or employed at cockfighting, dogfighting, bear baiting, pitting one animal to fight against another of the same or different kind, or any similar cruelty to animals, or shall receive money for the admission of any person, or shall knowingly purchase an admission, to any place kept for such purpose, or shall use, train or possess a dog or other animal for the purpose of seizing, detaining or maltreating any other domestic animal.
- (b) No person shall knowingly and willfully administer or cause to be administered to any horse, mule, donkey or pony participating in any pulling contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance. (WV Code 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 any sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or to be engaged

HISTORY:

Ord. 2013-05 (passed 06-10-2013) amended previous versions and reenacted Article 505.

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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 maltreating any other dog or cat. (WV Code 61-8-19a.)

505.03 Nuisance conditions prohibited.

No person shall keep or harbor any animal or fowl in the Corporation 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 Animal or fowl nuisance vocalizations.

No person shall harbor any animal or fowl within the Corporation which, by frequent and habitual vocalizations creates unreasonably loud and disturbing noises of such a character, intensity and duration as to disturb the peace, quiet and good order of the Corporation. Any person who shall allow any animal or fowl 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 animal or fowl.

505.05 Animals or fowl running at large.

- (a) No person being the owner or having charge of horses, cattle, sheep, goats, geese, ducks, turkeys, chickens or other fowl or animals shall permit them to run at large upon any public place, or upon any unenclosed lands, or upon the premises of another.
- (b) The running at large of any such animal or fowl in or upon any of the places mentioned in this section is prima facie evidence of a violation of this section.

505.06 Bird sanctuary.

- (a) No person shall trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or rob bird nests or wild fowl nests. Provided, however, 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 health authorities of the County of Jefferson, then in such event such health authorities shall meet with representatives of the Audubon Society, Bird Club, Garden Club or Humane Society, or as many of such clubs as are found to exist in the County of Jefferson, after having given at least three days actual notice of the time and place of the meetings to the representatives of such clubs.
- (b) If as a result of the meeting no satisfactory alternative is found to abate such nuisance, then such 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.
- (c) Anyone violating the provisions of this section shall be punishable by a fine of not more than one hundred dollars (\$100.00) or imprisonment not exceeding thirty days.

505.07 Hunting.

Except as provided in Section 505.08, 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 Corporation.

505.08 Urban deer management.

- (a) Purpose. It is the purpose of this section to establish urban deer management within the Corporation by means of an urban archery season, as authorized by Title 58, Series 45, Legislative Rules of the West Virginia Department of Natural Resources. It is also the intent of the Corporation that the first such urban deer management hunt take place in the year 2012.

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- (b) Urban archery hunting of deer. The urban archery hunting of deer shall be subject to the following procedures:
- (1) The Mayor may authorize the Chief of Police or his / her designee to apply for a hunt by the First day of March (or other date required by the Division of Natural Resources) at the request of property owners.
 - (2) The Chief of Police or his/her designee shall cause to be written rules and regulations for the conduct of each such urban archery deer hunting season within the Corporation. The rules and regulations shall address the manner in which archery hunters shall be selected by the Chief of Police to participate in any such hunt; the number of hunters to be selected for any such hunt; the designation of specific areas within the Corporation in which archery hunting for deer will be allowed; the assignment of selected archer hunters to designated deer hunting areas; and specific imposed hunting regulations to be observed by each selected archery hunter. A written copy of the rules and regulations shall be posted on the Corporation's website.
 - (3) The specific dates for each such urban archery deer season shall be as set by the West Virginia Department of Natural Resources.
 - (4) The maximum number of deer that may be taken by an archery hunter during an urban archery season shall be set by the West Virginia Department of Natural Resources.
 - (5) In addition to the requirements of this Section, and any rules and regulations approved by the Chief of Police pursuant to this Section, all such hunters shall be required to comply with applicable West Virginia law and Division of Natural Resources Rules and Regulations.
- (c) Rules and regulations. All such written rules and regulations approved by the Police Chief under authority of this Section shall be considered a part of this Section, and any violation of any such rule or regulation by any individual will be considered a violation of this Section.
- (d) Interference with hunters. A person shall not willfully obstruct or impede the participation of any individual in the lawful activity of archery deer hunting pursuant to this Section. Any person willfully obstructing or impeding any such archery deer hunter shall be guilty of a misdemeanor and upon conviction thereof, shall be fined as set forth in subsection (e) hereafter.
- (e) Violations. In addition to any penalties for violations of State of West Virginia hunting laws or regulations, any person violating this Section or the rules and regulations created pursuant to this Section, shall be guilty of a misdemeanor and subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). A separate offense shall be deemed committed for each such day that a violation continues.
- (f) Severability. If any subsection, paragraph, sentence, clause or phrase of this Section shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Section which shall remain in full force and effect and, for this purpose, the provisions of this Section are hereby declared to be severable.

505.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 505.01(a) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 505.01(b) shall be fined not more than one thousand dollars

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- (c) (\$1000). Whoever violates Section 505.02 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both. In addition the Humane Officer may remove the cat or dog involved and place it in the pound and such cat or dog 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. (WV Code 61-8-19a.)

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 507 Dogs

- 507.01 Registration; head tax; registration tag; assessor record.**
- 507.02 Leashing; running at large; liability of owner.**
- 507.03 Vaccination; vaccination tag; rabies observation; rabies quarantine; penalties.**
- 507.04 Nuisance.**
- 507.05 Female dogs.**
- 507.06 Injunctive relief from violations.**
- 507.99 Penalty.**

CROSS REFERENCES

Authority to regulate the keeping of animals—see WV Code 8-12-5(26)
Domestic animal tax—see WV Code 8-13-10
Dogs generally—see WV Code 19-20
Cruelty to dogs and cats—see Ord. 505.02
Barking or howling dogs—see Ord. 505.04

507.01 Registration; head tax; registration tag; assessor record.

- (a) Every person owning, harboring or keeping any dog or dogs above the age of six months within the corporate Town limits shall at the time of the annual assessment of personal property register with and to the Assessor of Jefferson County an animal head tax of three dollars (\$3.00) on each dog so kept, harbored or owned.
- (b) Every person who shall become the owner or possessor of any dog or dogs subject to registration and taxation after the time of the annual assessment shall register the same with the Office of the Assessor and pay the head tax required by this article within ten days after acquiring such ownership and possession, or meeting the age provision.
- (c) Every registered dog shall at all times wear and display a valid registration tag. The failure by any owner, harboring or keeper to have displayed or worn on any dog in his possession at any time of such valid tag shall be prima facie evidence that such dog is not registered.
- (d) It shall be the duty of the Assessor of Jefferson County to prepare and deliver to the Mayor and Council, together with his annual assessment, an accurate list of all persons owning, harboring or keeping any dog or dogs within the Town, showing the number of such dogs kept by each person. (Ord. 85-1. Passed 6-11-1985.)

507.02 Leashing; running at large; liability of owner.

- (a) Every person owning, harboring or keeping any dog or dogs within the corporate Town limits shall be responsible for keeping such dog or dogs leashed at all times when such dog or dogs are off the property of such owner, harboring or keeper.
- (b) Whenever any dog is found running at large unleashed within the corporate Town limits, it shall be the duty of the Mayor, or his designee, to see that such animal is taken into custody and impounded for a period of five days and notice of such impoundment given to the dog's owner or possessor, if known. At the end of the five day impoundment period, if no offer has been made by an animal's owner or possessor to redeem such animal so impounded, or to pay the full amount of any assessed fines and / or unpaid head taxes, with costs of impoundment, it shall be the duty of the Mayor, or his designee, to destroy such animal by an effective method of his discretion.
- (c) Any owner, harboring or keeper of any dog or dogs who permits such dog or dogs to run at large shall be liable for any damages inflicted upon the person or property of another

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by such dog or dogs while so running large. (Ord. 85-1. Passed 6-11-1985.)

507.03 Vaccination; vaccination tag; rabies observation; rabies quarantine; penalties.

- (a) Whoever owns, keeps or harbors a dog or dogs above the age of five months, or temporarily keeps or maintains a dog or dogs for a period of more than thirty days within the corporate Town limits, shall have such dog or dogs properly vaccinated or immunized against rabies, and shall every second year thereafter have such dog or dogs revaccinated. Whoever owns, keeps or harbors a dog or dogs and fails to have such dog or dogs vaccinated or revaccinated against rabies is guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00).
- (b) Every vaccinated dog shall at all times wear and display a valid vaccination tag. The failure by any owner, harborer or keeper to have displayed or worn on any dog in his possession at any time of such valid tag shall be prima facie evidence that such dog has not been vaccinated.
- (c) Any person who owns, keeps or harbors a dog, whether licensed or unlicensed, which bites any person shall forthwith confine and quarantine the dog for a period of fourteen days for rabies observation. If such dog is not confined and quarantined, such dog may be placed in the custody and care of a licensed veterinarian for such purpose at the owner's expense. The penalty for any violation of this subsection shall be a fine of fifty dollars (\$50.00).
- (d) After the establishment of an officially declared quarantine to prevent the spreading of rabies or hydrophobia, and the posting of required notices, it shall be unlawful, during the continuance of such quarantine, for the owner, harborer or keeper of any dog or dogs to permit such dog or dogs to run at large in any such quarantined locality, or for any person to remove, or permit to be removed, any dog from such quarantined area. Any dog found running at large in such quarantined area, known to have been removed from, or to have escaped from such area, as aforesaid, may be secured and confined, or may be shot or otherwise destroyed by any person, without liability therefore. Any person who shall violate any of the provisions of this subsection, or who shall obstruct or hinder a duly authorized official, in the performance of his duties under this subsection, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00), and upon conviction for each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than five-hundred dollars (\$500.00). (Ord. 85-1. Passed 6-11-1985.)

507.04 Nuisance.

- (a) No person shall harbor or keep any dog or dogs which by loud and frequent or habitual barking, yelping, whining or howling shall cause serious annoyance to the neighborhood or to people passing upon the street.
- (b) No owner, harborer, keeper or walker of any dog shall permit such dog to discharge such animal's excreta upon any public or private property, other than the property of the owner, keeper, harborer or walker of any dog, within the corporate Town limits, if such owner does not immediately thereafter remove and clean up such dog's excreta from the public or private property. (Ord. 85-1. Passed 6-11-1985.)

507.05 Female dogs.

Every person owning, harboring or keeping a female dog, whether licensed or unlicensed,

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shall keep such dog confined in a building or secure enclosure for twenty-five days during the period of estrus. (Ord. 85-1. Passed 6-11-1985.)

507.06 Injunctive relief from violations.

The Mayor, or such person as the Mayor may designate, is hereby expressly authorized and empowered to maintain civil actions before any court of competent jurisdiction to restrain by injunction violations of this article, or to compel compliance with the provisions of this article. (Ord. 85-1. Passed 6-11-1985.)

507.99 Penalty.

Any person who violates any of the provisions of this article for which no specific penalty is prescribed is guilty of a misdemeanor, and, upon conviction thereof, shall, for the first offense, be fined twenty-five dollars (\$25.00); upon conviction for the second offense, be fined forty dollars (\$40.00); and upon conviction for the third and subsequent offenses, be fined one hundred dollars (\$100.00).

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 509

Disorderly Conduct and Peace Disturbance

- 509.01** Disorderly conduct.
- 509.02** Loitering on school property.
- 509.03** Wearing masks, hoods or face coverings.
- 509.04** Disturbing the peace.
- 509.05** Disturbance of religious worship.
- 509.06** Breach of peace.
- 509.07** Public drunkenness.
- 509.08** Loitering.
- 509.09** Willful disruption of governmental process.
- 509.99** Penalty.

CROSS REFERENCES

Authority to maintain order—see WV Code 8-12-5(19), (44)
Crimes against the peace—see WV Code 61-6
Intoxication or drinking in public places—see Ord. 521.06
Breach of peace with weapon—see Ord. 545.02

509.01 Disorderly conduct.

- (a) No person shall, in a public place, a mobile home park, or public parking area, a common area of an apartment building or dormitory, or 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 another person, and who persists in such conduct after being requested to desist by a law enforcement officer acting in his lawful capacity.
- (b) For purposes of this section:
 - (1) “Mobile home park” means a privately-owned residential housing area or subdivision wherein dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for the 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. (WV Code 61-6-1b.)

509.02 Loitering on school property.

No person, not a student in regular attendance, shall loiter in or about any school building or school grounds in violation of any posted rules or regulations governing the use of any such

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school without written permission from the principal. (WV Code 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 a 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 or 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 ensuing 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 devices 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. (WV Code 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 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.

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- (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 Disturbance of religious worship.

No person shall willfully interrupt, molest or disturb any assembly of people met for the worship of God. (Passed 5-11-1981.)

509.06 Breach of peace.

No person shall conduct himself in a noisy, boisterous, belligerent, violent or tumultuous manner, which causes disturbance to the peace and quiet of others. No person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control. (Passed 5-11-1981.)

509.07 Public drunkenness.

No person shall:

- (a) Appear in a public place in an intoxicated condition;
- (b) Drink alcoholic liquor on any highway, street, alley or in any public square;
- (c) Drink alcoholic liquor in a motor vehicle parked on any highway, street, alley or in any public square; or
- (d) Tender a drink of alcoholic liquor to another in a public place. (Passed 5-11-1981.)

509.08 Loitering.

No person shall without legitimate business or purposes shall loaf, loiter, wander or idle in, upon or about in any way or place customarily open to public use. (Passed 5-11-1981.)

509.09 Willful disruption of governmental process.

No person shall willfully interrupt or molest the orderly and peaceful process of any department, division, agency or branch of this Municipal government. (Passed 5-11-1981.)

509.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses 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). (WV Code 61-6-16.)
- (b) Whoever violates Section 509.02 shall be fined not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. (WV Code 61-6-14a.)

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 513 Gambling

- 513.01** Keeping or exhibiting gambling apparatus.
- 513.02** Permitting gambling apparatus on premises.
- 513.03** Acting as lookout of guard for keeper of gambling apparatus.
- 513.04** Playing on gambling apparatus; hotels, public places.
- 513.05** Making wager for value or furnishing money to another for wager.
- 513.06** Permitting gambling at public places.
- 513.07** Cheating or fraudulent actions while gambling or making a wager.
- 513.08** Poolrooms and pool tickets.
- 513.09** Lotteries and raffles.
- 513.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Gambling at fairs prohibited—see WV Code 19-7-8

Pari-mutuel system of wagering at race track permitted—see WV Code 19-23-9

Gaming contracts—see WV Code 55-9

Crimes against public policy—see WV Code 61-10

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 of 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 the 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 non-payout 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. (WV Code 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. (WV Code 61-10-2.)

513.03 Acting as lookout of 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, prevent, hinder or delay 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. (WV Code 61-10-3.)

513.04 Playing on gambling apparatus; hotels, public places.

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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. (WV Code 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. (WV Code 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. (WV Code 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. (WV Code 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 buying, selling or transferring of tickets or chances in any lottery is hereby prohibited. (WV Code 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 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 the 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". (WV Code 61-10-11.)

513.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 513.04 or 513.06 shall be fined not more than \$100.00.
- (b) Whoever violates Section 513.05 shall be fined not more than \$300.00.

PART FIVE — GENERAL OFFENSES CODE

ARTICLE 517 Indecency and Obscenity

- 517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.**
- 517.02 Detention of person in place of prostitution.**
- 517.03 Pandering.**
- 517.04 Pimping.**
- 517.05 Profane swearing and drunkenness.**
- 517.06 Obscene or harassing telephone calls.**
- 517.07 Indecent exposure.**
- 517.08 Invasion of privacy by looking.**
- 517.09 Preparation, distribution or exhibition of obscene matters to minors.**
- 517.10 Sale or display of obscene matter.**
- 517.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Authority to prohibit distribution of obscene literature—see WV Code 8-12-5(17)

Authority to suppress houses of ill fame—see WV Code 8-12-5(18)

Authority to prevent indecent practices—see WV Code 8-12-5(19)

Equitable remedies—see WV Code 61-9

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 a 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 to secure another for the purpose of prostitution or for any 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 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 acts herein prohibited.

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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 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. (WV Code 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. (WV Code 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 to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any 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 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.

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Any such person shall be competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with 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 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. (WV Code 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 transactions 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 prostitution referred to in this section is a minor. (WV Code 61-8-8.)

517.05 Profane swearing and drunkenness.

No person having arrived at the age of discretion shall profanely curse or swear or get drunk in public. (WV Code 61-8-15.)

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 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 the 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 control to be used for any purposes 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. (WV Code 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 or engage in overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm. (WV Code 61-8B-10.)

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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 Preparation, distribution or exhibition of obscene matters to minors.

- (a) Definitions of terms used in this section, and any variations thereof required by the context, shall have the meaning ascribed to them as follows:
- (1) "Distribute" means to transfer possession of, whether with or without consideration.
 - (2) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than salary or wages.
 - (3) "Exhibit" means to display or offer for viewing, whether with or without consideration.
 - (4) "Knowingly" means to display or offer for viewing, whether with or without consideration.
 - (5) "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 any statue or other figure, or live conduct, or any recording, transcript or mechanical, chemical or electrical reproductions, or any other articles, equipment, machines or materials.
 - (6) "Minor" means any individual under the age of eighteen years.
 - (7) "Obscene matter" means to the average individual, applying contemporary State standards mater which:
 - A. Considered as a whole, appeals to the prurient interest;
 - B. Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibitions of the genitals; and
 - C. Considered as a whole, lacks serious literary, artistic, political or scientific value.
 - (8) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
 - (9) "Prepare" means to produce, publish or print.
 - (10) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window showcase, display case or similar public place, so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.
- (b) No person shall knowingly send or cause to be sent or bring or cause to be brought into this Municipality any obscene matter for distribution, exhibition or public display to a minor, or in this Municipality prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or offer to prepare for , distribute exhibit or make a public display of, any obscene matter to a minor.

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- (c) No employees shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his employment.
- (d) Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with the knowledge of its content or character.
- (e) No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.
- (f) No person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, shall hire, employ or use such minor to do so or assist in doing any of the acts described in subsection (a)(7)B. hereof. (WV Code Art. 61-8A.)

517.10 Sale or display of obscene matter.

- (a) Definitions. For the purpose 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 in a 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, widow 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

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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 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 States. (WV Code 8-12-5(b).)

517.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 517.01(a), or 517.07 shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (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) or imprisoned not more than fifty days, or both.
- (c) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than six months, or both.

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ARTICLE 521 Liquor Control

- 521.01** Definitions.
- 521.02** Article not applicable to certain uses by physicians, druggists and others.
- 521.03** Prohibited acts generally.
- 521.04** Unlawful sale or possession by alcoholic liquor license.
- 521.05** Unlawful purchase of alcoholic liquors from State agency.
- 521.06** Intoxication or drinking in public places; illegal possession.
- 521.07** Acts prohibited by non-intoxicating beer license.
- 521.08** Unlawful purchase of non-intoxicating beer.
- 521.09** Acts prohibited by private club license.
- 521.10** Unlawful purchase from private club.
- 521.11** Acts prohibited by wine dealers.
- 521.12** Unlawful purchase of wine.
- 521.13** Application for a new license or a renewal of an existing license.
- 521.99** Penalty.

CROSS REFERENCES

See sectional histories for similar State law.
Authority to regulate liquor sales—see WV Code 8-12-5(20)
Non-intoxicating beer—see WV Code 11-16
Local option—see WV Code 60-5
Search warrants—see WV Code 60-6-18
Public drunkenness—see Ord. 517.05

521.01 Definitions.

For the purposes of this article, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) “Alcoholic liquor” includes alcohol, beer, wine and spirits, and any liquid or solid capable of being used as a beverage, but shall not include non-intoxicating 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 a non-intoxicating 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 marked diminished.
- (d) “Manufacturer” means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.
- (e) “Non-intoxicating beer” means all 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 industries including malt coolers and containing at least one half of one percent (0.5%) alcohol by weight, or six percent (6%) by volume, whichever is greater, all of which are hereby declared to be non-intoxicating and the word “liquor” is used in this article shall not be construed to include or embrace non-intoxicating beer nor any of the beverages, products, mixtures or preparation included within this definition.
- (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

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resort or amusement. "Public place" does not mean or include any of the above-named places or any portion thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.

- (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. (WV Code 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. (WV Code 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 prescribed by 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. (WV Code 60-6-7.)
- (h) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or non-intoxicating beer except as permitted by West Virginia Code Chapter 11 and 60.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

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521.04 Unlawful sale or possession by alcoholic liquor license.

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; (WV Code 60-6-8.)
- (d) Sell alcoholic liquors to a person who is:
 - (1) Less than twenty-one years of age;
 - (2) An habitual drunkard;
 - (3) Intoxicated;
 - (4) Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
 - (5) Mentally incompetent. (WV Code 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. (WV Code 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 liquor from whatever source. (WV Code 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 non-intoxicating beer or have an open container of alcoholic liquor or non-intoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane or other public place;
- (c) Drink alcoholic liquor or non-intoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of non-intoxicating 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 one gallon, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control commissioner, without having first obtained written authority from the Commissioner therefore;
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.
- (g) Any person who possesses any beer or liquor under the age of 21 is in violation of the provisions of West Virginia Code Chapter 60 and 11.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense. (WV Code 60-6-9.)

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521.07 Acts prohibited by non-intoxicating beer license.

- (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, non-intoxicating 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 non-intoxicating 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 non-intoxicating 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 non-intoxicating 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 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 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 his, her its or their agents, shall transport or deliver non-intoxicating beer as defined in this article to any retail licensee on Sunday;
- (f) No brewer or distributor shall give, furnish, rent or sell 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 non-intoxicating 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 non-intoxicating 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

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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 provision of West Virginia Code Article 60-7, nor shall 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 non-intoxicating 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 music 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 non-intoxicating 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 non-intoxicating beer upon his licensed premises;
- (q) No Class A licensee, his, her, its or their servants, agents or employees, of 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 premise in the immediate company of his or her 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 items or commodities 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 non-intoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such non-intoxicating beer or sell, offer for sale, distribute or deliver any such non-intoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such non-intoxicating 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.

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- (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 non-intoxicating 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 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 non-intoxicating 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. (WV Code 11-16-18.)

521.08 Unlawful purchase of non-intoxicating beer.

- (a) No person under the age of twenty-one years for the purpose of purchasing non-intoxicating 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 non-intoxicating beer.
- (b) No person shall knowingly buy for, give to or furnish non-intoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WV Code 11-16-19.)

521.09 Acts prohibited by private club license.

- (a) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premise 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 alcoholic liquors, for or to 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 alcoholic liquors, for or to any mental incompetent, or for a person who is physically incapacitated due to consumption of alcoholic liquor or the use of drugs;
 - (5) Sell, give or dispense any 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 licensee's premises any 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) Permit any person who is less than eighteen years of age to sell, furnish or give alcoholic liquors to any person; or

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- (10) 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 the licensee's premises, the fact that alcoholic liquors may be purchased thereat. (WV Code 60-7-12.)

521.10 Unlawful purchase from private club.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing non-intoxicating beer or alcoholic liquors from a 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 non-intoxicating beer or alcoholic liquors from a licensee.
- (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 non-intoxicating beer or alcoholic liquors purchased from a licensee. (WV Code 60-7-12a.)

521.11 Acts prohibited by wine dealers.

It shall be unlawful:

- (a) For a distributor to sell or deliver wine purchased or acquired from any source other than a person who is 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 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 person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs;
- (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 distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of the supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purpose 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 licensed as such in this State: provided however, that nothing herein shall be deemed to prohibit sales of convenience between distributor 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 may be temporarily out of stock. The Alcohol Beverage Control Commissioner shall promulgate such rules or regulations as may be necessary to carry this subsection into effect;
- (f) For a person to violate any reasonable rule or regulation 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 deemed 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

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of wine under the provisions of this article. With the prior approval of the Commissioner a licensee whose principle 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 shall not include the sale or delivery of non-intoxicating 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. (WV Code 60-8-20.)

521.12 Unlawful purchase of wine.

No person shall:

- (a) Being under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, misrepresent his or her age, or for such purposes 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.
- (b) 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 to by blood or marriage. (WV Code 60-8-20a.)

521.13 Application for a new license or a renewal of an existing license.

Application for a new license or a renewal of an existing license shall be on a form provided by the Town. The application will not be considered complete unless accompanied by a copy of:

- (a) Applicant's completed WVABCC for 192, Application for Retail License, and
- (b) The floor plan of the licensed premises submitted to the WVABCC, and
- (c) The form submitted to the WVABCC showing the distance of the business premises from churches, residences, schools, and government offices.

521.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

- (a) Whoever violates Section 521.05(a), 521.08(A), 521.10(a) or 521.12(a) shall be fined not more than fifty dollars (\$50.00), or imprisoned for not more than seventy-two hours, or both, or in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.
- (b) Whoever violates Section 521.05(b), 521.08(b), 521.10(b), or 521.12(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than ten days, or both. (WV Code 11-16-19, 60-3-22a, 60-7-12a, 60-8-20a.)
- (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) and not more than thirty days in jail or completion of an alcohol education program of not more than six hours duration at the nearest community mental health-mental retardation center. 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) and not more than thirty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center.

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- (3) Upon third and subsequent convictions, a fine of not more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail 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 guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Article 27-5 and 27-6A.
- (d) Whoever violates Section 521.06(b) to (d) shall be fined not more than one hundred dollars (\$100.00), or imprisoned not more than thirty days, or both. (WV Code 60-6-9.)

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ARTICLE 522 Substance Control

- 522.01 Substance control regulations.**
- 522.02 Counterfeit substance regulations.**
- 522.03 Unlawful prescription possession regulations.**
- 522.04 Imitation controlled substance regulations.**

CROSS REFERENCES

See sectional histories for similar State law.
Uniform Controlled Substance Act—see WV Code 60A
Regulation of controlled substances—see WV 60A-4-401
Authority to prevent public injury—see WV Code 8-12-5(13)
Authority to prevent illegal sale—see WV Code 8-12-5(20)
Authority to promote order—see WV Code 8-12-5(44)
Authority to provide penalties—see WV Code 8-12-5(57)

522.01 Substance control regulations.

Except as authorized by this ordinance it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

- (a) It is unlawful for any person knowingly or intentionally to possess the controlled substance marijuana, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by the West Virginia Code.
 - (i) A controlled substance classified in Schedule I and II which is a narcotic drug, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;
 - (ii) Any other controlled substance classified in Schedule I, II or III, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;
 - (iii) A substance classified in Schedule IV, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;
 - (iv) A substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

522.02 Counterfeit substance regulations.

Except as authorized by this ordinance, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

- (i) A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;
- (ii) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

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- (iii) A counterfeit substance classified in Schedule IV, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;
- (iv) A counterfeit substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

522.03 Unlawful prescription possession regulations.

It is unlawful for any person knowingly or intentionally to possess a controlled substance 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 this ordinance. Any person who violates this subsection is guilty of a misdemeanor, or disposition may be made under section 407 [60A-4-407], subject to the limitations specified in said section 407 [60A-4-407], or upon conviction, such person may be confined to the county jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both; provided, that notwithstanding any other provisions of this act to the contrary, and first offense for possession of less than 15 grams of marijuana shall be disposed of under said section 407 [60A-4-407].

522.04 Imitation controlled substance regulations.

It is unlawful for any person knowingly or intentionally:

- (a) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (b) To 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 in the container or label of a counterfeit substance or an imitation controlled substance.

Any person who violates this subsection is guilty of a misdemeanor, and, upon conviction, may be imprisoned in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more, who violates subdivision (1) of this subsection, and, in doing so distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person, is guilty of a felony, and upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo. (1971, c 54; 1983, c 43. Passed 7-8-2002.)

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ARTICLE 525 Minors

- 525.01** **Contributing to delinquency or neglect of a minor.**
- 525.02** **Cruelty to children.**
- 525.03** **Parental liability for acts of children.**
- 525.04** **Abandoned airtight containers.**
- 525.05** **Curfew.**
- 525.99** **Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Delinquent child defined—see WV Code 49-1-4

Jurisdiction of municipal court—see WV Code 49-5-1(b)

Contributing to delinquency of a minor—see WV Code 49-7-7 *et seq.*

525.01 Contributing to delinquency or neglect of a 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. (WV Code 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, 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. (WV Code 61-8-24.)

525.03 Parental liability for acts of children.

The custodial parent or parents of any minor shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are proximate result of any one or a combination of the following acts of such minor:

- (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 such 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 is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor at the time of the minor'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 other court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and

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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 tortuous 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. (WV Code 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 greater than two feet without first removing all entry doors therefrom. (WV Code 61-2-26.)

525.05 Curfew.

- (a) Definitions. For the purpose of this section, the following terms, phrases, words and their derivation have the meaning given herein:
- (1) "Minor" means any person under the age of eighteen years.
 - (2) "Parent" means any person having legal custody of a minor:
 - A. As a natural or adoptive parent,
 - B. As a legal guardian,
 - C. As a person who stands in loco parentis to said minor, or
 - D. As a person to whom legal custody of a minor has been given by order of a court or competent jurisdiction.
 - (3) "Public place" means any street, highway, alley or right of way to include sidewalks; any park, playground, ground, place or building open to the public; any privately or owned place of amusement, entertainment or public accommodation, to include parking lots and other areas adjacent thereto; and any vacant lot or land without the consent of the owner, any private property.
 - (4) "Time of night" referred to herein, is based upon the prevailing standards of time, generally observed at that hour by the public in the Municipality, and prima facie the time when observed in the Municipal Administrative Offices and Police Station.
 - (5) "Year of age" continues from one birthday, such as the seventeenth, to but not including the day of the next, such as the eighteenth birthday, making it clear that seventeen or less years of age is herein treated as equivalent to the phrase "under eighteen years of age."
- (b) Curfew hours.
- (1) No person seventeen or less years of age shall be in or on any public place during the period ending at 6:00 a.m. and beginning:
 - A. At 10:00 p.m. for minors twelve or less years of age;
 - B. At 11:00 p.m. for minors thirteen through seventeen years of age; andunruliness and shall be cited to the County Prosecutor's Office for processing and prosecution of said violation.
 - (2) Any minor violating the provisions of this section shall be guilty of an act of unruliness and shall be cited to the County Prosecutor's Office for processing and prosecution of said violation.
- (c) Exceptions. In the following exceptional cases, a minor in or upon a public place during the nocturnal hours for which subsection (b) hereof is intended to provide the maximum limits of regulation shall not be considered in violation of this section:
- (1) When accompanied by a parent of such minor.
 - (2) When accompanied by an adult authorized by a parent of such minor to take the parent's place in accompanying the minor for a designated period of time and

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- purpose within a specified area.
- (3) When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right to assembly. Such minor shall evidence the bona fides of such exercise by first delivering to the Police Department of the Corporation, a written communication signed by such minor and countersigned if practicable by a parent of such minor with their home address and telephone number, addressed to the Police Chief specifying when, where and for what constitutionally protected and lawful purpose the minor will be in a public place at night during the hours when this section is otherwise applicable to the minor, in the exercise of the juvenile's First Amendment rights.
 - (4) In cases of reasonable necessity, but only after such minor's parent has communicated to the Police Department personnel the facts establishing such reasonable necessity and designating the minor's proposed location, route, purpose, and the period of time the minor will be in or upon a public place.
 - (5) When the minor is on the sidewalk of the place where such minor resides directly abutting said residence's property, or on the sidewalk of either next door neighbor who shall not be communicating an objection to said presence to a police officer
 - (6) When returning home by a directed route from, and within thirty minutes of, termination of a school activity, or an activity of a religious or other voluntary association, of which prior notice, indicating the place and probable time of termination, has been given in writing to, and duly filed for immediate reference by, the Chief of Police or the officer assigned to him on duty at the Police station.
 - (7) When authorized by special permit from the Mayor, or Chief of Police, carried on the person of the minor, when necessary and lawful nighttime activities of a minor may be inadequately provided for by other provisions of this section. A written application shall be given to the Mayor, signed by a minor, and by a parent of such minor stating:
 - A. The name, age and address of such minor,
 - B. The name, address and both home and work telephone number of a parent thereof;
 - C. The height, weight, sex, color of eyes and hair and other physical characteristics of such minor;
 - D. The necessity which requires such minor be in or upon a public place during the curfew hours otherwise applicable; and
 - E. The street or route and the beginning and ending of the period of time involved by date and hour.

The Mayor may grant a permit in writing for the use by the minor of these public places at such hours as in the Mayor's or Chief's opinion may reasonably be necessary. In an emergency, this may be handled by telephone, or other effective communication, with corresponding record being made contemporaneously, either to the Mayor, or if unavailable to the Police Chief.

- (8) When authorized, by resolution or a collective permit issued by the Mayor, in other similar cases or reasonable necessity, similarly handled but adapted to necessary nighttime activities of more minors than can readily be dealt with on an individual special permit basis. Normally such resolution or collective permit by the Mayor permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through other agencies such as schools, and shall define the activity, the scope of the use of public places permitted, and

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the period of time involved not to extend more than thirty minutes beyond the time for termination of such activity.

- (9) When the minor is carrying a certified card of employment, briefly identifying employment and his hours of employment, and said minor is in a public place as a necessity for said employment, or is going directly to or is returning directly to his home from said employment.

(d) Parental Responsibility.

- (1) No parent having legal custody of a minor shall knowingly permit or by ineffective control allow such minor to be in or upon any public place under circumstances not constituting an exception to, or under circumstances otherwise beyond the scope of this section for the times of permissible juvenile presence on the public premises of the Town. "Knowingly" includes knowledge which a parent should reasonably be expected to have concerning whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to, or unaware of, the activities or conduct or whereabouts of such a minor whose actions constitute a violation of this Ordinance.
- (2) A parent who violates this section is guilty of a misdemeanor and may be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (WV Code 8-11-1 *et seq.*) (Ord. 94-02. Passed 5-16-1994.)

525.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

Whoever violates Section 524-04 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

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ARTICLE 527 Noise

- 527.01 Noise control.**
- 527.02 Noise prohibited.**
- 527.03 Enforcement.**
- 527.04 Penalties.**
- 527.05 Exclusions.**
- 527.06 Appeals.**
- 527.07 Civil cause of action not precluded.**

CROSS REFERENCES

West Virginia Code 8-12-5(23) provides municipalities with the authority to eliminate hazards to public health and safety and to abate public nuisances, which in the opinion of the Council of the Corporation of Harpers Ferry, includes excessive noise.

The following sections of Harpers Ferry ordinances apply:

Ord. 505.04—Barking or howling dogs

Ord. 509.06—Breach of Peace

Ord. 509.01—Disorderly Conduct

527.01 Noise control.

No person shall, within the limits of the Municipality, make, continue or cause to be made or continued, any loud, unnecessary or unusual noise or any noise which does or is likely to either annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of reasonable persons of ordinary sensibilities.

527.02 Noise prohibited.

The following acts and emissions of noise are declared to be loud, disturbing and unnecessary noises prohibited by Section 527.01, but such enumeration shall not be deemed to be exclusive, namely:

- (a) Horns, Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the municipality, except as a danger warning, in a manner which is plainly audible at a distance of fifty (50) feet from said vehicle.
- (b) Vehicles. Noise from the use of any automobile, truck, motorcycle or other vehicle within the Municipality which either: (1) emits a noise above the level of 90 decibels, as measured by a Sound Level Meter properly calibrated under standards of the U.S. Environmental Protection Agency, as measured from the edge of the road carrying the vehicle; or (2) emits a noise above 65 decibels if between the hours of 10 p.m. to 8 a.m. (Ord. 06-10. Passed 10-9-2006.)
- (c) Sound Amplifying Devices. The using, operating or permitting to be played, any device for the producing or reproducing or amplifying of sound, in such manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants which exceeds 65 decibels, or fifty five (55) decibels if between the hours of 10 p.m. to 8 a.m., as measured fifty (50) feet from the building or vehicle from where the noise emanates.
- (d) Power Tools and Equipment. The use of power tools, landscaping or yard maintenance equipment that produce an audible sound at or above the level of 65 decibels, measured from the property line of the property from which the sound is emanating, between the hours of 10 p.m. to 8 a.m.

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527.03 Enforcement.

Any certified law enforcement officer who encounters evidence of a violation of this ordinance is empowered to issue a summons to a person or persons whom the law enforcement officer believes has violated this ordinance. The summons shall summon the individual or individuals to appear before the municipal court at a stated time and place to answer charges of a violation of this ordinance as stated in the summons.

527.04 Penalties.

- (a) The municipal court, having found that an individual has violated any provision of Article 527, may order the perpetrator to abate the public nuisance and may order the perpetrator to pay a civil penalty of not less than \$50.00 nor more than \$300.00.
- (b) The municipal court having found that an individual has committed a subsequent violation of Article 527 within twelve (12) months after being adjudged to have committed his / her last violation, may order the perpetrator to pay a civil penalty of not less than \$150.00 nor more than \$500.00.
- (c) Each violation of this ordinance, which occurs on a separate day shall constitute a separate offense under this ordinance.

527.05 Exclusions.

The provisions of Article 527 are not applicable to noise from the following sources:

- (a) Emergency or public safety vehicles;
- (b) Emergency repair activity directed at vital services;
- (c) Any public or private emergency or alarm device;
- (d) Noise emanating from any place of worship;
- (e) Trains or railway devices;
- (f) Sporting events;
- (g) Authorized public activities which have been authorized by the Town Council or Mayor.

527.06 Appeals.

Appeals to the Jefferson County Circuit Court may be made pursuant to Rule 18 of the West Virginia Rules of Civil Procedure for Magistrate Courts.

527.07 Civil cause of action not precluded.

Nothing contained in this ordinance shall be construed to limit or preclude the right of any individual, entity or municipality from pursuing any civil cause of action otherwise authorized by law for either injury or damage arising from any noise which creates either public or private nuisance under law. (Passed 11-14-2005.)

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ARTICLE 529 Offenses Relating to Persons

- 529.01** **Assault and battery.**
529.02 **Assault and battery on school employees.**
529.03 **Demonstration equipment prohibited.**
529.99 **Penalty.**

CROSS REFERENCES

Uniform Controlled Substance Act—see WV Code 60A
State law provisions—see WV Code 61-2
Harassing telephone calls—see Ord. 517.06
Intoxication or drinking in public places—see Ord. 521.06

529.01 Assault and battery.

- (a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury.
- (b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature with the person of another unlawfully and intentionally cause physical harm to another person. (WV Code 61-2-9.)

529.02 Assault and battery on school employees.

- (a) No person shall commit an assault by unlawfully attempting to commit a violent injury to the person of a school employee or by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury.
- (b) No person shall commit a battery by unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee or by unlawfully and intentionally causing physical harm to a school employee.
- (c) For the purposes of this section, “school employee” means a person employed by the Board of Education whether employed on a regular full-time basis, an hourly basis or otherwise, if at the time of the commission of any offense provided for in this section, such person is engaged in the performance of his duties or its commuting to or from his place of employment. For the purposes of this section, a “school employee” shall be deemed to include a student teacher. (WV Code 61-2-15.)

529.03 Demonstration equipment prohibited.

No person shall carry or possess while participating in any demonstration, rally, picket line or public assembly, any length of lumber, wood, wood lath or metal unless that object is one-fourth inch or less in thickness and two inches or less in width, or if not generally rectangular in shape, such object shall not exceed three-quarters inch in its thickest dimension. (Ord. 79-6, passed 10-25-1979.)

529.99 Penalty.

(EDITOR’S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

Whoever violates Section 529.01(a) or 529.02(a) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

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ARTICLE 533 Offenses Relating to Property

- 533.01 Shoplifting.**
- 533.02 Trespass.**
- 533.03 Petit larceny.**
- 533.04 Dealing with stolen goods.**
- 533.05 Injury or destruction of property or monuments.**
- 533.06 Tampering with and theft of utilities; CATV.**
- 533.07 Littering and deposit of garbage, rubbish, junk, etc.**
- 533.08 Barricades and warning lights; abandoned excavations.**
- 533.09 Aircraft.**
- 533.99 Penalty.**

CROSS REFERENCES

See sectional histories for similar State law.

Authority to regulate advertising—see WV Code 8-12-5(31)

State law provisions—see WV Code 61-3

533.01 Shoplifting.

(a) General definitions.

- (1) “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.
- (2) “Merchant” means an owner or operator of any mercantile establishment, and includes the merchant’s employees, servants, security agents or other agents.
- (3) “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.
- (4) “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.
- (5) “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. (WV Code 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

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- F. Removes a shopping cart from the premises of the mercantile establishment.
- (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. (WV Code 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. (WV Code 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. (WV Code 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. (WV Code 61-3A-5.)
- (f) Penalty. A person convicted of shoplifting shall be punished as follows:
- (1) First offense conviction. Upon a first shoplifting conviction:

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- A. When the value of the merchandise is less than or equal to one hundred dollars (\$100.00), the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
 - B. When the value of the merchandise exceeds one hundred dollars (\$100.00), 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; or the defendant shall be imprisoned not more than thirty days; or both.
- (2) Second offense conviction. Upon a second shoplifting conviction:
- A. When the value of the merchandise is less than or equal to one hundred dollars (\$100.00), 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; or the defendant shall be imprisoned not more than thirty days; or both.
 - B. When the value of the merchandise exceeds one hundred dollars (\$100.00), the defendant shall be fined not less than five hundred dollars (\$500.00) and shall be imprisoned not more than thirty days. At least thirty days shall actually be spent in confinement and not subject to probation.
- (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. (WV Code 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

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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 purposes 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. Entrance 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. (WV Code 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 do bodily injury to a human being in such structure notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a). (WV Code 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 not more than one hundred dollars (\$100.00).
- (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

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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 action shall not apply in a labor dispute. (WV Code 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. (WV Code 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. (WV Code 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, water or electric energy to any lamp, motor, burner, office or any other device, by 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 therefore, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action. (WV Code 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. (WV Code 61-3-45.)

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- (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 Aircraft.

- (a) No person shall pilot, fly, drive, or otherwise operate within the corporate limits of the Town any airplane, balloon or other aircraft at an altitude of less than one thousand feet above ground, except in ascending from or descending to any regularly used landing field or airport.
- (b) No person shall, while occupying or traveling in any airplane, balloon, or other aircraft, within the corporate limits of the Town, fire or discharge or otherwise set off a ignite any gun, firearm or other of explosive.
- (c) No person shall, while occupying or traveling in any airplane, balloon or other aircraft, cast out, drop or otherwise release or emit any paper or other matter which will descend within the corporate limits of the Town.

533.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

Whoever violates Section 533.05 (b) shall be fined not more than \$200.00 or imprisoned not more than thirty days, or both.

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ARTICLE 541 Railroads

541.01 Obstructing railroad crossings.

541.02 Trespassing.

541.99 Penalty.

CROSS REFERENCES

Authority to eliminate grade crossings—see WV Code 17-10-7

Grant of right of way—see WV Code 31-2-13

Stopping at grade crossing—see Ord. 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. 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.
- (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. (WV Code 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. (WV Code 61-3-43.)

541.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific

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penalty is provided.)

Whoever violates Section 541.02 shall be fined not more than \$25.00 or imprisoned not more than thirty days, or both.

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ARTICLE 545 Weapons and Explosives

545.01 Definitions.

545.02 Carrying concealed deadly weapons without license.

545.03 Exceptions as to prohibitions against carrying concealed deadly weapons.

545.04 Persons prohibited from possession of deadly weapons.

545.05 Possession of deadly weapons by minors prohibited.

545.06 Possession of machine guns.

545.07 Display or sale of deadly weapons.

545.08 Brandishing deadly weapons.

545.09 Shooting across road, or near building or crowd.

545.10 Fireworks sale, possession and discharge.

545.11 Discharging firearms.

545.12 Throwing or shooting missiles.

545.13 Blasting.

545.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law.

Authority to prohibit carrying weapons—see WV Code 8-12-5(16)

Limitations on power to restrict ownership—see WV Code 8-2-5a

Dangerous weapons—see WV Code 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, sand bag 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, 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) “Nunchaku” means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other non-rigid, 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 part may be used as the striking end.

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- (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 a manner that, when striking another person with the fist or a 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, design 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, or other deadly weapons of like kind or other deadly weapons of like kind or character which may be easily concealed on or about the person.
- (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 carried.
- (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(1). (WV Code 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. (WV Code 61-7-3.)

545.03 Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in West Virginia Code Article 61-7 shall not apply to:

- (a) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any 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, nor shall anything herein prohibit a person from 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;
- (b) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from the State or from the United States for the purpose of target practice, from carrying any pistol, as defined in Section 545.01(g), unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;
- (c) Any law-enforcement officer or law-enforcement official as such are defined in West Virginia Code 30-29-1;

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- (d) Any employee of the West Virginia Department of Corrections duly appointed pursuant to the provisions of West Virginia Code 28-5-5 while such employee is on duty;
- (e) Any member of the armed forces of the United States or the militia of the State while such member is on duty; or
- (f) Any circuit judge, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney. (WV Code 61-7-6.)

545.04 Persons prohibited from possession of deadly weapons.

Notwithstanding any provision of this article to the contrary, no person who has been convicted of a felony; has been discharged under less than honorable conditions from the armed forces of the United States; has been adjudicated as a mental incompetent or has been committed involuntarily to a mental institution; is an alien illegally or unlawfully in the United States; or is addicted to alcohol, a controlled substance or a drug, or is an unlawful user thereof, shall have in his or her possession any firearm or other deadly weapon, provided, that any person prohibited from possessing a firearm or other deadly weapon by the provisions of this section may petition the circuit court of the county in which he or she resides, and if the court finds by clear and convincing evidence that such person is competent and capable of exercising the responsibility concomitant with the possession of a firearm or other deadly weapon, the court may enter an order allowing such person to possess such weapon if such would not violate any Federal statute. (WV Code 61-7-7.)

545.05 Possession of deadly weapons by minors prohibited.

- (a) Notwithstanding any other provisions 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 owner 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 this 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. (WV Code 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. (WV Code 61-7-9.)

545.07 Display or sale of deadly weapons.

- (a) No person shall publicly display and offer for rent, sale, to any passerby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for the same.
- (b) No person shall knowingly sell, rent, give or lend any of the arms mentioned in this article to a person prohibited from processing same by any provisions of this article.

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(WV Code 61-7-10.)

545.08 Brandishing deadly weapons.

- (a) 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.
- (b) No person armed with a firearm or deadly weapon, except for law-enforcement officers on duty, shall expose, brandish, unholster or hold such firearm in his or her hand or expose, brandish or hold such deadly weapon in his or her hand on the premises of any primary or secondary educational facility in the Municipality, except for valid educational purposes by faculty or by the individuals invited by the facility; or on any premises housing a court of law. (WV Code 61-7-11.)

545.09 Shooting across road, or near building or crowd.

- (a) No person shall shoot or discharge any firearm across or in any public road in the Municipality, at any time, or within 400 feet of any schoolhouse or church, or within 500 feet of any dwelling house by any person other than the owner and his or her family or guests, or on or near any park or other place where persons gather for purposes of pleasure.
- (b) Any person operating a gun repair shop, licensed to do business in the State and duly licensed under applicable Federal statutes, is exempt from the prohibition established by this section and West Virginia Code 20-2-58 for the purpose of testing firearms. (WV Code 61-7-13.)

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, sparklers or other fireworks of like construction and any fireworks 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. (WV Code 29-3-23.)
- (b) Except as hereinafter provided, no person, firm, co-partnership 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 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

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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 \$1,000.00 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 require to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefore shall furnish proof of the financial responsibility to satisfy claims for the 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 employ thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public. (WV Code 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.

545.13 Blasting.

No contractor, workman or other person shall blast work with powder, dynamite or other explosives, which throws by the force of such blast any rocks or fragments of rocks upon any street, sidewalk, or alley of the Town, so as to endanger life or safety of any person in or upon such sidewalk or alley.

545.99 Penalty.

(EDITOR'S NOTE: See Section 501.99 for General Offenses Code penalty if no specific penalty is provided.)

PART SEVEN — BUSINESS AND TAXATION CODE

PART SEVEN — BUSINESS AND TAXATION CODE

CHAPTER ONE – Business Regulations.
CHAPTER THREE – Taxes and Service Charges.

PART SEVEN — BUSINESS AND TAXATION CODE

CHAPTER ONE – Business Regulations.

Article 705. Coin-operated Devices.

PART SEVEN — BUSINESS AND TAXATION CODE

ARTICLE 705 Coin-operated Devices

705.01 Operation prohibited.

705.02 Exceptions.

CROSS REFERENCES

Gambling prohibited—see Ord. 513

705.01 Operation prohibited.

- (a) No person shall operate or maintain for hire pinball machines, pool and billiard tables, juke boxes, or any coin operated novelty electronic games.
- (b) No person shall locate, operate or maintain any coin operated vending machines dispensing merchandise, wares, food or beverages, upon, or within view from a public walkway, street highway or residential property.
- (c) Any person violating this section shall be guilty of a misdemeanor punishable by a fine of \$50.00 for each offense. Each day that any device, machine, or equipment is either operated, maintained, or located in a manner prohibited by this Article shall constitute a separate offense hereunder. (Passed 6-18-1984.)

705.02 Exceptions.

Exceptions to the Article may be granted upon application to Town Council for display of merchandise which contributes to the historic appearance of the Town and does not impede pedestrian or vehicular traffic nor constitute a safety hazard. (Passed 6-8-1998.)

PART SEVEN — BUSINESS AND TAXATION CODE

CHAPTER THREE – Taxes and Service Charges.

- Article 721. Intoxicating Liquor.
- Article 725. License Taxes.
- Article 731. Private Clubs.
- Article 735. Business and Occupation Tax.
- Article 736. Sales and Use Tax.
- Article 740. Reciprocal Exchange of Tax Information.

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ARTICLE 721 Intoxicating Liquor

721.01 Tax levied.

CROSS REFERENCES

Authority to levy—see WV Code 8-13-7, 60-7-7

Liquor control—see Ord. 521

721.01 Tax levied.

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 West Virginia Code Article 60-8. Such tax shall be levied upon the purchaser of the intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of the intoxicating liquor or wine. Such tax shall be received by the municipality from the State Treasury pursuant to the rules and regulations adopted by the 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 West Virginia Code Article 60-7.

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ARTICLE 725 License Taxes

- 725.01** License required; fees.
- 725.02** Scope.
- 725.03** Proration of fees.
- 725.04** Duration.
- 725.99** Penalty.

CROSS REFERENCES

Taxation generally—see WV Code 8-13
Authority to tax—see WV Code 8-13-4, 11-12-4
Collection of taxes—see WV Code 8-13-15 *et seq.*
Contractors—see WV Code 11-12-19

725.01 License required; fees.

No person, firm or corporation which requires a West Virginia State License shall within the Town of Harpers Ferry, conduct, own or operate any business, occupations, trades, commercial ventures, or terms of art as defined herein and in the West Virginia Code, and shall have the meaning given to them in West Virginia Code without first obtaining a Town license. When there is more than one such meaning they shall have the meaning given in the sections of the West Virginia Code imposing any State license tax correlative to the Town's license tax. (Amended 10-12-1999.)

- (a) Establish, operate or maintain any store known as a "Special" store and being one in which goods, wares, merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin operated devices owned and operated by the store proprietor, without further qualifications, and fee for which Town license shall be fifteen dollars (\$15.00) per year, payable in advance.
- (b) Establish, operate or maintain any store known as "General" store and being one in which goods, wares, merchandise of any kind are purchased, ordered, sold or offered for sale, either at retail or wholesale, and the fee for which Town license shall be fifteen dollars (\$15.00) per year, payable in advance.
- (c) Keep or maintain any newspaper machine within a structure, fifteen dollars (\$15.00) per year for the first such machine at such location and five dollars (\$5.00) per year for each additional such machine at such location.
- (d) Sell, offer or expose for sale at retail non-intoxicating beer for which a West Virginia State license has already been obtained, the Town license fee for which shall be one hundred dollars (\$100.00) per year at each such store location where beer is offered for sale.
- (e) Distribute or sell such beer at wholesale from a specific warehouse or other location in the Town, the Town fee for which shall be two hundred and fifty dollars (\$250.00) per year.
- (f) Keep for public use or resort a bowling alley, billiard table, pool table, bagatelle table establishment, the Town license fee for which shall be fifteen dollars (\$15.00) per year for the first such table or alley at such location and five dollars (\$5.00) per year for each additional such table at such location.
- (g) Act as a hawker or peddler offering for sale manufactured products or commodities not raised by himself or made by himself personally, the Town license fee for which shall be ten dollars (\$10.00) per year.

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- (h) Act as a junk dealer or agent of a junk dealer, the Town license fee for which will be (\$10.00 per year.
- (i) Exhibit any circus or carnival, except under the auspices of a town volunteer fire department, religious or charitable organization, the Town license fee for which shall be twenty-five dollars (\$25.00) per day that the same is open for exhibit.
- (j) Act as a fortune teller, palmist, phrenologist, spiritualist, medium, clairvoyant, mind reader, or perform any similar art or profession of telling the past or forecasting the future, the town license fee for which shall be one hundred dollars (\$100.00) per year or if a lesser period is supplied for, the fee shall be ten dollars (\$10.00) per month and for any fraction thereof, the same minimum amount.
- (k) Act as a pawnbroker, or offer to act as such, the Town license fee for which shall be seventy-five dollars (\$75.00) per year.
- (l) Sell, offer or expose for sale merchants trading stamps, premium stamps or certificates of like nature, or undertake to redeem such stamps or certificates in money or goods, the Town fee for which shall be one hundred dollars (\$100.00) per year.
- (m) Operate a motion picture theater, or otherwise give public plays or shows to which admission is charged, except under the auspices of a religious, or charitable organization, or school, the Town license fee for which shall be fifteen dollars (\$15.00) per year.
- (n) Operate a collection agency, the Town fee for which shall be fifty dollars (\$50.00) per year.
- (o) Operate an employment agency, the Town fee for which shall be fifty dollars (\$50.00) per year.
- (p) Being a corporation chartered or organized under the laws of any other state except West Virginia, except life insurance corporations, carry on the business of such corporation through an agent or otherwise, the Town license fee for which shall be twenty-five dollars (\$25.00) a year.
- (q) The license fee for any profession, trade, or business not otherwise listed herein is fifteen dollars (\$15.00) per year.

725.02 Scope.

Whereas the above designated business, and the licensing thereof by the Town, come within the police powers of the Town corporation, such license fees shall apply to and be required of any such business located within one mile of the corporation limits, even though actually situated outside such limits, except where such corporation is within the bounds of another municipal corporation. (Passed 8-6-1957.)

725.03 Proration of fees.

The license fees stated shall be the minimum fees payable, regardless of the fractional part of a year by desired applicant. (Passed 8-6-1957.)

725.04 Duration.

License years except for the first shall be from July 1 through June 30 of the following year. The first year shall end June 30, 1958. (Passed 8-6-1957.)

725.99 Penalty.

- (a) Every violation of this article shall be punishable by a fine of one hundred dollars (\$100.00) as a minimum to not more than five hundred dollars (\$500.00) as a maximum, and in addition such violators may be imprisoned not more than ten days in County Jail, and such violators will still be required to obtain such license and pay such

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fees as specified in the article, plus an additional penalty of ten percent (10%) thereof, for their delinquency. (Passed 8-6-1957. Amended 11-14-2005.)

- (b) (2) Upon conviction for a second offense, a fine of not less than five hundred dollars (\$500.00) as a minimum to not more than one thousand dollars (\$1,000.00) as a maximum, and in addition such violators may be imprisoned not more than thirty days in the County Jail. (Passed 11-14-2005.)

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ARTICLE 731 Private Clubs

- 731.01** License fee.
731.02 Payment of fee.
731.03 Revocation of license.

CROSS REFERENCES

Authority to license—see WV Code 8-13-7, 60-7-7
Private clubs—see WV Code 60-7
Liquor control—see Ord. 521

731.01 License fee.

A licensee who has obtained a State license pursuant to West Virginia Code Article 60-7, as amended, shall pay an annual license fee, or partial license fee, as the case may be, as follows:

- (a) For a licensee having one hundred members or less: five hundred dollars (\$500.00);
- (b) (b) For a licensee having more than one hundred, but less than three hundred members: seven hundred fifty dollars (\$750.00);
- (c) (c) For a licensee having three hundred or more, but less than six hundred members: one thousand dollars (1,000);
- (d) (d) For a license having six hundred or more members: one thousand five hundred dollars (\$1,500);
- (e) (e) The fee for any such license issued following January 1, of any year, and to expire on June 30, of such year, shall be one-half of those hereinabove set forth. (Passed 5-8-1967.)

731.02 Payment of fee.

All such fees shall be paid in the Office of the Mayor on or before June 30, for the ensuing fiscal year, whereupon a license shall be issued by the Town Recorder. Such license shall be on such form or forms as prescribed by the Recorder. (Passed 5-8-1967.)

731.03 Revocation of license.

In the event that any such license provided from the State or any agency thereof is revoked: then in such event, any license provided by reason of this article will be likewise revoked by the Recorder without necessity of further proceedings hereunder. (Passed 5-8-1967.)

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ARTICLE 735 Business and Occupation Tax

- 735.01 Short title.
- 735.02 Purpose and intent.
- 735.03 Definitions.
- 735.04 Imposition of tax.
- 735.05 Natural resource production.
- 735.06 Manufacturing.
- 735.07 Selling tangible property.
- 735.08 Public service or utility business.
- 735.09 Contracting.
- 735.10 Amusements.
- 735.11 Service business or calling not otherwise classified.
- 735.12 Rentals and royalties.
- 735.13 Banking and other financial businesses.
- 735.14 Health maintenance organizations.
- 735.15 Internet sales.
- 735.16 Additional credits.
- 735.17 Exempt activities.
- 735.18 Tax cumulative.
- 735.19 Administration generally.
- 735.20 Returns: computation and payment of tax.
- 735.21 Taxpayer records.
- 735.22 Tax return information confidentiality.
- 735.23 Erroneous computation of tax.
- 735.24 Investigations.
- 735.25 Assessments.
- 735.26 Notice of assessment; petition for reassessment.
- 735.27 Hearing procedure; decision; review.
- 735.28 Injunction.
- 735.29 Unpaid tax a lien; delinquency notice filing and release.
- 735.30 Successor liability.
- 735.31 Revocation, non-renewal of licenses and permits.
- 735.32 Settlement agreements and compromises.
- 735.33 Additional administrative provisions concerning contracting.
- 735.34 Claims for refunds or credit.
- 735.35 Interest and penalty.
- 735.36 Severability.
- 735.37 Administration.
- 735.38 Tax rate per \$100.00.
- 735.39 Temporary Special Event Vendor License.

CROSS REFERENCES

Business and Occupation Tax, Authority to tax – see WV Code 8-13-5; and WV Leg. Rules, WV Leg. Rules, §110-26
Collection of taxes – see WV Code 8-13-15 *et seq.*

735.01 Short title.

This Article shall be known as the “Harpers Ferry Municipal Business and Occupation Tax

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Ordinance.” (Passed 11-12-2012.)

735.02 Purpose and intent.

The purpose of this Article is to impose a municipal business and occupation tax pursuant to West Virginia Code § 8-13-5 and West Virginia Legislative Rules § 110-26 to the fullest extent allowable under the operative laws of the State of West Virginia and the United States unless a more restrictive application is required by an express limitation set forth in this Article. (Passed 11-12-2012.)

735.03 Definitions.

For purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section unless a different meaning is clearly required by the context in which the term is used:

- (a) Banking business. The term “banking business or financial organization” means any bank, banking association, trust company, industrial loan company, small loan company, or licensee, building and loan association, savings and loan association, credit union, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.
- (b) Business. The term “business” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct, except for occasional or casual sales of property or services.
- (c) Contracting. The term “contracting” means the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property. The business of contracting is taxable under the business and occupation tax ordinance, and the gross income derived therefrom must be reported under the contracting classification. The rate of tax applied against gross income under the contracting classification is taxable at the rate specified in Section 735.38 of this Article.
- (d) Gross income. The term “gross income” generally means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest and discount paid, or sums paid to independent contractors, subcontractors or persons furnishing services or property used in the operation of any business to produce gross income, or any other expense whatsoever. “Gross income” of a banking or financial business is defined in Section 735.13 of this Article.
- (e) Gross proceeds of sales. The term “gross proceeds of sales” means the value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The terms “gross income” and “gross proceeds of sales” shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers

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when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the gross income or gross proceeds of sales; excise taxes imposed by the State; money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for repayment of a debt of another; and excise taxes imposed by the federal government upon the consumer, not manufacturer, and which are held in trust by the vendor as agent for the Federal Government.

- (f) Municipality. The term “municipality” means the Corporation of Harpers Ferry, West Virginia.
- (g) Occasional or casual sales. “Occasional sale” or “casual sale” shall mean the sale of tangible personal property not held or used by a seller in the course of an activity for which a Town business license is required; including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business; Provided, That such sale or exchange is not one of a series of sales sufficient in number, scope and character to constitute a business activity requiring the holding of a Town business license.
- (h) The term “official” means the municipality’s Mayor and his or her agents, delegates, or representatives as identified by the Mayor.
- (i) Person. The terms “person” and “company” are used interchangeably in this Article and mean and includes any individual, firm, co-partnership, joint adventure, association, corporation, limited liability company, trust, estate or any other group or combination acting as a unit, and the plural as well as the singular number. The word “it” shall also include the pronouns “he” and “she.”
- (j) Prime contractor. The term “prime contractor” means and includes all persons primarily responsible for furnishing work or both materials and work for another in fulfillment of a contract.
- (k) Retail sales. The terms “retail sales” and “selling at retail” mean all sales other than wholesale sales, including but not limited to sales to persons for use in any activity not subject to the tax imposed by this Article, all sales of real property, and sales to consumers.
- (l) Sale. The terms “sale” and “sales” mean any transfer of the ownership of or title to property, whether for money or in exchange for other property.
- (m) Services. The term “service business” or “calling” includes all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.
- (n) State. The term “state” means the State of West Virginia.
- (o) Subcontractor. The term “subcontractor” means all persons furnishing work or both materials and work to a contractor.
- (p) Tax year. The terms “tax year” and “taxable year” mean either the calendar year or the taxpayer’s fiscal year when permission is obtained in writing from the Mayor to use such fiscal year in lieu of the calendar.
- (q) Taxpayer. The term “taxpayer” means any person liable for any tax hereunder.
- (r) Town. The term “town” means the Corporation of Harpers Ferry, West Virginia.
- (s) Wholesale sales. The terms “selling at wholesale” and “wholesale sales” mean only (1) sales of tangible personal property for the purpose of resale in the form of tangible personal property, (2) sales of machinery, supplies or materials which are to be directly consumed by the purchaser in the conduct of any business or activity which is subject

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to the tax imposed by this Article, or (3) sales of tangible personal property to the United States of America, its agencies and instrumentalities, or the State of West Virginia, its institutions and political subdivisions. (Passed 11-12-2012.)

735.04 Imposition of tax.

Annual privilege taxes (Business and Occupation Tax) are hereby levied, imposed and shall be collected against the persons, on account of the business and other activities and in the amounts to be determined by the application of rates against values or gross income or gross proceeds as set forth in Sections 735.05 through 735.14 of this Article, inclusive.

If any person liable for any tax under Section 735.05 or 735.06 of this Article shall ship or transport its products, or any part thereof, out of the municipality without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the municipality shall be the basis for the assessment of the tax imposed in those sections. Gross income included in the measure of the tax under Section 735.05 or 735.06 of this Article, shall neither be added nor deducted in computing the tax levied under the other Sections of this Article. In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and the seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the value upon which such privilege tax shall be levied shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and the seller but where the circumstances or conditions are otherwise similar.

The municipal business and occupation tax is imposed on each person engaged in privileges taxable under this Article if such person is engaged in purposive revenue generating activities within the municipality's limits and such person has sufficient contacts to sustain the municipality's taxing jurisdiction. By way of example (but not limitation), if a person's activities within the municipality contributes to the establishment and maintenance of a market, such contacts are considered to be sufficient to sustain the municipality's taxing jurisdiction assuming federal constitutional nexus standards are satisfied. (WV Code 8-13-5. Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[735.04]

735.05 Natural resource production.

Upon every person engaging or continuing within the municipality in the business of severing, extracting, mining, quarrying, reducing to possession and/or producing for sale, profit or commercial use any natural resource products, the amount of such tax shall be equal of the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as hereinafter provided, multiplied by the respective rates as follows: coal, one percent (1.00%); limestone or sandstone quarried or mined, one and one-half percent (1.5%); oil or blast furnace slag, three percent (3.0%); natural gas in excess of the value of five thousand dollars (\$5,000.00), six percent (6.0%); sand gravel or other mineral products, not quarried or mined, three percent (3.0%); timber one and one-half percent (1.5%), and other natural resource products, two percent (2.0%).

FOOTNOTE:

735.04

The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate. Ord. 2022 -03 (passed 08-08-2022) amended 735.04 to allow for temporary special event vendor licenses. See 735.39.

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The measure of this tax is the value of the entire production in the municipality, regardless of the place of sale or the fact that delivery may be made to points outside the municipality.

A person exercising privileges taxable under this Section and using or consuming the natural resources so produced in his/her business or transferring or delivering the natural resources as any royalty paid, in kind, or the like, shall be deemed to be engaged in the business of producing natural resources and shall be required to make returns on account of the production of the business, showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which privilege taxes shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers.

Persons who produce natural resources outside the municipality and who make sale of those products within the municipality shall not pay the tax imposed by this Section but shall pay the tax imposed by Section 735.07 of this Article for the privilege of selling such products within the municipality.

A person exercising any privilege taxable under this Section and engaging in the business of selling its natural resource products in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed in Section 735.07 of this Article for the privilege of engaging in the business of selling such natural resource products in the municipality. (Passed 11-12-2012.)

735.06 Manufacturing.

Upon every person engaging or continuing within the municipality in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the amount of the tax shall be equal to the value of the article, substance, commodity, or newspaper manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of thirty one-hundredths percent (0.30%).

The measure of the tax in this Section is the value of the entire product manufactured, compounded or prepared in the municipality for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the municipality. It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within the municipality and partially manufactures, compounds or prepares such products outside the municipality, the measure of tax under this Section shall be that proportion of the sales price of the product that the payroll costs of manufacturing within the municipality bears to the entire payroll costs of manufacturing the product.

If any persons shall ship or transport its products or any part thereof out of the municipality without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the municipality shall be the basis for the assessment of the tax imposed. The Mayor or designated official may prescribe equitable and uniform rules of ascertaining such value; provided that, the absence of such rules, the person manufacturing the products within the municipality shall report the value in a

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consistent and reasonable manner.

The dressing and processing of food intended for human consumption by a person, or the cooking and serving of food by a restaurant which food is to be sold in the municipality by such person, shall not be considered manufacturing or compounding or preparing for sale, but the sale of these product shall be reported under Section 735.07 of this Article either as wholesale or retail sale, as the case may be.

Persons who manufacture, compound or prepare products outside the municipality and who make sale of such product within the municipality shall not pay the tax imposed by this Section but shall pay tax imposed by Section 735.07 of this Article for the privilege of selling such product within the municipality.

A person exercising any privilege taxable under this Section and engaging in the business of selling its product in the municipality shall be required to make returns of the gross proceeds of such sales and pay the tax imposed by this Section at the rate set forth in Section 735.07 of this Article for the privilege of engaging in the business of selling such manufactured goods in the municipality. (Passed 11-12-2012.)

735.07 Selling tangible property.

Upon every person engaging or continuing within the municipality in the business of selling any tangible property whatsoever, real or personal, including the sale of food in hotels, restaurants, cafeterias, confectioneries, and other public eating houses and wholesale sales from a rolling stockpile, except sales of any person engaging or continuing in the business of horticulture, agriculture or grazing, or selling stocks, bonds, or other evidence of indebtedness, there is hereby levied, and shall be collected, a tax equal to one-half percent (0.50%) of the gross income of the business; except, therein the case of selling at wholesale, the tax shall be equal to fifteen one-hundredths percent (0.15%) of the gross income of the business.

Gross income or gross proceeds of sales derived from sales within the State that is not taxed or taxable by any other municipality are included in the measure of municipal business and occupation tax if the sales are either directed from a location within the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when the taxpayer has only one office location and this office is located within the municipality and its activities elsewhere in the State are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

Persons domiciled outside the municipality who solicit sales within the municipality and sell tangible personal property within the municipality are doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the municipality, and the tangible personal property is to be delivered in the municipality, then the gross proceeds of such sales are included in the measure of the tax imposed by this Article. (Passed 11-12-2012.)

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735.08 Public service or utility business.

Upon every person engaging or continuing within the municipality 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 levied, and shall be collected, taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: water companies, four percent (4.0%); electric light and power companies, four percent (4.0%) on sales and demand charges for domestic and commercial lighting and three percent (3.0%) on sales and demand charges for all other purposes; natural gas companies, three percent (3.0%); and upon all other public service or utility business, two percent (2.0%). The measure of this tax shall not include gross income derived from commerce between the State, other states of the United States and foreign countries. The measure of the tax under this Section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section of this Article. Municipally-owned water companies and municipally-owned electric distribution systems are not subject to the tax imposed under this Section (West Virginia Legislative Regulations §110-26-2d.2). (Passed 11-12-2012.)

735.09 Contracting.

- (a) Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to two percent (2.0%) of the gross income of the business.
- (b) Prime and subcontractors, taxable on gross income with no deductions therefrom: A prime contractor, one who furnishes work or both materials and work under a written or oral contract, for the construction, alteration, repair, decoration, or for the construction, alteration, repair, decoration or improvement of a new or existing building or structure may take no deduction from gross income on account of payments made to the subcontractor. The subcontractor will also be taxable on his gross income under the contracting classification.
- (c) Contracting entered into with governments: Gross income received by a person for contracting activities performed for the State, the Federal Government, or any of their instrumentalities, agencies, boards, commissions or political subdivisions, etc., is taxable and shall be reported under the contracting classification. The fact that the owner is a governmental unit does not relieve the contractor, subcontractor, suppliers, or any other person from liability for business and occupation tax on the full amount of gross income.
- (d) Prime contractors liable for taxes due from subcontractors: Whenever a contracting, repairing, decorating or improving contract is let for work to be done in the Town, the prime contractor shall submit a list of all subcontractors who will work under the contract to the Harpers Ferry Town Recorder. The list shall be submitted within thirty days of the original contract. The names of any and all subcontractors engaged after the list is submitted shall be submitted as they are engaged. The Recorder or his/her designee shall approve a standard form for the list. Upon completion of the contract, but prior to final payment to the subcontractor or subcontractors, the prime contractor shall notify the Recorder in writing and request a letter of release from the Recorder stating that such subcontractor or subcontractors, as appropriate, have timely filed and paid taxes due the Town. If the Recorder is satisfied that such subcontractor or subcontractors, as appropriate, have timely filed and paid taxes due the Town, he/she shall issue such letter of release forthwith. Nothing herein shall be construed to relieve

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any subcontractor of its liability for taxes due the Town under Section 735.38. (Passed 11-12-2012.)

735.10 Amusements.

Upon every person engaging or continuing with the municipality in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, carnival, circus, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to forty one-hundredths percent (0.40%) of the gross income of the business. (Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[735.10]

735.11 Service business or calling not otherwise classified.

Upon every person engaging or continuing within the municipality in any service business or calling not otherwise specifically taxed under this Article, there is hereby levied, and shall be collected, a tax equal to one percent (1.0%) of the gross income of any such business. Gross income or gross proceeds of sales derived from services within the State that is not taxed or taxable by any other municipality are included in the measure of tax under this Article if the services are either directed from a location in the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when a taxpayer has only one (1) office location and this office is located within the municipality and its activities elsewhere in the State are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality. (Passed 11-12-2012.)

735.12 Rentals and royalties.

Upon every person engaging or continuing within the municipality in the business of furnishing any real or tangible personal property which has a tax situs in the municipality, or any interest therein, for hire, loan, lease or otherwise, whether the return is in the form of rentals, royalties, fees or otherwise, the tax shall be one percent (1.0%) of the gross income of any such activity. The term "tangible personal property," as used herein, shall not include money or public securities. (Passed 11-12-2012.)

735.13 Banking and other financial businesses.

Upon every person engaging or continuing within the municipality in the business of banking or financial business, the tax shall be equal to one percent (1.0%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties; charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property; provided, that gross income shall not include (1) interest received on the obligations of the United States, its agencies and instrumentalities; (2) interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia; or (3) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by non-transients; provided further that all interest derived on activities exempt under (3) above shall be reported, as to amounts, on the return of a person taxable under the provision of this Section. (Passed 11-12-2012.)

FOOTNOTE:

735.10 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate.

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735.14 Health maintenance organizations.

The rate of tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of West Virginia Code §§33-25A-1 *et seq.* shall not exceed one half of one percent (0.50%) to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the public employee insurance agency pursuant to West Virginia Code §§5-16-1 *et seq.*, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization that is expended for administrative expenses; and shall not exceed one-half of one percent (0.50%) to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the public employees insurance agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: Provided, that this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in the municipality, whether such income is in the form of rentals or royalties. (Passed 11-12-2012.)

735.15 Internet sales.

Sales of tangible personal property by a business located within the Town, ordered through the internet, by mail or by some other form of telecommunication are subject to the Town business and occupation tax if (1) the customer resides in the Town; or (2) if the tangible personal property is to be delivered in West Virginia to a location which does not impose a business and occupation tax; or (3) where the order is placed from anywhere and the tangible property ordered is to be picked up by the customer at a store, warehouse or business located in the Town. However no business and occupation tax may be imposed where the sale is conditioned upon delivery outside West Virginia. (Passed 11-12-2012.)

735.16 Credits.

- (a) A person taxable under Section 735.07 of this Article with respect to selling products at wholesale in this municipality shall be allowed a non-refundable credit against the tax imposed on such wholesale sales pursuant to Section 735.07 for any (1) manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality, and/or (2) extracting taxes paid by such person with respect to the extracting of products so sold in this municipality or ingredients of products so sold at wholesale in this municipality.
- (b) For purposes of this Section:
 - (1) "Manufacturing tax" means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a manufacturer and includes (i) the tax imposed in Section 735.06 of this Article and (ii) similar gross receipts taxes paid to other municipalities or other local government units (other than State governments) within the United States.
 - (2) "Extracting tax" means a gross receipts tax imposed by a municipality or other local government unit on the act or privilege of engaging in the business as a producer of natural resource products and includes (i) the tax imposed in Section 735.05 of this Article and (ii) similar gross receipts taxes paid to other municipalities or other local government units within the United States (other than State governments) within the United States.
 - (3) "Gross receipts tax" means a tax which (i) is imposed on or measured by the

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gross volume of business in terms of gross receipts or in other terms and in the determination of which deductions allowed would not constitute the tax an income tax or value added tax and (ii) which is not pursuant to law or custom, separately stated from the sales price.

- (c) If imposition of the municipality's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the tax under this Article, and still apply the tax to as much of the taxpayer's activities as may be subject to the municipality's taxing authority. (Passed 11-12-2012.)

735.17 Exempt activities.

- (a) The provisions of this Article shall not apply to: (1) insurance companies which pay the State of West Virginia a tax upon premiums; provided, that such exemption shall not extend to that part of gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in the municipality, whether such income is in the form of rentals or royalties; (2) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (3) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of gross income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of West Virginia Code §§60-7-1 *et seq.*; (4) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (5) production credit associations, organized under the provisions of the Federal Farm Credit Act of 1933; provided, that the exemption of this Section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§19-4-1 *et seq.*; (6) any credit union organized under the West Virginia Code; provided, that the exemptions of this Section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code §§19-4-1 *et seq.*; (7) gross income derived from advertising service rendered in the business of radio and television broadcasting; (8) gross income of nonprofit homeowners' associations received from assessments on its members for community services including but not limited to road maintenance, common area maintenance, water service, sewage service and security service; (9) persons engaged in the business of horse racing or dog racing, providing they have complied with all the requirements set forth in West Virginia Code §§19-23-1 *et seq.*, but public conveniences such as golf courses or other recreational activities and motel or hotel operations from which persons engaged in horse racing or dog racing derive income, are subject to municipal business or occupation tax; and (10) business development corporations organized in compliance with the provisions of West Virginia Code §§31-14-1 *et seq.*
- (b) Although certain persons engaged within the State in any public service or utility business are taxable on such business and shall report the gross income from such business activities, persons operating the following businesses are exempt from municipal business or occupation tax: railroads, railroad car companies, express companies, pipeline companies, motor carriers, telephone and telegraph companies and water carriers by steamboat or steamship. (Passed 11-12-2012.)

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735.18 Tax cumulative.

The tax, interest and penalty imposed by this Article shall be in addition to all other licenses, taxes and other revenue measures levied or collected by the municipality as a condition precedent to the right of any person to engage or continue in any business, profession, trade, calling or other activity within the municipality. A person exercising a privilege taxable under this Article, subject to the payment of all licenses and charges which are conditions precedent to exercising the privileges taxed, may exercise the privilege in the municipality for the tax year upon the condition that he/she shall pay the tax, interest and penalty imposed by this Article. (Passed 11-12-2012.)

735.19 Administration generally.

The administration of this Article is vested in and shall be exercised by the Mayor who shall prescribe forms and may promulgate from time to time reasonable rules, publications and instructions for the making of returns, and for ascertaining, assessment, collection and administration of tax, interest and penalty imposed hereunder. The Mayor reserves the right to delegate such responsibility to a designated official of the municipality. (WV Code 8-13-15. Passed 11-12-2012.)

735.20 Returns: computation and payment of tax.

The tax levied by this Article shall be due and payable in quarterly installments on or before the expiration of one month from the end of the calendar quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make a return reporting the computation of tax for which it is liable for each quarter; sign and mail or hand-deliver the completed return, together with any remittance due, to the Town Hall, Corporation of Harpers Ferry or as specified by the Mayor. In reporting and remitting the amount of the tax, interest and penalties due for each quarter, the taxpayer may deduct the quarterly credit allowed by Section 735.15 of this Article. The Mayor or his/her official designee may allow return and payment under this Section for periods other than quarterly periods.

On or before thirty-one (31) days after the end of the tax year, each person liable for the payment of tax under this Article shall make a fourth quarter return, showing the gross proceeds of sale or gross income of business, trade, calling or activity, computing the amount of tax, interest and penalty chargeable against the person in accordance with the provisions of this Article and transmit with the return a remittance in the sum required by this Article, covering the remainder of the tax, interest and penalty chargeable against the person for the tax year, to such location or locations specified by the Mayor. Such returns shall be verified by the oath of the taxpayer, if made by an individual, or by the individual designated by a taxpayer that is an entity to take the oath on behalf of the taxpayer.

All remittances and payments of tax, interest and penalty imposed by this Article shall be made to the Corporation of Harpers Ferry in lawful money of the United States or by bank draft, certified check, cashier's check, or other commercially acceptable means specified by the Mayor or designated official, to be kept deposited and accounted for as provided by law. (Passed 11-12-2012.)

735.21 Taxpayer records.

Each person or business subject to this Article shall maintain sufficient records for review by the Mayor or his/her official designee, as long as the contents of such records may be material in the administration of tax imposed by this Article. (Passed 11-12-2012.)

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735.22 Tax return information confidentiality.

- (a) Except when required in an investigation or proceeding to ascertain or collect amount of tax, interest, penalty, refund or credit due, or pursuant to an exemption in West Virginia Code §11-10-5d, it shall be unlawful for any officer, employee or agent of the municipality to divulge or make known in any manner the tax return, or any part thereof, of any person, or disclose information concerning the personal affairs of any individual or the business of any person, or disclose the amount of income or any particulars set forth or disclosed in any report, declaration or return required to be filed with the Mayor or his/her designee or otherwise obtained by the municipality in an investigation undertaken by the Mayor or his/her designee concerning the tax imposed by this Article. Any person protected by the provisions of this Article may, in writing, waive the confidentiality provisions of this Section for such purpose and such period as he/she shall therein state. This Section shall not be construed to prohibit the publication or release of statistics so classified as to prevent the identification of particular reports and the items thereof.
- (b) Notwithstanding the foregoing, the Mayor or his/her designee may permit the proper officer, or his/her authorized representative or agent, of the United States or the State of West Virginia, or any political subdivision of the State, to inspect return information to or may furnish to such officer or representative a copy of any such return or any other tax return information, provided, that such other jurisdiction grants similar privileges to this municipality or if the other jurisdiction is a party of an intergovernmental agreement authorizing the exchange of such information. Further guidance on confidentiality and disclosure of tax information is contained in the municipal ordinance entitled "Reciprocal Exchange of Tax Information." (Passed 11-12-2012.)

735.23 Erroneous computation of tax.

If any taxpayer shall make any error in computing the tax, interest and penalty under this Article, the Mayor or his/her designee shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his/her action by mailing the taxpayer promptly a copy of the corrected assessment, and any additional tax, interest and penalty for which such taxpayer may be liable shall be paid within fifteen (15) days after the receipt of such statement. If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the request of the Mayor or his/her designee and shall be payable out of any funds available for that purpose. The taxpayer may, at its election, apply any overpayment as credit upon tax subsequently accruing hereunder. (Passed 11-12-2012.)

735.24 Investigations.

For the purposes of ascertaining the correctness of a tax return, claim or assessment or for the purpose of making an estimate of any taxpayer's liability for the tax administered under this Article, the Mayor or his/her designee shall have the power to examine or cause to be examined any books, papers, records, memoranda and other documents or data bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or the attendance of any other person having knowledge of relevant matters. In connection therewith, the Mayor or his/her designee may take testimony and shall have the power to administer oaths.

The Mayor or his/her designee has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of

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ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the Mayor or his/her designee. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the Mayor or his/her designee may invoke the aid of the Circuit Court of Jefferson County. Upon proper showing, the Mayor or his/her designee may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question. (Passed 11-12-2012.)

735.25 Assessments.

If any person, who is required by this Article to do so, shall fail or refuse to make a return, either in whole or part, or if the Mayor or his/her designee believes the tax imposed by this Article has been insufficiently returned by any taxpayer, the Mayor or his/her designee may proceed to assess the tax and shall notify the person or business assessed of the amount of the tax, additional tax, interest and penalties so assessed.

The Mayor or his/her designee may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the Mayor or his/her designee ascertains that such assessment is improper or incomplete in any material respect. The Mayor or his/her designee may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the Mayor or his/her designee ascertains that any assessment is incorrect in any material respect.

The amount of tax, interest and penalties imposed by this Article shall be assessed within three (3) years after the date the fourth quarter return for the year in which such tax arose is filed by the taxpayer; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, an assessment may be made at any time. (Passed 11-12-2012.)

735.26 Notice of assessment; petition for reassessment.

The Mayor or his/her designee shall give the taxpayer written notice of any assessment made pursuant to this Article. Unless the taxpayer to whom the notice of assessment is given shall within thirty (30) days after service thereof file with the Mayor or his/her designee a petition for reassessment, the assessment shall become final and not subject to administrative or judicial review. A petition for reassessment must be in writing verified under oath by the taxpayer or his duly authorized agent having knowledge of the fact, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections. The total amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final. (Passed 11-12-2012.)

735.27 Hearing procedure; decision; review.

When a petition for reassessment or a petition for refund or credit is properly filed pursuant to this Article within the time prescribed for such filing, the Mayor or his/her designee shall assign a time and a place for a hearing thereon and shall notify the petitioner of such hearing by written notice at least twenty (20) days in advance thereof. Such hearing shall be held within ninety (90) days from the date of filing the petition, unless continued by agreement of the parties or by the Mayor or his/her designee for sufficient cause.

The hearing shall be informal and shall be conducted in an impartial manner by the Mayor or a hearing examiner designated by the Mayor. The burden of proof shall be upon the taxpayer to show that the assessment or denial refund or credit is incorrect and contrary to law. After such hearing, the Mayor or his/her designee shall, within a reasonable time, give notice

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in writing to the taxpayer of the Mayor's or his/her designee's decision.

An appeal may be taken by the taxpayer to the Circuit Court of Jefferson County within sixty (60) days after service of the Mayor's or his/her designee's administrative decision issued pursuant to this Section. (Passed 11-12-2012.)

735.28 Injunction.

After any delinquency shall have continued sixty (60) days, the Mayor or his/her designee may proceed in the Circuit Court of Jefferson County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all tax, interest and penalty due under this Article. In any proceeding under this Section, upon judgment or decree for the municipality, the municipality shall be awarded its costs. (Passed 11-12-2012.)

735.29 Unpaid tax a lien; delinquency notice filing and release.

Any tax, interest and penalties due and payable under this Article shall be a debt due the municipality and shall constitute a lien on the real and personal property of the taxpayer. The Mayor or his/her designee, for the more effective collection of the tax, interest and penalty imposed by this Article, may file with the Clerk of the Court, Jefferson County a certified notice of lien for delinquent taxes, interest and penalty under this Article for recordation. If a lien has been recorded respecting a delinquency, upon full payment of all delinquent tax, interest and penalty, the Mayor or his/her designee shall attest to the fact and amount of payment, and shall forward a certificate of release to the taxpayer. Upon presentation and payment of the recording fee by the taxpayer, the Clerk of the Court, Jefferson County shall record such certificate in the book in which releases are recorded. (Passed 11-12-2012.)

735.30 Successor liability.

The tax, interest and penalty imposed by this Article shall be a continuing lien upon the property of any person subject to the provisions hereof who shall sell out its business or stock of goods, or shall quit business, and such person shall be required to make the return provided for in this Article within thirty (30) days after the date it sold out its business or stock of goods, or quit business, and its successor in business shall be required to withhold a sufficient amount of the purchase money to cover the amount of such tax, interest and penalty due and unpaid until such time as the former owner shall produce a receipt from the Mayor or his/her designee showing that all tax, interest and penalty has been paid. If the purchaser of a business or stock of goods fails to withhold purchase money as hereby provided, and the tax, interest and penalty shall be due and unpaid after the thirty-day period allowed, the successor shall be personally liable for the payment of the tax, interest and penalty accrued and unpaid on account of the operation of the business by the former owner. (Passed 11-12-2012.)

735.31 Revocation, non-renewal of licenses and permits.

The Mayor or his/her designee may revoke, deny and prevent any and all licenses and permits issued by the municipality in the event a licensee or permittee fails or refuses to file any return required hereby or fails or refuses to pay any delinquent tax, interest or penalty due and owing to the municipality.

In the event of such a revocation or denial, the Mayor or his/her designee may provide written notice to the affected person at least five (5) days prior to the contemplated revocation or denial and such notice shall be served by certified mail. The notice shall indicate the time and the place of a revocation/denial review meeting, the general grounds of said

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contemplated action, and shall advise the affected person of its rights to appear at said hearing in person and represented by legal counsel, and to be heard orally upon the merits of the person's defense. The Mayor or his/her designee may request legal advice from the Harpers Ferry Town Attorney, and adopt such procedures for its decorum and the dispatch of business at such hearing as the Mayor or his/her designee may regard advisable. The revocation decision of the Mayor or his/her designee will be final.

Each license or permit that has been revoked or denied pursuant to this Section may be issued or re-issued upon payment of all delinquent tax, interest or penalty due and owing to the municipality and satisfaction of all relevant licensing conditions otherwise imposed by the municipality. (Passed 11-12-2012.)

735.32 Settlement agreements and compromises.

The Mayor or his/her designee, with approval of the Town Council, is authorized to enter into an agreement in writing with any person relating to the liability of such person in respect of the tax, interest and penalty imposed by this Article for any taxable period. If such a closing agreement is duly made and entered into, such agreement shall be final and conclusive for the periods covered except upon a showing of fraud, malfeasance or misrepresentation of a material fact. The Mayor or his/her designee, with approval of the Town Council, may compromise all or part of any administrative determination or civil case concerning tax, interest and penalty or otherwise arising under the provisions of this Article. (Passed 11-12-2012.)

735.33 Additional administrative provisions concerning contracting.

Without limiting the generality of the administrative and collection powers granted to the Mayor or his/her designee in this Article, the Mayor or his/her designee is also empowered to require any person engaging or continuing with the municipality in the business of contracting to furnish a list of the names, addresses and amounts paid by them to any subcontractors employed and suppliers of material used upon any job or to do any work within the municipality. The Mayor or his/her designee may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State of West Virginia to pay or guarantee the payment of the amount of the tax imposed by this Article for the privilege of engaging in the business of contracting within the municipality, such payment of such tax to be based upon the amount of the building permit issued by the municipality for the work to be performed by such person, as a condition precedent to the issuance of such building permit. In lieu of such prior payment in cash of such tax any such nonresident may guarantee the payment of such privilege tax provided for herein by delivering to the municipality a bond, with good and adequate surety, payable to the municipality, and conditioned to pay such tax on or before the estimated date of the completion of the work to be performed by such person within the municipality. (Passed 11-12-2012.)

735.34 Claims for refund or credit.

Any taxpayer claiming to have overpaid any tax, interest or penalty imposed by this Article shall file its claim with the Mayor or his/her designee within three (3) years after the due date of the return in respect of which the tax was imposed, and not thereafter.

If, as a result of the claim, the Mayor or his/her designee shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the Mayor or his/her designee shall refund the same to the taxpayer. If the Mayor or his/her designee denies the claim, the

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taxpayer may within thirty (30) days after notice of denial file with the Mayor or his/her designee a petition for refund or credit, which shall be heard in accordance with Section 735.27 of this Article. A taxpayer's failure to abide by express procedures contained in this Section precludes taxpayer's right to any refund or credit of tax, interest and penalties paid or collected under this Article. (Passed 11-12-2012.)

735.35 Interest and penalty.

The tax imposed by this Article, if not paid when due, shall bear interest at the rate of eight percent (8.00%) per annum from the due date of the payment until paid.

If any person fails to make the return or any quarterly installment required by this Article, or makes its return but fails to remit, in whole or in part, the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five (5.00%) percent of the tax for the first month, or fraction thereof, of delinquency, and one (1.00%) percent of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the Mayor or his/her designee may waive, in whole or in part, these penalties. Additionally, if the failure to pay is due to fraud or intent to evade any such tax there shall be added an additional penalty of twenty-five (25.00%) percent of the tax owed, exclusive of penalties.

Interest and penalties may be collected in the same manner as the tax imposed by this Article. (Passed 11-12-2012.)

735.36 Severability.

If any provision of this Article is held unconstitutional or invalid, on its face or as applied, the remaining provisions of this Article shall remain in full force and effect; and to this end, the provisions of this Article are declared to be severable. (Passed 11-12-2012.)

735.37 Administration.

The administration of this ordinance is vested in and shall be exercised by the Mayor or his/her designee who shall prescribe forms and reasonable rules in conformity with this ordinance for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this ordinance in any of the courts of the State. Without limiting the generality of the foregoing and notwithstanding any provision herein to the contrary, the Mayor or his/her designee may execute and deliver binding agreements with other municipalities to carry out the provisions of this ordinance respecting cooperation and tax administration, including sourcing of gross income for municipal business and occupation tax purposes, may execute and deliver binding agreements with the West Virginia State Tax Commissioner respecting the exchange of taxpayer information as set forth in Section 735.22 of this Article and Town Ordinance titled "Reciprocal Exchange of Tax Information Agreement" and may execute and deliver settlement agreements as set forth in Section 735.32. (WV Code 8-13-15. Passed 11-12-2012.)

735.38 Tax rate per \$100.00.

<i>Production (§11-13-2a)</i>	
Coal	1.00
Limestone or sandstone quarried or mined	1.50
Oil, blast furnace slag	3.00

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Natural gas in excess of \$5,000	6.00
Sand & gravel (not mined or quarried)	3.00
Timber	1.50
Other natural resource products	2.00
<i>Manufacturing</i> (§11-13-2b)	0.30
<i>Business of selling tangible property</i> (§11-13-2c)	
Retailers	0.50
Wholesalers	0.15
<i>Public service or utility business</i> (§11-13-2d)	
Electric light and power companies (sales and demand charges, domestic purposes and commercial lighting)	4.00
Electric light and power companies (all other sales and demand charges)	3.00
Natural gas companies	3.00
Other public service or utility business (not telephone or telegraph)	2.00
<i>Contracting</i> (§11-13-2e)	2.00
<i>Amusements</i> (§11-13-2g)	0.40
<i>Service business or calling</i> (§11-13-2h)	1.00
<i>Rentals, royalties, fees or otherwise</i> (§11-13-2i)	1.00
<i>Small loan and industrial loan businesses</i> (§11-13-2j)	1.00
<i>Banking and other financial business</i> (§11-13-2k)	1.00

(Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[735.38]

735.39 Temporary Special Event Vendor License.

- (a) A Temporary Special Event is an event sponsored by a governmental, charitable, community, or for-profit organization which has been approved as a special event by the Town Council, or by the Mayor and / or his or her designee.
- (b) All vendors who do not have a permanent Harpers Ferry business license and are registered with the sponsoring organizations must obtain a Temporary Special Event Vendor License, which license is valid for a 72-hour period for sales. Vendors that have a current Town business license are exempt from the requirement to obtain a Temporary Special Event Vendor License.
- (c) Vendors may only obtain a Temporary Special Event Vendor License for four Temporary Special Events in any calendar year.
- (d) The fee for the Temporary Special Event Vendor License is \$10.00, per vendor, per event.
- (e) Vendors that are required to obtain a Temporary Special Event Vendor License are exempt from municipal Business and Occupation Tax for sales made during the Temporary Special Event. State and municipal sales and use taxes are still applicable. (Ord. 2022-03, passed 08-08-2022.)

FOOTNOTE:

735.38 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate.

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ARTICLE 736. Sales and Use Tax

- 736.01** Short Title.
736.02 Authority.
736.03 Definitions.
736.04 Imposition of a Municipal Sales and Service Tax.
736.05 Imposition of a Municipal Use Tax.
736.06 Credit against Municipal Use Tax.
736.07 Tax Commissioner shall administer, enforce and collect taxes.
736.08 Municipal taxes imposed in addition to Municipal Sales & Service Tax and Municipal Use Tax.

CROSS REFERENCES

Authority of Home Rule municipalities to enact sales tax—see WV Code 8-1-5a(i)(14)

736.01 Short Title.

This Article shall be known as, and may be cited as, the “Harpers Ferry Municipal Sales and Use Tax Ordinance”.

736.02 Authority.

The authority to enact this Article is granted to the Corporation of Harpers Ferry through §8-1-5a of the Code of West Virginia, 1931, as amended; and by the provisions of the Harpers Ferry Home Rule Plan, adopted by the Municipal Home Rule Board on 16 November 2015.

736.03 Definitions.

For the purpose of application, interpretation, and construction of this Ordinance, the definitions as set forth in West Virginia Code Chapter 11, Articles 15, 15A and 15B, shall apply, and the definitions therein are fully incorporated herein by reference.

736.04 Imposition of a Municipal Sales and Service Tax.

Effective on the first day of July 2016, there is hereby imposed upon all persons or entities engaging in business within the municipal boundaries of the Corporation of Harpers Ferry a 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 Corporation of Harpers Ferry, subject to the following:

- (a) The base of the Municipal Sales and Service Tax imposed herein shall be identical to the base of the Consumers Sales and Service Tax imposed pursuant to the provisions of West Virginia Code Chapter 11, Article 15; and,
- (b) Except for the exemption provided in West Virginia Code §11-15-9f, all exemptions and exceptions from Consumers Sales and Service Tax apply to this Municipal Sales and Service Tax; and
- (c) Sales of motor vehicles subject to the tax imposed under West Virginia Code §11-15-3c and sales of gasoline and special fuel are not subject to the Municipal Sales

HISTORY:

The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate, all effective 1 July 2016.

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- and Service Tax herein imposed; and,
- (d) The Municipal Sales and Service Tax herein imposed is subject to the sourcing rules set forth in West Virginia Code Chapter 11, Article 15B.

736.05 Imposition of a Municipal Use Tax.

Effective on and after the first day of July 2016, a Municipal Use Tax is hereby levied and imposed on the use within the Corporation of Harpers Ferry tangible personal property, custom software, and 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 West Virginia Code Chapter 11, Article 15A; and,
- (b) Except for the exemptions provided in West Virginia Code §11-15-9f, all exemptions and exceptions from the use tax imposed pursuant to West Virginia Code Chapter 11, Article 15A apply to the Municipal Use Tax herein imposed; and,
- (c) Uses of motor vehicles subject to the tax imposed under West Virginia Code §11-15-3c and uses of gasoline and special fuel are not subject to the Municipal Use Tax herein imposed; and,
- (d) The Municipal Use Tax herein imposed is subject to the sourcing rules set forth in West Virginia Code Chapter 11, Article 15B.

736.06 Credit against Municipal Use Tax.

- (a) A person or entity is entitled to a credit against the Municipal Use Tax herein imposed on the use of a particular item of tangible personal property, custom software or services equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of the 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 Corporation of Harpers Ferry. For purposes of this Ordinance the following definitions shall apply:
- (1) "Municipality" means a municipality, as defined in West Virginia Code §81-2, or a comparable unit or entity 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 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 Ordinance for payment of any sales or use taxes imposed by this State or any other State.

736.07 Tax Commissioner shall administer, enforce and collect taxes.

The services of the West Virginia State Tax Commissioner shall be used to administer, enforce and collect the Municipal Sales and Service Tax and Municipal Use Tax herein imposed and the Corporation shall coordinate such services with the West Virginia State Tax Department.

736.08 Municipal taxes imposed in addition to Municipal Sales & Service Tax and Municipal Use Tax.

The Municipal Consumers Sales and Service Tax and Municipal Use Tax imposed pursuant to this Ordinance shall be in addition to the Consumers Sales and Service Tax and Use Tax imposed pursuant to West Virginia Code Chapter 11, Articles 15 and 15A, on sales made and

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services rendered and taxable uses of tangible personal property, custom software, and taxable services within the municipal boundaries of the Corporation of Harpers Ferry and, except as exempted or excepted, all sales made and services rendered and taxable uses of tangible personal property, custom software, and taxable services within the municipal boundaries of the Corporation of Harpers Ferry shall remain subject to the tax levied by those Articles. Further, the Municipal Sales and Service Tax and Municipal Use Tax imposed pursuant to this Ordinance shall be imposed in addition to any tax imposed pursuant to the provisions of West Virginia Code §7-22-1, §8-13-6, §8-13-7, and §8-38-12, respectively.

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ARTICLE 740. Reciprocal Exchange of Tax Information

- 740.01 Purpose.
- 740.02 Exchange of information.
- 740.03 Information subject to exchange.
- 740.04 Disclosure to other governmental units.
- 740.05 Persons entitled to secure information.
- 740.06 Withholding of tax information.
- 740.07 Security and protection of return information.
- 740.08 Effective dates.

CROSS REFERENCES

Confidentiality and disclosure of returns and return information—see WV Code 11-10-5d

740.01 Purpose.

The purpose of this article is to aid in the administration, collection, and documentation of municipal Business and Occupation Taxes (Article 735), Room Occupancy Taxes (Article 753), and liquor sales taxes (Article 721) by providing for the exchange of tax information (West Virginia Code § 11-10-5d(i-j)) between the State of West Virginia and the Corporation of Harpers Ferry, a political subdivision thereof. (WV Code 11-10-5d[i-j]. Passed 12-10-2012.)

740.02 Exchange of information.

The State of West Virginia (the “State”) and the Corporation of Harpers Ferry (the “Town”) hereby agree that they shall, in accordance with the terms and conditions contained herein, exchange, disclose to and permit the other party to inspect and make copies of tax information in its possession, but only to the extent necessary in the administration and enforcement of the requesting party’s tax laws and for the assessment and collection of taxes owed and due. The Town’s request for tax information from the State will focus only on that information related to Business and Occupation (B&O) taxes, Room Occupancy Taxes, liquor sales taxes and related taxes assessed by the Town. (WV Code 11-10-5d[i-j]. Passed 12-10-2012.)

740.03 Information subject to exchange.

- (a) Tax information subject to this Article shall include reports, declarations and returns, or copies thereof, filed with the West Virginia Tax Commissioner or the Town, provided:
 - (1) That this information is limited to Business and Occupation tax, sales tax from single location businesses, Room Occupancy Taxes, and liquor sales taxes; and
 - (2) That this information shall be furnished only to the extent necessary for the administration and enforcement of the requesting party’s tax laws; and
 - (3) That this information shall be disclosed only to individuals authorized under this Article, subject to the penalties for unlawful disclosure set forth in West Virginia Code § 11-10-5d(c) and Article 740.07 of these Ordinances.
- (b) Under no circumstances shall the tax information exchanged include any information or data secured from the Federal Government, from another state or the District of Columbia, or from any other municipality or local government unit. (Passed 12-10-2012.)

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740.04 Disclosure to other governmental units.

Neither party to this Article shall disclose any tax information obtained by virtue of this Article to the Federal Government, to another state, to other agencies or departments of the receiving party, or to any other local government unit or municipality without the consent of the party from which the tax information is obtained. (Passed 12-10-2012.)

740.05 Persons entitled to secure information.

- (a) Each time the State or Town develops a need to request tax information, as outlined in this Article, the parties to this Article shall furnish, in writing, on official letterhead, the names, addresses and other needed information of the personnel authorized to request, inspect and receive tax information under the terms of this Article. Only persons who are State or Town officers or employees, subject to the penalties for unlawful disclosure set forth in WV Code 11-10-5d(c) and Section 740.07 of this Article, shall be included. Whenever the Town requests tax information from the State, the written request is to be directed to the West Virginia Tax Commissioner. The request should be as specific as possible regarding the type of tax information requested.
- (b) The State Tax Commissioner or the appropriate Town authority shall promptly give written notice to the other party of any change in employment, duties or other relevant matters which affect a designated person's right to request, inspect and receive information under this Article. Such information shall be included within the tax information request as contained in Section 740.03(a) of this Article. Unless otherwise indicated, as per the requirements of this sub-section, the Mayor will serve as the principal authority and signatory to requests from the Town. (WV Code 11-10-5d[c]. Passed 12-10-2012.)

740.06 Withholding of tax information.

Either party to the procedures contained within this Article may withhold or refuse to exchange tax information:

- (a) If disclosure of such information would be detrimental to its ability to enforce or administer its tax laws, or to the assessment and collection of taxes; or
- (b) If disclosure of such tax information would interfere with or seriously impair any pending audit or litigation; or
- (c) If the security measures practiced by the requesting party are insufficient to ensure the confidentiality of the tax information requested. (Passed 12-10-2012.)

740.07 Security and protection of return information.

- (a) It shall be the obligation of the party who requested and received tax information, under this Article, to protect the confidentiality and secrecy of that information.
- (b) Any officer or employee of the Town who makes an unauthorized disclosure of tax information received under this Article shall be guilty of a misdemeanor and, upon conviction, fined not more than one thousand dollars (\$1,000.00), or imprisoned for not more than one year, or both, together with the costs of prosecution.
- (c) For purposes of this Article "unauthorized disclosure" shall mean the release to any persons of any tax information obtained by virtue of this Article, unless the person receiving the information is the authorized and designated official(s) of the Town who is using the tax information only for the purpose of administering Business and Occupation taxes, sales tax, liquor sales tax, or Room Occupancy Tax, or the person who filed the return has authorized, in writing, their release, thereby waiving their right

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to privacy, secrecy, and confidentiality. The Town's Mayor retains the exclusive authority to name those Town officials who are authorized to access such tax information in performance of official Town business. The authorized list of approved Town officials will become a permanent record that is retained and updated by the Mayor. (WV Code 11-10-5d[a]. Passed 12-10-2012.)

740.08 Effective dates.

Section 740.07 of this Ordinance shall become effective on January 15, 2013 and the remainder of the ordinance on January 31, 2013.

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ARTICLE 753 Room Occupancy Tax

753.01	Purpose.
753.02	Definitions.
753.03	Levy of tax.
753.04	Rate of tax.
753.05	Duties and procedures for hotel operators.
753.06	Administration.
753.99	Penalty.

CROSS REFERENCES

Authority to tax—see WV Code 7-18

753.01 Purpose.

The purpose of this article is to levy an occupancy tax on hotel rooms located in the incorporated areas of the Corporation of Harpers Ferry for the following purposes:

- (a) At least fifty percent (50%) of the net revenue received during the fiscal year by the Corporation, pursuant to requirements of the Code shall be transmitted for the purpose of promotion of conventions and tourism to any convention and visitor's bureau located within Jefferson County and if there be no convention and visitor's bureau located within Jefferson County, then the percentage appropriation required by this subsection shall be appropriated as follows:
 - (1) Any hotel located within this Municipality may apply to this Municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to this Municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection; provided, that prior to the appropriating of any moneys to such hotels this Municipality shall require submission of, and give approval to, a budget setting forth the proposed uses of such moneys.
 - (2) The balance of the net revenue required to be expended by this section shall be appropriated to the regional travel council serving the area in which the Municipality is located.
- (b) The remaining portion of the net revenue receivable during the fiscal year by the Corporation may be expended for one or more of the following purposes:
 - (1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
 - (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
 - (3) The promotion of conventions;
 - (4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition); or
 - (5) The promotion of the arts;
 - (6) Historic sites;

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- (7) Beautification projects;
- (8) Passenger air service incentives and subsidies directly related to increasing passenger air service availability to tourism destinations in the State of West Virginia;
- (9) Medical care and emergency services, in an amount not exceeding two hundred thousand dollars, in any county where:
 - A. There is an urgent necessity to preserve the delivery of acute medical care and emergency services;
 - B. There is an increase in need for acute medical care and emergency services directly related to tourism;
 - C. Recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care and emergency services;
 - D. There is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care and emergency services;
 - E. There is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety;
 - F. There is one and only one hospital within the county; and
 - G. The county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist; or
- (10) Support and operation of the Hatfield-McCoy Recreation Area by the participating county commissions in the Hatfield-McCoy Regional Recreation Authority. (Passed 06-11-2001. Amended 02-11-2013.)

753.02 Definitions.

For the purposes of this article the following words, phrases, and terms are defined:

- (a) "Consideration paid" or "consideration" means the amount received in money, credits, property, or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. (The term "consumer" shall not be constructed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.)
- (c) "Convention and / or Visitor's Bureau" shall be any convention and visitor's bureau formed for the promotion of conventions and tourism within this Corporation or within Jefferson County and approved by resolution of Council.
- (d) "Convention center" means a convention facility owned by state, county, municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.
- (e) "Corporation" means the Corporation of Harpers Ferry.
- (f) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the Corporation of payment of any tax which there is a known legal duty to pay.
- (g) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the Corporation.
- (h) "Fiscal year" means the year beginning July 1, and ending June 30 of the next calendar year.

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- (i) “Hotel” means any facility, building or buildings, publicly or privately owned (including a facility located in a state, county, or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term “hotel” shall include state, county and municipal 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 sleeping rooms in private homes, not exceeding a total of ten days in a calendar year, nor any tent, trailer or camper campsites; provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term “hotel” shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.
- (j) “Hotel operator” means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purpose of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (k) “Hotel room” means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term “hotel room” shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.
- (l) “Net proceeds” means the gross amount of tax collections less the amount of tax lawfully refunded.
- (m) “Person” means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organizations, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
- (n) “Promotion of the arts” means activity to promote public appreciation of music of all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.
- (o) “Recreational facilities” means and includes any public park, parkway, playground, public recreation center, athletic field, sports area, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by the Corporation.
- (p) “Tax”, “taxes”, or “this tax” means the hotel occupancy tax authorized by this article.
- (q) “Taxing authority” means the Corporation of Harpers Ferry.
- (r) “Taxpayer” means any person liable for the tax authorized by this article.
- (s) “Willfully” means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in the respect of which the violation occurs; provided, that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant has had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.
(Passed 06-11-2001. Amended 02-11-2013.)

753.03 Levy of tax.

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There is hereby levied a Corporation hotel tax, as hereinafter described upon all hotels located within the incorporated limits of the Corporation including any hotels owned by the state or by any political subdivision of this State. The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room. (Provided, however, the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.) (Passed 06-11-2001.)

753.04 Rate of tax.

The rate of tax imposed shall be five per cent (5%) if the consideration is paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under West Virginia Code 11-15 or charges for meals, valet service, room service, telephone service or other charges or consideration not for use or occupancy of a hotel room. (Ord. 2015-13, passed 12-14-2015, effective 07-01-2016.) ^[753.04]

753.05 Duties and procedures for hotel operators.

- (a) Consumer to pay tax: Hotel or hotel operator not to represent that it will absorb tax: Accounting by hotel.
 - (1) The consumer shall pay to the hotel operator the amount of tax imposed by the Corporation, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the Corporation, all taxes paid by consumers. The hotel operator may commingle tax collected hereunder with the proceeds of the rental of hotel accommodations. The Corporation claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the State for moneys held by the hotel pursuant to the provisions of West Virginia Code 11-15. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.
 - (2) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.
- (b) Occupancy billed to government agencies or employees.
 - (1) Hotel room occupancy billed directly to the federal government shall be exempt from this tax; provided, that rooms paid for by the federal government employee for which reimbursement is made shall be subject to this tax.
 - (2) Hotel room occupancy billed directly to this State or its political subdivision shall be exempt from this tax; provided, that rooms paid for by an employee of this State for which reimbursement is made shall be subject to this tax.
- (c) Collection of tax when sale on credit. A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty days thereafter.
- (d) Receivership bankruptcy: Priority tax. In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this article shall be paid from first money available for distribution in priority to all claims and liens except taxes and debts due to the United States which under federal law are given priority over the debts and liens created by

FOOTNOTE:

735.10 The Corporation of Harpers Ferry was granted Municipal Home Rule on 16 November 2015, allowing the Corporation to establish a municipal sales tax when coupled with a reduction in the business and occupation tax rate. Ord. 2015-13 establishes the sales tax, reduces the business and occupation tax rate, and reduces the room occupancy tax rate.

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municipal ordinance or order of the County Commission for this tax and taxes and debts due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid which are chargeable against the person whose property or estate is in administration or distribution.

- (e) Failure to collect or remit tax: Liability of hotel operator. If any hotel operator fails to collect the tax authorized by this article and levied pursuant to this article or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can by good and substantial evidence prove the refusal of the purchaser to pay his tax despite the diligent effort in good faith of the hotel operator to collect the tax.
- (f) Total amount collected to be remitted. No profit shall accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in the excess of the amount for which a consumer would be liable by the application of the levy of three percent (3%) for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.
- (g) Tax return and payment.
 - (1) The tax authorized by this article shall be due and payable in quarterly installments on or before the fifteenth day of the calendar month next succeeding the quarter in which the tax accrued; provided that the credit in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for the purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon expiration of the thirty day payment period set forth in subsection (c) hereof, whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each quarter prepare and deliver to the Treasurer of the Corporation of Harpers Ferry a return for the preceding quarter, in the form prescribed by Council. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax the Corporation may require. A remittance for the amount of tax due shall accompany each return. Each return shall be signed by the hotel agent.
 - (2) For the first quarter that the tax is delinquent, there shall be assessed by the Treasurer a penalty in the amount of five percent (5%) of the tax due for the delinquent period. For each additional quarter that the tax remains delinquent there shall be further assessed an additional one percent (1%) penalty per quarter until the tax is paid. No payment for a subsequent period shall be collected until all prior delinquent taxes have been paid in full with all penalties assessed thereto.
- (h) Special rule for taxes due in amounts less than \$30.00 per quarter. In the event that the tax due for any reporting period is less than thirty dollars (\$30.00), the reporting requirements as stated under subsection (g) hereof are hereby waived and no reporting shall be required until such tax liability exceeds thirty dollars (\$30.00).
- (i) Keeping and preserving records. Each hotel operator shall keep complete and accurate records of taxable sales and charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall

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consent in writing to their destruction within the period or shall require that they be kept for a longer period.

- (j) Liability of officers. If the taxpayer is an association or corporation, the officer thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines additions to the tax penalties which may be imposed by State law. Corporation ordinances, order of the County Commission or other authority may be enforced against such officers as against the association or corporation which they represent. (Passed 06-11-2001. Amended 02-11-2013.)

753.06 Administration.

- (a) General procedure and administration. The administrative procedure for the assessment, collection and refund of the tax authorized by this article shall be established by the Corporation to aid in the efficient administration of the tax and distribution of its proceeds.
- (b) Proceeds of tax; application of proceeds. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the General Revenue Fund of the Corporation and after appropriation thereof shall be expended only as provided in Section 753.01 (a) and (b). (Passed 06-11-2001.)

753.99 Penalty.

- (a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or for any officer, partner or principal of any corporation or association to willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of this tax.
- (b) Any person willfully violating any of the provisions of this article shall for the first offense be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) or imprisoned for a period of not more than thirty days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or imprisoned in the penitentiary not less than one nor more than three years, or in the discretion of the Court be confined in the county jail not more than one year, or both fined and imprisoned.
- (c) Every prosecution for any offense arising under this ordinance shall be commenced within three years after the offense was committed, notwithstanding any provisions of this article to the contrary.
- (d) Proceedings against any person under this section shall be initiated in the county of this State wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, than in the county where the offense was committed. (Passed 06-11-2001. Amended 02-11-2013.)

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ARTICLE 769 Wine Distributors and Retailers

- 769.01** License required.
769.02 Fee.
769.03 Terms of license.
769.04 Separate license required.

CROSS REFERENCE

Authority to levy—see WV Code 8-13-4
Liquor control—see Ord. 521

769.01 License required.

No person may engage in business in the capacity of distributor or retailer of wine as provided by West Virginia Code Article 60-8, within the corporate limits of the Town, without first obtaining a license from the Town, 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.

769.02 Fee.

The Town shall collect an annual fee for license issued under this article as follows:

- (a) Twenty-five hundred dollars (\$2,500) per year for a distributor's license.
- (b) One hundred fifty dollars (\$150.00) per year for a retailer's license.

769.03 Terms of license.

The license period shall begin on the first day of July of each year commencing with July 1, 2008 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.

769.04 Separate license required.

A retailer who have 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. (Ord. 07-04, passed 09-10-2007.)

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- Article 901. Water Commission.
- Article 905. Water.
- Article 907. Cross-Connection and Backflow Prevention Program.
- Article 909. Streets.
- Article 911. Electrical and Communications Utilities, Underground Regulations.

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ARTICLE 901 Water Commission

- 901.01** **Creation; objective.**
- 901.02** **Membership; term of office.**
- 901.03** **Election of officers.**
- 901.04** **Office; expenses.**
- 901.05** **Regular and special meetings; quorum.**
- 901.06** **Reporting.**
- 901.07** **Duties and responsibilities.**
- 901.08** **Effective Date.**

CROSS REFERENCES

General powers of municipality—See WV Code 8-12-5(32)
Operation of municipal waterworks—See WV Code 8-19-1
Schedule of rates & charges—See Ord. 905

901.01 Creation; objective.

There is hereby created in the Corporation of Harpers Ferry, the Harpers Ferry Water Commission, whose purpose is to serve in an advisory capacity to assist the Town Council in carrying out its responsibilities in administering, operating and maintaining the Harpers Ferry Water Works in a professional, efficient and financially sound manner. (Ord. 97-01, passed 7-14-1997.)

901.02 Membership; term of office.

The Commission shall have at least three and no more than six members, all of whom shall be qualified by knowledge and experience in matters pertaining to the operation of the Corporation of Harpers Ferry and the Harpers Ferry Water Works, and all of whom shall be nominated and confirmed by the Town Council. All members of the Commission must be residents of the Harpers Ferry Water Works service area. The Town Council may appoint up to two members to the Water Commission who are not residents of Harpers Ferry: one from the Corporation of Bolivar and one from the unincorporated area of Jefferson County. Upon creation of the Commission, its members shall be appointed for the following terms: Up to two for a term of one year; up to two for a term of two years; up to two for a term of three years, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be for a term of three years. In the event that a vacancy shall occur during the term of any member, the Town Council shall appoint his or her successor for the unexpired portion of the term. ^[901.02]

901.03 Election of officers.

At its first meeting, and annually thereafter, the Commission shall elect from its members a Chairman, Vice-Chairman and Secretary. The Vice-Chairman shall have the power and authority to act as the Chairman of the Commission during the absence or disability of the Chairman. (Ord. 97-01, passed 7-14-1997.)

FOOTNOTE:

901.02 Revised 14 November 2011 to include a voting member from outside the Corporation of Harpers Ferry, superseding Ordinance 03-01 (passed 11 August 2003). Ordinance 2021-06 (passed 11 October 2021) expanded this to two voting members: one from the Corporation of Bolivar and one from unincorporated Jefferson County.

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901.04 Office; expenses.

The Town Council shall provide the Commission with suitable office space for the holding of meetings and the storage of records and documents. Members shall serve without compensation but shall be reimbursed for all responsible, and necessary expenses actually incurred in the performance of their official duties. (Ord. 97-01, passed 7-14-1997.)

901.05 Regular and special meetings; quorum.

- (a) The Commission shall fix the time for holding regular meetings, but it shall meet at least quarterly.
- (b) Special meetings of the Commission may be called by the Chairman, by one
- (c) member or the Town Council upon written request to the Secretary. Whether called by the Chairman, by a member, or the Town Council the Secretary shall send to each member, at least two days in advance of a special meeting, a written notice fixing the date, time and place of the meeting, but written notice of a special meeting is not required if the date, time and place of a special meeting have been fixed in a regular meeting, or if all of the members are present at the special meeting.
- (d) A majority of the members of the Commission shall constitute a quorum. No action of the Commission shall be official, however, unless authorized by a quorum of the members of the Commission at a regular or properly called special meeting. (Ord. 97-01, passed 7-14-1997.)

901.06 Reporting.

The Chairman, or a duly assigned member of the Commission, shall be present at each regular meeting or special meeting (if deemed necessary) of the Town Council to report on the activities of the Commission and to make recommendations, when appropriate. The commission also shall submit the Town Council an annual report, signed by the members, concerning the functions of the Commission. (Ord. 97-01, passed 7-14-1997.)

901.07 Duties and responsibilities.

The Harpers Ferry Water Commission shall:

- (a) Make rules and regulations for the administration of the affairs of the Commission, subject to approval of the Town Council.
- (b) Keep abreast of the new technologies and equipment and the various aspects of operating a water system by attending relevant seminars, and through technical publications.
- (c) Assist the Harpers Ferry Water Works Superintendent and the Town Treasurer in the formulation of the annual budget for the Harpers Ferry Water Works.
- (d) Review periodically the financial status of the Harpers Ferry Water Works with the Harpers Ferry Water Works Superintendent and Mayor and recommend to the Town Council changes as may be indicated in the Schedule of Rates and Changes.
- (e) Review the Harpers Ferry Water Works Superintendent's request for major purchases of equipment and recommend to the Town Council action to take.
- (f) Research and report to the Town Council sources for grant funds designated for water systems.
- (g) Research and report to the Town Council sources for services of consulting engineers specializing in water systems.
- (h) Serve as liaison with the State of Maryland on matters pertaining to withdrawals of water from the Potomac River into the Harpers Ferry Water Works, keeping the Town Council informed of any discussions.
- (i) Perform such other duties involving the Harpers Ferry Water Works, as may be

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requested by the Town Council. (Ord. 97-01, passed 7-14-1997.)

901.08 Effective Date.

This Ordinance shall take effect and be in force from and after July 14, 1997.

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ARTICLE 905 Water

- 905.01 Purpose.**
905.02 Establishment of a schedule of just and equitable rates or charges for water services; use of water meters; provision for flat rates.
905.03 Rules and regulations.
905.04 Schedule of rates.
905.05 Separability; repeal of conflicting schedules.

CROSS REFERENCES

Power to regulate—see WV Code 8-12-5(32)
Discontinuance for nonpayment—see WV Code 8-19-13
Review of rates by Public Service Commission—see WV Code 24-2-4(b)
Deposit limitations—see WV Code 24-3-8

905.01 Purpose.

To amend and re-enact an existing ordinance to establish a schedule of just and equitable rates or charges for the use of and services rendered by the water system and works of the Corporation of Harpers Ferry, the purpose and effect of this ordinance being to provide a new increased schedule of rates as herein-after stated. (Ord. 2014-01, passed 03-10-2014.)

905.02 Establishment of a schedule of just and equitable rates or charges for water services; use of water meters; provision for flat rates.

For the payment of the proper and reasonable expense of operation, repair, replacement, improvements, additions, betterments, extension, and maintenance of the water system and for the payment of the sums required to pay the principal and interest of all water revenue bonds as the same becomes due, and to establish funds to satisfy conditions and requirements attaching to said bonds, there is hereby established a schedule of just and equitable rates or charges for the use of and services rendered by the municipal water system and works of the Corporation of Harpers Ferry, West Virginia, which schedule of rates or charges, based upon the metered amount of water supplied the premises, where possible, but providing for a flat rate when no meter is available. (Ord. 2014-01, passed 03-10-2014.)

905.03 Rules and regulations.

Rules and Regulations for the Government of Water Utilities adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission. (Ord. 2014-01, passed 03-10-2014.)

905.04 Schedule of rates.

RATE SCHEDULE NO. 1

APPLICABILITY:

Applicable in the entire area served by the Harpers Ferry Water System.

AVAILABILITY OF SERVICE:

Available for general domestic, commercial, and industrial service.

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RATES:

FIRST 30,000 gallons used per month	\$19.25 per 1,000 gallons
ALL OVER 30,000 gallons used per month	\$13.84 per 1,000 gallons

MINIMUM CHARGE:

No bill shall be rendered for less than the following amounts according to the size of meter installed.

<u>Meter</u>	<u>Per month</u>
5/8"	\$38.50
3/4"	\$57.75
1"	\$96.25
1 1/4"	\$140.53
1 1/2"	\$192.50
2"	\$308.00
3"	\$577.50
4"	962.50
6"	\$1925.00

DELAYED PAYMENT PENALTY:

The above tariff is net. On all accounts not paid in full when due, 10% will be added to 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.

SECURITY DEPOSIT:

A deposit not to exceed one-twelfth (1/12) of the annual estimated charge for residential service or one-sixth (1/6) of the annual estimated charge for commercial service, or \$50.00, whichever is greater, shall be paid at the time of initial connection.

FORM OF PAYMENT; RETURNED CHECK FEE:

Payment may be made with cash, check, money order, or credit card. A service charge equal to the actual bank fees assessed to the water utility, not to exceed \$25.00, will be imposed upon any customer whose check for payment of charges is returned due to insufficient funds. If more than two checks within a three-year period are returned, payment must be made by cash or money order.

RECONNECTION CHARGE:

\$20.00 will be charged whenever the supply of water is turned off for violation of rules, nonpayment of bills, or fraudulent use of water.

TAP FEE:

The following charges are to be made whenever the utility installs a new tap to serve an applicant.

A tap fee of \$750.00 will be charged to customers who apply for service outside of a certificate proceeding before the Commission for each new tap to the system.

A tap fee of \$375.00 will be charged to customers applying for service before construction is completed adjacent to the customer's premises in connection with a certificate proceeding

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before the Commission. This pre-construction tap fee will be invalid after the completion of construction adjacent to an applicant's premises that is associated with a certificate proceeding.

INCREMENTAL LEAK ADJUSTMENT:

The Harpers Ferry Water Works will make a leak adjustment only when the water usage being adjusted is in excess of 200% of the customer's historical usage that can be attributed to leakage on the customer's side of the point of service. The leak adjustment will be computed pursuant to applicable rules of the Public Service Commission, the leak adjustment rate of \$0.86 per 1,000 gallons, and the customer's historic usage.

RATE SCHEDULE NO. 2

APPLICABILITY:

Applicable in entire territory served.

AVAILABILITY OF SERVICE:

Available for private fire protection service.

RATE:

	<u>Type</u>	<u>Per annum</u>
(1) Annual minimum charges	2" service line	\$150.00
	4" service line	\$375.00
	6" service line	\$683.03
	8" service line	\$1,137.50
(2) Unit charges	Standard fire hydrant	\$227.14
	Hose connection	
	2 1/2" or less	\$75.00
	Sprinkler head	\$0.32

(3) Rules relative to private fire protection:

The annual minimum charge entitles the customer to any combination of unit charges up to the amount of annual minimum charge. Additional units will be charged at the rates stated. Where private fire service is metered, the charge will be based on metered and minimum charges stated under Schedule No. 1. Installation cost of private fire service facilities will be borne by the customer.

DELAYED PAYMENT PENALTY:

The above schedule is net. On all accounts not paid in full when due, 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.

RATE SCHEDULE NO. 3

APPLICABILITY:

Applicable in entire territory served.

AVAILABILITY OF SERVICE:

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Available for public fire protection.

RATE:

\$12.00 per month per hydrant.

DELAYED PAYMENT PENALTY:

The above schedule is net. On all accounts not paid in full when due, 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.

CAPITAL CAPACITY IMPROVEMENT FEE

In addition to all the fees provided above, there shall be paid to the Corporation of Harpers Ferry at the time of issuance by the Corporation of a final water availability letter for the property to be served a capital capacity improvement fee of \$2,925.00 for each residential connection. Connections for non-residential use is to be paid in accordance with a residential usage equivalent schedule set forth below. The funds collected from the capital capacity improvement fee will be maintained in a separate fund by the Water Department's financial officer and are to be used only for the purpose of improving the Corporation's water system treatment, storage, and transmission facilities. The usage equivalent for other than single family residential units for the capital capacity improvement fee is based upon the following:

RESIDENTIAL USAGE EQUIVALENTS FOR CAPACITY IMPROVEMENT CAPITAL COST FEE

UNIT	<u>WATER GALLONS / DAY</u>	<u>RESIDENTIAL USAGE EQUIVALENT</u>
Apartments	150/unit	1.0/unit
Bowling Alleys	200/alley	1.33/alley
Churches with Kitchens	8/member	0.05/member
Churches without Kitchens	2/member	0.013/member
Food Service	32/seat	0.213/seat
Fast Food Restaurant	35/seat	0.23/seat
Bar & Cocktail Lounge (additive)	2/patron	0.013/patron
Tavern-Little or no food	20/seat	0.132/per seat
Hotel	120/room	0.8/room

If a unit does not appear on this schedule, the sewer department will determine its residential usage equivalent in consultation with its consulting engineer. ^[905.04]

905.05 Separability; repeal of conflicting schedules.

The provisions of this Ordinance are separable, and if any clause, provisions or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this ordinance. All resolutions, orders, ordinances, or parts thereof in conflict with the provisions of this ordinance. All resolutions, orders, ordinances, or

FOOTNOTE:

905.04 Ord. 2017-09 implemented a two-step rate increase. Step 1 rates became effective immediately upon adoption of the ordinance. Step 2 rates became effective 60 days prior to commencement of project debt service for the comprehensive water system improvement project. Ord. 2017-09 superseded Ord. 2015-08. Ord. 2021-09 (passed 11-08-2021) increased the incremental leak adjustment rate. Ord. 2023-04 (passed 04-18-2023, effective 06-02-2023) increased the incremental leak adjustment rate and modified how the adjustment is calculated.

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parts therefore in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby. Repealed insofar as they may be deemed to conflict with this Ordinance; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders, ordinances, or parts, thereof, the same shall remain in full force and effect. (Ord. 2014-01, passed 03-10-2014.)

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ARTICLE 907

Cross-Connection and Backflow Prevention Program

- 907.01 Purpose.
- 907.02 Authority.
- 907.03 Responsibility.
- 907.04 Definitions.
- 907.05 Administration.
- 907.06 Requirements.
- 907.07 Degree of hazard.
- 907.08 Existing in-use backflow prevention devices.
- 907.09 Periodic testing.
- 907.10 Records.

907.01 Purpose.

- (a) To protect the public water system served by the Harpers Ferry Water Works from the possibility of contamination or pollution by isolating within its customer's internal distribution water system(s) such contaminants or pollutants that could backflow due to backpressure or back-siphonage into the public water system;
- (b) To promote the elimination and / or control of cross-connections and backflow conditions, actual or potential, within a customer's internal distribution water system(s), nonpotable systems, plumbing fixtures and processes; and
- (c) To provide for the maintenance of a continuing program of cross-connection and backflow prevention control which will effectively prevent the contamination or pollution of the public and/or customer's water system(s) from cross-connections and backflow conditions.

907.02 Authority.

By the Federal Safe Drinking Water Act of 1974 and 1996 amendment, and the Code of West Virginia Chapter 16, Article 1, and Public Health Laws, WV Bureau for Public Health Chapter 1, Article 5B, the Water Purveyor has the primary responsibility for preventing water from unapproved sources, or any other substances, from entering the public potable water system.

907.03 Responsibility.

The Water Purveyor shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to backflow from back-pressure or back-siphonage of contaminants or pollutants through the water service connection. If, in the judgment of the Water Purveyor, an approved backflow preventer assembly is required at the water service connection to any customer's premises, the Water Purveyor, or his delegated agent, shall give notice in writing to said customer to install an approved backflow preventer assembly at each service connection to his premises. The customer shall, within ninety (90) days, install such approved assembly, or assemblies, 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 grounds for discontinuing water service to the premises until such assembly or assemblies have been properly installed.

907.04 Definitions.

- (a) Approved. Accepted by the Water Purveyor as meeting an applicable specification

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stated or cited in the WV Department of Health and Human Resources regulation or as suitable for the proposed purpose.

- (b) Assembly. A backflow preventer usually consisting of a combination of approved check valve components and additional instrumentation including approved shutoff valves and test cocks.
- (c) Auxiliary water supply. Any water supply or water source, on or available, to a customer's premises other than the water purveyor's approved public water system.
- (d) Backflow. The undesirable reversal of water flow or introduction of other liquids, mixtures or substances, caused by a pressure differential in the distribution pipes of a potable water system.
- (e) Backflow condition(s). Any set of circumstances, actual or potential that could be construed to create a cross-connection allowing for backflow of a contaminant or pollutant to enter a potable water system.
- (f) Backflow preventer. A device or assembly, or means designed to prevent backflow in a potable water system. Most commonly categorized as air gap, atmospheric vacuum breaker, barometric loop, double check with intermediate atmospheric vent, double check valve assembly, hose bibb vacuum breaker, pressure vacuum breaker, reduced pressure principle assembly, and residential dual check.
 - (1) Air gap. A physical separation sufficient to prevent backflow between the free-flowing discharge end of the 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.
 - (2) Atmospheric vacuum breaker. A device which prevents backflow by creating an atmospheric vent when there is either a negative pressure or sub-atmospheric pressure in a water system.
 - (3) 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.
 - (4) Double check valve assembly. An assembly of two (2) independently operating spring loaded check valves with tightly closing shut-off valves on each side of the check valves, and properly located test cocks for the testing of each check valve.
 - (5) Double check valve with intermediate atmospheric vent. A device having two (2) spring loaded check valves separated by an atmospheric vent chamber.
 - (6) Hose bibb vacuum breaker. A device attached to a hose bibb and which acts as an atmospheric vacuum breaker.
 - (7) Pressure vacuum breaker. An assembly containing an independently operated spring loaded check valve and an independently operated spring loaded air inlet valve located on the discharge side of the check valve. The assembly includes tightly closing shut-off valves on each side of the valves and properly located test cocks for the testing of the check and air valve.
 - (8) 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 on each side of the check valves plus property located test cocks for the testing of the check valves and the relief valve.
 - (9) Residential dual check. A device consisting of two (2) spring loaded, independently operating check valves. Generally employed immediately downstream of the water meter to act as a fixture isolation device.
- (g) Backpressure. A condition in which the customer's system pressure is greater than the

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- water purveyor's system pressure.
- (h) Back-siphonage. The flow of water or other liquids, mixtures or substances into the distribution pipes of a potable water system from any source other than the primary source caused by the sudden reduction of pressure or negative pressure in the potable water system.
 - (i) Community water system. A public water system that serves at least 25 residents year around or that has 15 service connections serving year around residents.
 - (j) Containment (external protection). A method of backflow prevention which requires a backflow preventer assembly be installed after the meter and prior to any water service entrance.
 - (k) Contaminant. A substance that will impair the quality of potable water to a degree that it creates a serious health hazard to the public leading to poisoning or the spread of disease.
 - (l) Cross-connection. Any actual or potential, direct or indirect, connection between the public water system and an unapproved water supply or other source of contamination or pollution.
 - (m) Customer. A customer is described as a billing unit or service connection to which drinking water is delivered by a public water system. A customer may also be identified as an owner.
 - (n) Degree of hazard. The degree of hazard is the potential risk to health and the potential adverse effects upon the public water system based on the probability of backflow occurring and the type or nature of the contaminant. A health hazard is any condition, device or practice which creates or may create a danger to health and well being of the water consumer. A severe health hazard is any health hazard (contaminant) that could be expected to result in significant morbidity or death. A non-health hazard (pollutant) is any condition that could degrade the quality or adversely affect the public water system.
 - (o) Device. A single body backflow preventer with one or two check valves that cannot be tested and does not have shut off valves or test cocks.
 - (p) Fixture isolation (internal isolation). A method of backflow prevention where a backflow preventer is located to control a cross-connection or potential source of contamination at an in-plant piece of equipment or process location other than at a water service entrance.
 - (q) Owner. Any person who has legal title to, or license to operate, or resides in a property or facility which is supplied drinking water from a public water system. May also be referred to as a customer.
 - (r) Person. Any individual, partnership, company, public or private corporation, political subdivision, agency of the State, agency or instrumentality of the United States, or any other legal entity.
 - (s) Pollutant. A foreign substance, if permitted to enter the public water system, will degrade potable water quality so as to constitute a moderate hazard, or impair the usefulness of the water to a degree which does not create an actual hazard to the public health, but which does adversely and unreasonably affect (appearance or color, odor, taste, etc.) the water for domestic use.
 - (t) Potable water. Water that is safe for human consumption as described by the West Virginia Bureau for Public Health.
 - (u) Public water system. Includes the works and auxiliaries for the collection, treatment, storage and distribution of drinking water from the source of supply to a customer's premises. May also be know as a water purveyor.
 - (v) Water purveyor. The Municipal Water Department, Water Board, Public Service

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District or other administrative authority invested with the authority and responsibility for a public water system.

- (w) Water service entrance. That point in the customer's water system beyond the sanitary control of the public water system (water purveyor), generally considered to be the outlet end of the water meter and always before any unprotected branch water line.
- (x) West Virginia Bureau for Public Health (WVBPH). The State of West Virginia Bureau for Public Health.

907.05 Administration.

- (a) The Water Purveyor will establish, operate and promote a cross-connection and backflow prevention control program, to include the keeping of necessary records, which fulfills the requirements of the WVBPH Cross-Connections and Backflow Prevention Regulations.
- (b) The owner shall allow his property to be inspected for possible cross-connections and backflow conditions, and shall follow the provisions of the Water Purveyor's program and the WVBPH Cross-Connections and Backflow Prevention Regulations where a cross-connection is permitted.
- (c) If the Water Purveyor requires that the public water system be protected by containment, the Owner shall be responsible for the installation and maintenance of the required backflow preventer assembly(ies) and for water quality beyond the outlet end of the containment assembly(ies) and could utilize fixture isolation protection for that purpose. The owner may also seek local public health officials, or personnel from the Water Purveyor, or their designated representatives, or certified/licensed private sector personnel to assist him / her in the survey of their facility(ies) and to assist him/her in the selection of proper containment assemblies and/or fixture isolation devices, and the proper installation of these assemblies / devices.

907.06 Requirements.

- (a) Water Purveyor.
 - (1) On new installations, the Water Purveyor will provide an on-site evaluation and/or inspection of plans in order to determine the type of backflow preventer assembly(ies), if any, that will be required based on actual or potential cross-connections and the degree of health hazards.
 - (2) For premises existing prior to the start of this program, the Water Purveyor will perform evaluations and inspections of plans and/or premises for actual and potential cross-connections and backflow conditions 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) / assembly(ies) already in place.
 - (3) The Water Purveyor will not allow any actual or potential cross-connection to remain unless it is protected by an approved air gap or backflow preventer assembly(ies) and which must be regularly tested or inspected to insure satisfactory operation.
 - (4) The Water Purveyor shall inform the owner by letter, of any failure to comply, prior to a re-inspection. The Water Purveyor will allow an additional fifteen (15) days for the correction(s). In the event the owner fails to comply with the necessary correction(s) by the time of a second re-inspection, the Water Purveyor will inform the owner by letter, that the water service to the owner's

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premises will be terminated within a period not to exceed five (5) days. In the event that the owner informs the Water Purveyor of extenuating circumstances as to why the correction(s) has not been made, a time extension may be granted by the Water Purveyor, but in no case will exceed an additional thirty (30) days.

- (5) If the Water Purveyor determines at any time that a serious threat to the public health exists, water service will be terminated immediately
- (6) The Water Purveyor will conduct initial and follow-up premise inspections to determine the nature of existing or potential hazards. The main focus will be on high hazard industries and commercial premises.
- (7) The Water Purveyor must report any backflow incidents(s) occurring in the public water system as soon as possible but no later than twenty-four (24) hours after the incident to the WVBPH.

(b) Owner.

- (1) The Owner shall be responsible for the elimination or protection of all actual or potential cross-connections and / or backflow conditions on his/her premises.
- (2) The Owner, after having been informed by a letter form the Water Purveyor, shall at his / her expense, install, maintain, and test, or have tested, any and all backflow preventer assemblies on his / her premises.
- (3) The Owner shall correct within thirty (30) days any malfunction of an air gap or backflow preventer assembly(ables) which is revealed by periodic inspection or testing. This may also involve the removal and/or replacement of the backflow preventer assembly(ables).
- (4) The Owner shall inform the Water Purveyor of any proposed or modified cross-connections and also any existing cross-connections of which the Owner is aware, but have not been found the Water Purveyor.
- (5) The Owner shall not install a by-pass around any backflow preventer assembly unless there is a backflow preventer assembly of the same type on the bypass. Owners who cannot shut down operation for testing of the assembly(ables) must supply additional assemblies necessary to allow testing to take place.
- (6) The Owner shall install only backflow preventer assemblies approved by the Water Purveyor or the WVBPH.
- (7) The Owner shall install backflow preventer assemblies in a manner approved by the Water Purveyor and general industry standards.
- (8) Any Owner having a private well or other auxiliary water source must have the approval of the Water Purveyor and the WBVPH if the well or source is cross-connected to the Water Purveyor's system. Permission to cross-connect may be denied. The Owner may be required to install a backflow preventer assembly at the service entrance if a private water source is maintained, even if it is not cross-connected to the Water Purveyor's system.
- (9) In the event the Owner installs plumbing to provide potable water for domestic purposes which is on the water Purveyor's side of a backflow preventer assembly, such plumbing must have its own backflow preventer assembly installed.
- (10) The Owner shall be responsible for the payment of all fees for service, permits, periodic assembly testing, retesting in the case that a backflow preventer assembly fails to operate correctly, and follow-up re-inspections for non-compliance with Water Purveyor or WVBPH requirements.
- (11) The Owner must maintain for a minimum of three (3) years records of installation and removal, all testing, repair and maintenance for all assemblies/

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- devices in the Owner's water distribution system(s).
- (12) The Owner will report any backflow incident(s) occurring in their facility (ties) / building(s) as soon as possible but no later than twenty-four hours (24) after the incident to the Water Purveyor and to the WVBPH. Also, the Owner must maintain for a minimum of three (3) years all records and reports of all backflow incidents occurring in their facility(ties) / building(s). These records and reports are to be made available to the Water Purveyor and/or WVBPH upon request.

907.07 Degree of hazard.

The Water Purveyor recognizes the threat to the public water system arising from cross-connections and backflow conditions. All threats will be classified by degree of hazard which will determine the requirements for the installation of approved backflow preventer assemblies.

907.08 Existing in-use backflow prevention devices.

Any existing backflow preventer assembly shall be allowed by the Water Purveyor to continue in service unless the degree of hazard is such as to supersede the effectiveness of the present backflow preventer assembly, or there is an unreasonable risk to the public health. Where the degree of hazard has increased, as in the case of residential installation converting to a business establishment, any existing backflow preventer assemblies must be upgraded to a reduced pressure principle assembly or a reduced pressure principle assembly must be installed in the event that no backflow preventer assembly is present.

907.09 Periodic testing.

- (a) Backflow preventer assemblies shall be tested and inspected at least annually.
- (b) Periodic testing shall be performed by a WVBPH certified tester. This testing will be done at the Owner's expense.
- (c) 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 assembly 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 periodic test and cannot be repaired immediately. In other situations, a compliance date of not more than thirty (30) days after the test date may be established. The Owner is responsible for the costs of all testing, repair service, replacement parts, or a replacement assembly. Parallel installation of two (2) assemblies is an effective means of the owner insuring uninterrupted water serve during testing or repair of one of the assemblies and is strongly recommended when the Owner desires such continuity.
- (d) Backflow preventer assemblies will be tested more frequently than specified in above in cases where there is a history of test failures and the Water Purveyor feels that due to the degree of hazard involved, additional testing is warranted. Cost of the additional tests will be born by the Owner.

907.10 Records.

- (a) The Water Purveyor will initiate and maintain (update) the following:
- (1) Master files on customer evaluations and / or inspections of cross-connections and backflow conditions
 - (2) Master files on all customer backflow preventer assemblies
 - (3) Master files on customer backflow preventer tests, repairs and replacements. Records for replaced backflow preventers shall be maintained for a period of one (1) year after date of removal from service

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- (4) Records and reports of any backflow incident(s) occurring in the public or consumer water systems shall be maintained for a least three (3) years after the date of the incident
 - (5) Copies of any of the above and other records and / or reports supplied to the WVBPH. This Material shall be maintained for at least three (3) years after submission.
- (b) Upon request, the Water Purveyor will submit records of inspection and noncompliance, surveys, tests results and / or corrective actions, and backflow incident reports to the West Virginia Bureau for Public Health. (Ord. 06-06. Passed 4-10-2006.)

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ARTICLE 909 Streets

- 909.01** Definitions.
- 909.02** Obstructions prohibited.
- 909.03** Construction restricted; permit.
- 909.04** Snow removal.

CROSS REFERENCES

General power to regulate—see WV Code 8-12-5(1)
Connection to State road system—see WV Code 17-4-26 *et seq.*
Street obstructions—see Ord. Art. 311.01

909.01 Definitions.

- (a) “Street” includes any and all existing streets and right-of-way within the Corporate limits including rights of way which have not been physically opened, but which appear on the surveys of S. Howell Brown of the Town of Harpers Ferry. “Street” shall include all existing rights of way whether or not they lie specifically within the boundaries shown on the surveys of S. Howell Brown of the Town of Harpers Ferry, notwithstanding, the ownership of a fee title through or upon the land of which “street” physically passes and notwithstanding whether they, being unconstructed appear on the surveys of the Town of Harpers Ferry S. Howell Brown; provided, however the term “streets” as defined above shall not include in any way a driveway less than a total of 1,000 feet in length used solely by a landowner as a means of ingress or egress from any existing tract of land, dwelling or building within the corporate limits of Harpers Ferry, West Virginia or located outside the corporate limits of the Town access to which is desired by way of a driveway or road located partially within the corporate limits of Harpers Ferry.
- (b) “Person” includes any person within the Corporate limits including, but not limited to the Mayor, any and all policemen of the Town and/or Bolivar, West Virginia, also an incorporated municipality, any member of the Town Council, any person purporting to exercise authority on behalf of the Town of Harpers Ferry, any member of any government authority of Jefferson County, West Virginia, the State of West Virginia or the United States of America.
- (c) “Natural disaster” shall be limited to any fire, earthquake, hurricane, tornado, flood, automobile accident, or collapse of a building, or buildings causing a direct threat to the safety of persons in the vicinity of such “natural disaster.” The words “natural disaster” shall not include the restriction of automobile traffic upon any street within the Corporate limits of the Town for any than the above set forth “natural disaster.” (Ord. 86-1. Passed 5-22-1986.)

909.02 Obstructions prohibited.

- (a) No person shall obstruct, or to cause to be obstructed, individually or acting in concert with any other person, any street within the Corporation limits of Harpers Ferry, West Virginia except when necessary by virtue of a natural disaster as defined herein.
- (b) Violation of this section shall constitute a crime against the laws of the Town of Harpers Ferry and shall be punishable by a fine of one hundred dollars (\$100.00) and / or ten days imprisonment for each such violation and in the event, a violation of this section, each hour thereof shall be deemed to be a separate offense punishable as set forth; provided, however, this section shall not be deemed to be a separate offense

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punishable as set forth; provided, however, this permitting Chief of Police of Harpers Ferry / Bolivar to momentarily close a street or streets to the passage of traffic in order to facilitate and permit the presentation of or gathering for a special event of a transient nature otherwise permitted by the Town in order that there be an orderly traffic flow during the time allowed for such special event, to being the specific intent of Council to forbid the closure, in particular, temporarily or permanently or otherwise, in a way, of a certain right-of way known as the Shenandoah Street in connection with the construction by the United States Department of the Interior, National Park Service, Harpers Ferry National Park of a parking lot on what in former times was known as Cavalier Farm located on Cavalier Heights, together with construction of a road connecting with the Shenandoah Street for the use of bus transportation to and from the corporate limits of Harpers Ferry by visitors to the Harpers Ferry National Park. (Ord. 86-1. Passed 5-12-1986.)

909.03 Construction restricted; permit.

No person shall construct any street, as defined above, within the Corporate limits of Harpers Ferry, or alter or improve any street within the Corporate limits of Harpers Ferry or connect or cause to be connected any street with any existing street within the Corporation limits of Harpers Ferry without first obtaining a permit in writing for the same from the Planning Commission and from the Town Council in such manner and form as may be prescribed and directed by the Town Council. (Ord. 86-1. Passed 5-22-1986.)

909.04 Snow removal.

All owners or occupants of property within the Town shall remove, or cause to be removed, the snow from the sidewalks adjacent to their property within four hours after the snow has ceased to fall; provided, however, that should the snow fall during the night or on a Sunday, it shall be removed, within four hours after sunrise on the following day. (Ord. 86-1. Reinstated 1-11-1999.)

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ARTICLE 911

Electrical and Communications Utilities, Underground Regulations

- 911.01 Purpose.
- 911.02 Underground utilities system defined.
- 911.03 Underground electric wire installations.
- 911.04 Exception, emergency or unusual circumstances.
- 911.05 Liability and claims.
- 911.06 Application for underground space.
- 911.07 Issuance of permit.
- 911.08 Installation of underground facilities.
- 911.09 Street lighting.
- 911.10 Authorized servicemen.
- 911.11 Existing poles, wires.
- 911.12 Violations.

CROSS REFERENCES

911.01 Purpose.

The Council believes it to be desirable and in the public interest to assure orderly municipal development and to provide for the safety and convenience of its inhabitants. To this end, all underground utilities as hereinafter defined shall be placed, constructed and installed underground. The ultimate goal of the Town is to place all utilities underground. (Ord. 98-02. Passed 6-8-1998.)

911.02 Underground utilities system defined.

Underground utilities system shall include, but not limited to, electric, communications, street lighting and cable television lines. The appurtenances and associated equipment of said system such as, but not limited to, surface mounted transformers, pedestal mounted terminal boxes and meter cabinets, and concealed ducts in an underground system shall not be included in such definition and may be properly placed upon or above the ground when approved by the City Council or an individual or Board designated by said Council. High voltage transmission lines of fifteen thousand (15,000) volts or more shall not be included in this definition and when properly approved the Engineer may be placed above the ground. (Ord. 98-02. Passed 6-8-1998.)

911.03 Underground electric wire installations.

In addition to any other requirement of this Code, the following shall be applicable to the installation of electric and communication distribution systems of all utilities, excluding high voltage circuits and transmission lines of fifteen thousand (15,000) volts or more. (Ord. 98-02. Passed 6-8-1998.)

- (a) Every permanent extension of any distribution lines, circuits, and systems and any service lateral providing permanent electric power service, communication service or other associated utility services shall be installed underground when for:
 - (1) Any new installation of buildings, signs, street lights or other structures where the service lateral is street fed;
 - (2) Any new subdivision or home;
 - (3) Any new development or industrial part containing new commercial or industrial buildings.

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- (b) Any permanent replacement, relocation or reconstruction of more than four hundred (400) yards of any distribution line, circuit or system of any such utility and any service lateral shall be installed underground when for or made in connection with street paving, street widening, public utility installation and other such projects. Such requirements may be waived by the City Council or on individual or Board designated by said Council, when it is not technically or economically feasible.
- (c) Whenever any part or portion of the distribution system of any such utilities in an area or district of this Municipality is now located underground, such part or portion shall remain underground and any replacement, relocation, reconstruction, repair and extension thereof shall be installed underground.
- (d) All high voltage circuits and transmissions lines of fifteen thousand (15,000) volts or more which are constructed within the corporate limits of this Municipality after obtaining approval of the City Council or individual or Board designated by said Council, if however, not feasibly to be placed underground, shall be placed whenever possible on two – legged or single-pole structures of metal or wood unless the Engineering staff of this Municipality approves structural techniques.

911.04 Exception, emergency or unusual circumstances.

- (a) Notwithstanding the provisions of Section 911, the City Council or individual or Board designated by said Council may grant special permission on such terms as he may deem appropriate in case of emergency or other unusual circumstances, without discrimination as to any person or utility, to temporarily erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures for periods up to nine (9) months. Said permits may be renewed for additional six-month periods upon good cause shown.
- (b) Upon showing unusual circumstances of a permanent nature which cause extreme hardship, the Council may grant special permission to a person or utility to erect, construct, install maintain, use or operate poles, overhead wires and associated structures within the corporate limits of this Municipality. (Ord. 98.02. Passed 6-8-1998.)

911.05 Liability and claims.

All persons and companies providing electrical distribution and communications service under Section 911 shall at all times save the City harmless from all damages arising from all accidents, injuries or any damage whatsoever that may be caused to any person or property due to installation or use of any underground wiring, conduit or cables installed pursuant to the terms of Section 911 and upon a ten (10) day notice from the City shall appear and defend all suits for damages against the City as a result of any such accident, injury or damage.

911.06 Application for underground space.

Persons or companies making applications for spaces underground facilities shall present their application and location drawings to the City Council or individual or Board designated by said Council clearly indicating the type of underground system to be used, whether the system is to be a joint system to include electric supply and communication facilities, and specifying the proposed start and duration of the construction and the part of the street needed for construction. When such system, plans and specifications have been approved by the City Council or individual or Board designated by said Council, applicants who are unable to show financial responsibility to the satisfaction of the City Council or individual or Board designated by said Council may be required to deposit with the City a sufficient sum to defray

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the cost of repaving that portion of the street used by them in case such paving is required.

911.07 Issuance of permit.

The City Council or individual or Board designated by said Council shall then issue a permit for such applicant granting the right to enter upon such streets as may be necessary, designating that portion that such applicant may be permitted to use and the location of their underground facilities. Any question arising regarding the amount of space to be allowed any applicant or the location of their underground facility shall be determined by the City Council or individual or Board designated by said Council, and where a disagreement arises with reference to the City Council's decision, the said decision may be appealed to the Council for final determination.

911.08 Installation of underground facilities.

- (a) Underground facilities shall be located in the designated space as approved by the City Council or individual or Board designated by said Council. All excavations for the purposes of placing facilities underground shall be made in accordance with specifications as approved by the City Council or individual or Board designated by said Council. Periodic inspections of excavations and back-filling procedures will be conducted by representatives of the City Council or individual or Board designated by said Council to insure adherence and compliance to specifications.
- (b) The top of all duct and cable system structures shall be located at a sufficient depth, in accordance with the National Electric Safety Code, to protect the system from injury.
- (c) All utility companies shall keep current records and plats of all underground facilities they own and operate. Such plats shall be available to all other utility companies and this Municipality immediately up the request of the City Council or individual or Board designated by said Council.
- (d) In the repair, addition or change of any underground facilities, no person or company shall be permitted to interfere with the underground facilities of any other person or company except so far as shall be necessary to make such repairs, additions or changes. All such repairs, additions or changes shall be made in accordance with specifications as approved by the City Council or individual or Board designated by said Council and the City Council or individual or Board designated by said Council shall be notified before work thereon in commenced.
- (e) Conditions requiring emergency street opening and for repair may be handled at the discretion of the City Council or individual or Board designated by said Council.
- (f) All companies laying underground facilities under provisions of Section 911 shall begin such work at a time fixed by the City Council or individual or Board designated by said Council and shall proceed with the construction of the same following the time scheduling as ordered by the City Council or individual or Board designated by said Council. (Ord. 98.02. Passed 6-8-1998.)

911.09 Street lighting.

- (a) Where a new development, whether residential, commercial, or industrial is established incorporating a street lighting system, that lighting system shall have underground wiring and the style approved by this Municipality.
- (b) The electrical service for the street lighting system shall be applied to the areas underground as authorized by the City Council or individual or Board designated by said Council. (Ord. 98-02. Passed 6-8-1998.)

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911.10 Authorized servicemen.

Those employees designated or authorized by any utility to enter any building, areaway, or other private place, for the purpose of placing, extending, or repairing any wires, cables, conduits, or other fixtures pertaining to the underground electric service, shall be furnished appropriate identification which shall be displayed upon request. No person except those designated shall seek to enter any private place under pretense of being employed on such service and no authorized servicemen shall in any way alter, remove or interfere with the wires, cables, conduits or fixtures of any person or company other than that in whose employ he may be, without proper authority from the owners of agents thereof. (Ord. 98-02. Passed 6-8-1998.)

911.11 Existing poles, wires.

Nothing in section 911 shall be construed as prohibiting necessary repairs to any policies or wires properly in use within the corporation limits of this Municipality. (Ord. 98-02. Passed 6-8-1998.)

911.12 Violations.

A person who violates the terms of section 911 shall be guilty of a misdemeanor. The continued violation of the provisions of Section 911 shall constitute a separate offense for each day that such violation shall continue. (Ord. 98-02. Passed 6-8-1998.)

PART ELEVEN — HEALTH AND SANITATION CODE

PART ELEVEN — HEALTH AND SANITATION CODE

Article 1104. Tree Conservation.

Article 1109. Nuisances and Property Maintenance.

PART ELEVEN — HEALTH AND SANITATION CODE

ARTICLE 1104 Tree Conservation

- 1104.01 Title.**
- 1104.02 Purpose.**
- 1104.03 Definitions.**
- 1104.04 Tree Commission.**
- 1104.05 Licensing and insurance requirements.**
- 1104.06 Landscaping and construction.**
- 1104.07 Public tree planting, maintenance and removal.**
- 1104.08 Private trees and tree protection.**
- 1104.09 Penalties, claims and appeals.**
- 1104.10 Interference with Tree Commission.**
- 1104.11 Enforcement.**
- 1104.12 Severability.**

CROSS REFERENCES

Authority to regulate trees—see WV Code 8-12-5(29)

1104.01 Title.

This ordinance is entitled and may be cited as the *Harpers Ferry Tree Conservation Ordinance*.

1104.02 Purpose.

It is the purpose of this ordinance to recognize that tree conservation is crucial to the environment and to the character of Harpers Ferry; to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees within the Corporation; and to establish authority, policies, regulations, and standards necessary to ensure that the Corporation will continue to realize the benefits provided by its urban forest. The provisions of this article are enacted to:

- (a) Establish a responsible authority for the management of the Corporation's urban forest;
- (b) Establish and maintain the optimal amount of tree cover on public property in the Corporation;
- (c) Maintain the Corporation's trees in a healthy and non-hazardous condition through good arboricultural practices; and
- (d) Establish and maintain diversity in appropriate tree species and age classes to provide a stable and sustainable urban forest.

1104.03 Definitions.

As used in this ordinance, the following definitions apply:

ANSI A300: American National Standards Institute, Inc., "Standard Practices for Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance."

Arborist: A person with special skills, training, or certification to apply knowledge on urban trees or on an urban forest, especially one who is a tree professional certified by the International Society of Arboriculture (ISA), the Tree Care Industry Association, the Society of

HISTORY:

Ord. 2023-02 (passed 03-13-2023) amended Article 1104 to remove the Planning Commission's authority over the Tree Committee and change the name of the latter body to the Tree Commission.

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American Foresters, or another similar professional organization.

Business: For the purposes of this ordinance, “business” is defined as the exchange of labor, material, or services for profitable monetary gain.

Canopy: The area constituting the leaves and branches of the tree; the upper portion of a tree, from the lowest branch on the trunk to the top of the tree.

Commission: The Harpers Ferry Tree Commission.

Community Tree Plan: A written document that guides the work of the Tree Commission and envisions a long-range plan for the preservation and improvement of the Corporation's urban forest. The Community Tree Plan may include such data as deemed necessary by the Tree Commission to carry out its legal mandate.

Contractor: Any individual, corporation, or firm who agrees to supply labor or material to the Corporation of Harpers Ferry.

Corporation: The Corporation of Harpers Ferry, Jefferson County, West Virginia.

Critical root zone: A more or less circular area above and extending 24 inches below the surface of the ground around the trunk of a tree with a radius equivalent to the distance to the drip line, or 1.25 feet for every 1 inch DBH, whichever is greater. The critical root zone increases in size as the tree grows larger.

DBH: Diameter at Breast Height, a common forestry term indicating the diameter of a tree trunk at approximately 4.5 feet above the average ground level at the base of the tree. If a tree forks 4.5 feet above the ground level, the collective diameter of all the trunks at 4.5 feet above the ground level constitutes this measurement.

Department: Any of the departmental divisions of the Corporation of Harpers Ferry.

Drip line: An imaginary vertical line running along the ground directly beneath the outermost portion of the canopy of the tree(s).

Historic Landmarks Commission: The Harpers Ferry Historic Landmarks Commission.

Injury: Any harm or damage that affects the health of the tree(s). This term does not include pruning for the purpose of regeneration or shaping.

Invasive species: A plant species whose introduction causes, or is likely to cause, economic or environmental harm, or harm to human health.

Landmark tree: Any tree which has been individually designated by the Tree Commission to have a special significance because one or more of the following apply: rare species, old age, unusual size, distinct location, association with an historical event or person, scenic enhancement, legal boundary marker, public demand for such classification, or one or more unique characteristic(s) determined by the Tree Commission to qualify it for such classification.

Mayor: The mayor of the Corporation of Harpers Ferry. In all cases pursuant to this ordinance, the mayor is considered an agent of the Tree Commission.

Native tree: A tree species indigenous to the Mid-Atlantic region of the United States.

Nuisance tree: Any tree or any part thereof with an infectious disease or insect problem; dead or dying trees; invasive species; trees at risk for failure; a tree or its limb(s) that obstruct or interfere with utility lines, street lights, traffic signs, or the free passage of pedestrians or vehicles; or a tree that poses a threat to the health, safety, or general welfare of a person(s) or property.

Official inventory tag: A metal or plastic tag affixed to the trunk displaying the official inventory number of a tree. The tag may be placed by the Tree Commission, its agent, or an individual or company contracted to do so by the Tree Commission.

Person: Any person, firm, partnership, association, corporation, company, or organization of any kind.

Planning Commission: The Harpers Ferry Planning Commission.

Property owner: The person(s) owning designated property as shown by the Jefferson County Assessor's Plat of the Corporation of Harpers Ferry.

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Pruning: The removal of woody plant parts.

Public property: Any real property in the Corporation that is owned by the Corporation, or by a county or state governmental body. This term includes buildings, parking lots, parks, streets, sidewalks, rights-of-way, easements, and other similar property.

Public tree: Any tree growing on public property, including streets, rights-of-way, and parks.

Removal: The act of taking from the premises any tree or part thereof, or any action that gives cause for removal.

Street trees: Trees on public property growing within the right-of-way of all streets or other ways within the corporate limits.

Topping: The cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role.

Tree: Any perennial woody plant, including its root system, having at least one well-defined trunk or stem, which has reached or can reach a height of at least 15 feet and a DBH of at least 3 inches at physiological maturity.

Urban forest: The trees, lower vegetation, open green spaces, and associated wildlife within the Corporation or adjacent to it.

Utility / utility company: Any public or private utility company owning and / or maintaining utility lines for the transmission of electricity, water, sewage, telephone, television, and the like.

1104.04 Tree Commission.

- (a) Establishment. There is hereby created and established, in the Corporation of Harpers Ferry, the Harpers Ferry Tree Commission, which consists of five voting members, citizens and residents of this Corporation, each appointed by a majority vote of the Town Council. One of these voting members must also be a member of the Planning Commission. When considering applicants for the Tree Commission, the Town Council will give special consideration to those with skills and an expressed interest in urban forestry, landscaping, or arboriculture. The Corporation's Maintenance Supervisor, one representative of the West Virginia Division of Forestry, and one representative of Potomac Edison (or its successor) serve as ex-officio, non-voting members of the Commission. Other persons may serve as ex-officio, non-voting members as deemed necessary by the voting members.
- (b) Duties and responsibilities. It is the responsibility of the Tree Commission to study, investigate, counsel, and develop and/or update annually, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees along streets and in other public areas. Such plan may also include the designation of an official tree for the Corporation. This plan must be presented annually to the Town Council, and upon their acceptance and approval constitutes the official Community Tree Plan for the Corporation of Harpers Ferry. Such Community Tree Plan must be consistent with the Planning Commission's Comprehensive Plan. The Tree Commission, when requested by the Town Council, will consider, investigate, make findings, report, and recommend upon any special matter of question coming within the scope of its work.
- (c) Tree City USA. It is the duty of the Tree Commission to complete all required mandates to achieve and maintain Tree City USA status and inform the Town Council of all requirements and achievements in such.
- (d) Term of office. The term of office of the five persons to be appointed by the Town Council is two years. In the event that a vacancy occurs during the term of any member, the Town Council will appoint his or her successor for the unexpired portion of the term. There is no limitation to the number of terms any member may serve.

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- (e) Removal of members. Members of the Tree Commission may be removed in accordance with the provisions of Ordinance Article 130.
- (f) Election of officers. At its first regular meeting in each calendar year, the Tree Commission must elect from its voting members a chairperson, vice-chairperson, and secretary-treasurer. The vice-chairperson has the authority and power to act as the chairperson of the Commission during the absence or inability of the chairperson.
- (g) Operation. The Tree Commission may make its own rules and regulations, and must keep a written record of its proceedings. A majority of the voting members of the Tree Commission constitutes a quorum for the transaction of business. The Commission must hold a regular meeting at least quarterly. The Mayor or the chairperson of the Tree Commission may call special meetings at any time.
- (h) Compensation. Members of the Tree Commission serve without compensation, except that previously approved expenses incurred by Commission members in connection with their duties may be reimbursed upon presentation of evidence thereof.
- (i) Offices and expenses. The Town Council must provide the Tree Commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts, and must provide for the operating expenses of the Commission by appropriating a sum sufficient to defray such expenses. The Town Council has plenary power and authority to appropriate funds for expenditure by the Commission to accomplish the purposes of this article.
- (j) Donations and grants. The Tree Commission has the authority to accept all public and private contributions, donations, or other funds, and to apply for federal, state, local, or private grants or funding, for the planting, care, and protection of trees throughout the Corporation. All such monies must be used only for the purpose of planting, maintenance, promotion, or other purposes relating to the Corporation's urban forest.
- (k) Review by Town Council. The Town Council has the right to review the conduct, acts, and decisions of the Tree Commission.

1104.05 Licensing and insurance requirements.

- (a) Licensing. Any contractor, firm, or corporation engaging in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees over 15 feet in height or over five inches DBH within or for the Corporation must agree to adhere to ANSI A300 standards before procuring a Corporation business license. The Tree Commission may impose specific tests, licensing requirements, certification, or other methods of determining the professional status of those individuals working on public trees within the Corporation. No license may be required of any utility or public service company, or employee of the Corporation doing such work in the pursuit of their authorized public service endeavors; or of any volunteer authorized by the Tree Commission.
- (b) Insurance. Before any such license may be issued, each applicant must first file with the Town Clerk evidence of possession of general or public liability insurance in the minimum amounts of \$300,000 (single limit) for bodily injury or death, and \$100,000 property damage indemnifying the Corporation or any person injured or damaged resulting from the pursuit of such endeavor as herein described. Such policy must by its terms require notification to the Corporation upon cancellation thereof.

1104.06 Landscaping and construction.

- (a) New construction. When the development of any commercial property occurs, landscaping plans are required and must be submitted to the Tree Commission by the owner of such property or structure, or by the owner's authorized agent. The

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Commission will review the landscaping plans and may recommend trees to be preserved or to be planted in or on any of the streets, parking lots, parks, and other public places abutting lands henceforth developed. When recommended, these trees must meet the standards described in the Commission's "Tree Specifications and Standards Manual." After reviewing the landscaping plans, the Commission will forward a list of its recommendations to the Planning Commission for its approval as part of the building permit application.

- (b) Construction tree guard. All public trees and their critical root zones must be protected during construction. All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work must be guarded with a good substantial fence, frame, or box. All building materials, dirt, or other debris must be kept outside this construction tree guard.
- (c) Abuse of public trees. No person, corporation, or other entity may attach any rope, wire, nails, advertisements, posters, or other contrivance to any public trees; allow any gaseous liquid or hazardous substance which is harmful to such trees to come into contact with them; remove or tamper with an official inventory tag; or intentionally damage, cut, carve, transplant, or remove any public tree without the express permission of the Tree Commission.

1104.07 Public tree planting, maintenance and removal.

- (a) Tree Specifications and Standards Manual. The Tree Commission must develop and maintain a "Tree Specifications and Standards Manual." This manual must be reviewed and updated by the Commission at least biennially, and must include the following information at a minimum:
 - (1) A list of desirable trees for planting along streets and elsewhere within the Corporation. For this list of desirable trees, preference must be given to native trees. Desirable trees shall be divided by size classification;
 - (2) A list of trees considered undesirable for planting. This list must include, among others, trees considered to be invasive;
 - (3) Recommended sizes for trees to be planted on public property;
 - (4) Spacing requirements for street trees;
 - (5) Distance trees must be planted from curbs, sidewalks, street corners, and fire hydrants; and
 - (6) Distance and size requirements for public trees in relation to utilities.
- (b) Maintenance. No contractor, person, firm, or corporation, except the Tree Commission or its agent, may perform any of the planting, removal, trimming, pruning, spraying, or maintenance of any nature on public trees without first obtaining permission in writing from the Commission.
- (c) Topping. It is unlawful as a normal practice for any person, firm, Corporation department, or utility company to top any tree on public property. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical, may be exempted from this section at the determination of the Tree Commission. All exceptions must be approved by the Commission.
- (d) Climbing spurs. It is unlawful to use climbing spurs when working on live trees on public property.
- (e) Removal. As a normal practice, no contractor, person, firm, or corporation may remove, cut, improperly prune, transplant, or otherwise disturb any tree on any public property without first filing a written request and procuring written permission from the Tree Commission. The person receiving said permission must abide by the standards

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set forth in this section. The Commission may remove, or cause or order to be removed, any tree or part thereof which may be considered a nuisance tree. The Corporation must provide written notification to adjacent property owners at least 14 days in advance of such removal as described herein, except that in emergency or imminent situations such notification is not required.

- (f) Emergency situations. If personal injury or property damage is imminent due to the hazardous or dangerous condition of a tree located on public property, the tree may be removed, pruned, or trimmed or other necessary action taken without prior permission from the Tree Commission so long as the action taken in response to the emergency situation is reasonable under the circumstances and does not exceed the type of action necessary to address the emergency situation. The person performing the work must promptly notify the Mayor, or in the Mayor's absence, the Harpers Ferry Police Department, of the emergency situation and the work performed. Once the emergency situation has been resolved and an imminent hazard or danger no longer exists, a written request must be submitted and written permission procured from the Commission, as described in section 1104.07 (e), for any further work to be performed to address the situation.
- (g) Stumps. All stumps of public trees must be removed below the surface of the ground so that the top of the stump does not project above the surface of the ground, unless exception is granted by the Tree Commission.
- (h) Utility and Corporation compliance. As a normal practice and to the extent practical, all utility companies and all departments of the Corporation must conform to the ANSI A300 standards for tree pruning and trimming. All pruning, trimming, or other work performed on any tree within the Corporation by any utility company or department of the Corporation is subject to review by the Tree Commission. All governmentally-regulated utility companies must comply with applicable regulations for pruning or removal of trees on or adjacent to public lands. These utility companies are not required to obtain a permit for routine operations affecting trees, as long as such work is done in strict accordance with said regulations.

1104.08 Private trees and tree protection.

- (a) Nuisance trees; dead, dying, or diseased trees. Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the Tree Commission or its agent must at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice must require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in such notice.
- (b) Private trees overhanging public property. Trees or limbs originating on private property with limbs that overhang any sidewalk or other public space that are dead or create a hazard to the public, because of disease, insect damage, growth of *Hedera* species (commonly known as ivy), or storm damage, or interfere with pedestrian or vehicular traffic may be removed, pruned, or trimmed. Such removal, pruning, or trimming is the responsibility of the property owner of the land on which the tree originates. The Tree Commission or its agent must notify such property owner in writing of an order requiring removal, pruning, or trimming of such tree or limb within a reasonable amount of time to be specified in such notice.
- (c) Trimming of private trees by Corporation. The Corporation may, at its own discretion, trim or prune trees or limbs that overhang any sidewalk, street, or other public place, or which interferes with pedestrian or vehicular traffic or with public safety, but only to

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such point that it no longer overhangs the public property, or no longer interferes with pedestrian or vehicular traffic or with public safety. As a normal practice, the Corporation must provide written notification to the owner of the property on which the tree originates at least 14 days in advance of such trimming or pruning as described herein, but in emergency or imminent situations such notification may not be required.

- (d) The Tree Commission maintains a list of all trees that qualify to be named Landmark Trees on both public and private lands. The Commission must locate and map such trees within the Corporation, with identification by genus, species, and common name. The list of trees so designated must be updated annually and must be provided to the Historic Landmarks Commission and to the Planning Commission. Guidelines and criteria for designating a specimen as a Landmark Tree are as follows:
- (1) Any person may, and is encouraged to, submit a written proposal to designate a tree as a Landmark Tree. Property owners of trees under consideration must be notified that a proposal has been submitted and have the opportunity to be fully involved in the designation process. Proposals must be reviewed by the Tree Commission. Upon recommendation of the Tree Commission and approval of the Town Council, a tree may be designated as a Landmark Tree if it meets any of the following criteria:
 - A. The tree is an outstanding specimen of a desirable species;
 - B. The tree is one of the largest or oldest trees in Harpers Ferry;
 - C. The tree is of historical interest;
 - D. The tree is of distinctive form; or
 - E. The tree is an unusual species or otherwise unique.
 - (2) The Chair of the Tree Commission must notify, in writing, the person who submitted the proposal and the tree's owner (if different from the applicant) of the Town Council's decision. When considering designating, removing designation, or removing Landmark Trees of historical value, the Historic Landmarks Commission must be given the opportunity to comment on the proposal prior to the Tree Commission's decision.

1104.09 Penalties, claims and appeals.

- (a) Violations. Any person who violates any provision of this article, or who fails to comply with any notice issued pursuant to the provisions of this article, is subject to punishment by law. The Tree Commission or its agent will determine whether a violation is punishable as a civil offense or as a criminal offense, taking into account the willfulness of the violation, the scale of damage that is caused, and the values of individual trees affected.
- (b) Civil offenses. When a violation of the provisions of this article is deemed civil, violators are subject to a fine not to exceed \$500.00 for each separate offense. Each day during which any violation of any provision of this article occurs or continues is a separate offense. If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree located on public property is caused, the cost of repair or replacement of such tree must be borne by the party in violation. The replacement value of trees must be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture. Civil penalties may be assessed by the Tree Commission at a regular or special meeting. If civil penalties are not paid within 60 days of the date of assessment, the matter becomes a criminal offense and is subject to further penalties as provided by this ordinance and by state law.

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- (c) Criminal offenses. When a gross violation of the provisions of this article is deemed criminal, violators are guilty of a misdemeanor. Upon conviction thereof, violators may be punished by a sum of not more than \$500.00 for each separate offense, or imprisoned for not more than 30 days, or by both fine and imprisonment. Each day during which any violation of any provision of this article occurs or continues is a separate offense for the assessment of fines. If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree located on public property is caused, the cost of repair or replacement of such tree must be borne by the party in violation. The replacement value of trees must be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens," as published by the International Society of Arboriculture. For all criminal violations for which a defendant is found guilty, there will also be assessed costs of courts as provided by state law.
- (d) Assignment of claim. Failure to comply with an order as required herein is cause for the Corporation, or its agents or contractors, to enter upon the property on which such nuisance is located to perform the necessary removal or abatement, the cost of which must be assessed to the property owner. In addition, the owner of the property upon which the nuisance was located may be subject to prosecution.
- (e) Appeals. Any person may, within 30 days, appeal any ruling or order of the Tree Commission or its agent to the Town Council, who may hear the matter and make the final decision. The appellant, the Commission or its agent, and person whose interests are affected must be given an opportunity to be heard before the Council. The procedures may not require compliance with strict rules or evidence but mandate that only relevant information be received. The Town Council must render its decision within 30 days. All hearings are open to the public.

1104.10 Interference with Tree Commission.

It is unlawful for any person to prevent, delay, or interfere with the Tree Commission, or any of its agents, while engaging in and about the planting, cultivating, mulching, pruning, spraying, or removing of any public trees or trees on private grounds, as authorized in this ordinance.

1104.11 Enforcement.

The Tree Commission or its agent is responsible for the enforcement of this ordinance.

1104.12 Severability.

If a court of competent jurisdiction declares any provision, or any part of a provision, of this ordinance to be invalid or to be of no force and effect, it is the intention of the Town Council in enacting this ordinance that each and every other provision of this ordinance authorized by law be applied and enforced in accordance with its terms, to the extent possible, according to law.

PART ELEVEN — HEALTH AND SANITATION CODE

ARTICLE 1109 Nuisances and Property Maintenance

- 1109.01 Purpose.**
- 1109.02 Definition of nuisance.**
- 1109.03 Duty of maintenance of private property.**
- 1109.04 Exterior structure.**
- 1109.05 Exterior storage of non-operating vehicles prohibited.**
- 1109.99 Penalty.**

CROSS REFERENCES

Authority to eliminate—see WV Code 8-12-5(13), (23)
Animals generally—see Ord. Art. 505
Littering, deposit of refuse—see Ord. Art. 533.07

1109.01 Purpose.

To protect property values, preserve the historic and scenic character of the Town, protect and enhance the desirability of the Town as a place to reside and to conduct commercial and civic activities, to secure a safe, healthy, and more desirable living environment for its citizens and visitors, and to protect the public welfare by abating nuisances on private property within the limits of the Corporation of Harpers Ferry. This article establishes rules and regulations pertaining to nuisances and the physical condition of structures, and provides penalties for violations of this ordinance. (Ord. 2014-04, passed 09-08-2014.)

1109.02 Definition of nuisance.

For the purpose of this article, the term “nuisance” means any condition or use of premises or of building exteriors, which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located. This definition includes, but is not limited to:

- (a) The keeping, maintaining, depositing, storing on, or scattering over the premises, to include on porches, decks, patios, and unenclosed structures visible from a public right-of-way or from ground level of an adjacent property of any of the following:
 - (1) Lumber, junk, trash, refuse, garbage, ashes, or debris;
 - (2) Abandoned, discarded or unused objects or equipment including, but not limited to automobiles, automobile parts, television sets, furniture, stoves, refrigerators, washing machines, freezers, cans, and containers;
 - (3) Storage crates, storage bins and containers, indoor furniture, file cabinets, and similar household items, and unsightly accumulations of cardboard boxes; exceptions include in-use outdoor patio furniture and operable barbecue grills;
 - (4) Upholstered furniture, not manufactured for outdoor use, including, without limitation, upholstered chairs, upholstered couches and mattresses;
 - (5) Any compost pile which is of such nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals, or insects, provided that the presence of earthworms in a compost pile shall not constitute a nuisance; or
 - (6) Any unsanitary matter which constitutes a hazard to the health of the public.

HISTORY:

Ord. 2014-04 (passed 09-08-2014) amended previous versions and reenacted Article 1109, superseding Ord. 2013-10 (passed 09-09-2013). Original ordinance was 84-1 (passed 06-25-1984).

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- (b) A property that is unfit for human habitation, occupancy or use pursuant to State law;
- (c) A property that materially increases the risk of fire to adjacent property;
- (d) A property that is subject to unauthorized entry leading to potential health and safety hazards, and where the owner has failed to take reasonable and necessary measures to secure the property to prevent unauthorized entry;
- (e) A property with the presence of vermin or accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds which creates potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove such hazards; or
- (f) A property with a dilapidated appearance or other condition of the property which materially affects the welfare, including economic value, of residents in close proximity to the property and where the owner has failed to take reasonable and necessary measures to remedy said conditions. (Ord. 2015-05, passed 05-22-2015.)

1109.03 Duty of maintenance of private property.

No person owning, leasing, occupying or having charge of any premise shall maintain or keep any nuisance thereon, and no person shall keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

- (a) The provisions of this section shall govern the minimum conditions and the responsibilities of persons for the maintenance of structures and exterior property.
- (b) A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this article.
- (c) All exterior property and premises shall be maintained in a clean, safe, and sanitary condition and maintained in a proper state of repair and free from hazardous conditions. This includes all sidewalks, walkways, stairs, driveways, and parking spaces and similar areas.
- (d) All premises and exterior property shall be maintained free from weeds or plant growth in excess of ten (10) inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants, and vegetation, other than trees or shrubs, provided; however, this term shall not include cultivated flowers and gardens.
 - (1) Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to the provisions of Article 1109.99.
 - (2) The intent of these provisions is to prevent blighted and unsafe/unhealthful property condition(s) which adversely affect property values of adjacent property owners. (Ord. 2014-04, passed 09-08-2014.)

1109.04 Exterior structure.

The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety, welfare or diminution of property values to adjacent property owners.

- (a) The following conditions shall be determined as unsafe and shall be repaired or replaced in order to mitigate the harmful and dangerous effects of such conditions and to reduce their negative impact on property values.
 - (1) Exterior walls that are not properly anchored to supported elements or are not plumb and free of holes, cracks, or breaks and loose or rotting materials.
 - (2) Veneer, cornices, belt courses, corbels, trim, wall facings, and similar decorative features not properly anchored and maintained.

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- (3) Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes, and exhaust ducts not properly anchored or maintained.
- (4) Exterior stairs, decks, porches, balconies, and all similar appurtenances attached thereto including guards and handrails not structurally sound and/or properly anchored.
- (5) Chimneys, cooling towers, smokestacks, and similar appurtenances not structurally sound and/or not properly anchored.
- (b) All exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in safe condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All metal surfaces subject to rust and corrosion, and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. (Ord. 2014-04, passed 09-08-2014.)

1109.05 Exterior storage of non-operating vehicles prohibited.

No person in charge of or in control of premises, whether as owner, lessee, tenant, occupant or otherwise, shall allow any partially dismantled, wrecked, junked, discarded or otherwise non-operable motor vehicle to remain on such property, longer than thirty days, unless said vehicle is kept and stored within an enclosed building or so located upon the premises so as not to be readily visible from any public place or from any surrounding private property. (Ord. 2014-04, passed 09-08-2014.)

1109.99 Penalty.

- (a) Any person who violates the provisions of this article or fails to comply therewith or with any of the requirements thereof shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- (b) The Mayor, or such person as he or she may designate, is hereby expressly authorized and empowered to institute and maintain civil actions before any court or competent jurisdiction to restrain by injunction violations of this article, notwithstanding the penalties for the violation thereof set forth herein. (Ord. 2014-04, passed 09-08-2014.)

PART THIRTEEN — PROJECT AND ZONING CODE

PART THIRTEEN — PROJECT AND ZONING CODE

- Article 1301. Authority.
- Article 1302. Words, Terms and Phrases.
- Article 1303. Project Permits.
- Article 1304. Site Development Standards.
- Article 1310. Establishment of Zoning Districts and Zoning Map.
- Article 1311. Residential District; Uses.
- Article 1312. Business District; Uses.
- Article 1313. Promontory Overlay District.
- Article 1316. Signs.
- Article 1322. Nonconforming Provisions.
- Article 1324. Conditional Use Permit Approval Procedure.
- Article 1326. Variance Approval Procedure.
- Article 1328. Appeals.
- Article 1329. Amendments.
- Article 1330. Enforcement.
- Appendix A. Historic District Standards and Guidelines.
- Appendix B. Standards for Project Activities.

PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1301 Authority

1301.01 Authority.

1301.02 Relationship to Other Ordinances.

1301.03 Interpretation, Conflict and Severability.

CROSS REFERENCES

Zoning authority generally—see WV Code 8A-7-1 *et seq.*

1301.01 Authority.

The Zoning Ordinance is enforceable only within the corporate boundaries of the Corporation of Harpers Ferry and is established under the authority granted pursuant to WV Code 8A-7-1 *et seq.* The Zoning Ordinance is intended to comply with the provisions of 8A-7-1 *et seq.* (Ord. 2015-02, passed 01-29-2015.)

1301.02 Relationship to Other Ordinances.

- (a) The Zoning Ordinance shall be interpreted to include any and all other provisions of the Harpers Ferry Code that are necessary for an understanding of the Zoning Ordinance and the attainment of its purposes. The Corporation of Harpers Ferry intends that all ordinances related to land use be read as part of a uniform system of land use regulations.
- (b) All departments, officials, employees or agents of the Corporation of Harpers Ferry that or who are vested with the duty or authority to issue permits, certificates or approvals shall conform to the provisions of the Zoning Ordinance and shall issue no permit, certificate or approval for any Use, Structure or activity if the same would be in conflict with the provisions of the Zoning Ordinance unless otherwise provided for by law. Any permit, certificate or approval issued in conflict with the provisions of the Zoning Ordinance shall be null and void and, in no event, shall act as a waiver of the standards and requirements of this Zoning Ordinance. (Ord. 2015-02, passed 01-29-2015; Ord. 2017-01, passed 02-25-2017.)

1301.03 Interpretation, Conflict and Severability.

- (a) In its interpretation and application, the Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.
- (b) The Zoning Ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law. Where the conditions imposed by, or pursuant to, the Zoning Ordinance are different from those imposed by any other ordinance, rule or regulation, statute or other provision of law, the provisions that are more restrictive and that impose the higher or greater standards shall control, except where federal or state law otherwise forbids it.
- (c) The provisions of the Zoning Ordinance are severable. If any provision of the Zoning Ordinance is adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the provision directly involved in the controversy in which the judgment shall have been rendered and shall not affect or impair the validity of the

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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remainder of the provisions of the Zoning Ordinance, and the Corporation of Harpers Ferry hereby declares that it would have enacted all such remaining provisions of the Zoning Ordinance. (Ord. 2015-02, passed 01-29-2015; Ord. 2017-01, passed 02-25-2017.)

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ARTICLE 1302 Words, Terms and Phrases

CROSS REFERENCES

Words, terms and phrases—see generally WV Code 8A-1-2 *et seq.*

For purposes of this Zoning Ordinance, the words, terms and phrases used in this Zoning Ordinance shall have the definitions or meanings ascribed to them in this Article or in other provisions of this Zoning Ordinance. If not defined in this Zoning Ordinance or any other ordinances of the Corporation of Harpers Ferry, any word, phrase or term shall have the meaning or meanings ascribed to them in any standard or widely published dictionary or American Planning Association publication. The following rules apply:

- (a) The particular controls the general.
- (b) In the event there is any conflict or inconsistency between the heading of an article, section, subsection, or paragraph of this Zoning Ordinance and the context thereof, the heading shall not be deemed to affect the scope, meaning, or intent of the context.
- (c) In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- (d) In case of conflict between provisions, the more restrictive applies.
- (e) Words used in the present tense include the future.
- (f) Words used in the singular number include the plural, and the plural the singular, unless the context indicates the contrary.
- (g) The masculine includes the feminine and neuter.
- (h) The word "shall" is always mandatory and not discretionary.
- (i) A defined word, term or phrase, whether capitalized or not, shall have the meaning ascribed to it.
- (j) Unless the context clearly indicates the contrary, where a provision involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," or "either...or," the conjunction shall be interpreted as follows:
 - (1) "and" indicates that all the connected items, conditions, provisions, or events shall apply.
 - (2) "or" indicates that the connected items, conditions, provisions, or events shall apply singly or in any combination.
 - (3) "either...or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
- (k) No word, term or phrase defined in this Article 1302 shall have operative effect unless it is used elsewhere in this Zoning Ordinance.

Abandonment. The relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another or resuming the Nonconforming Use of the property for a period of one year.

Abutting. See **Contiguous**.

HISTORY:

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Access. The way or means by which pedestrians or vehicles approach, enter or exit property.

Addition. Any increase in the Gross Floor Area of a Structure or Use, including those in which the Structure Footprint is not enlarged.

Adjoining. See **Contiguous**.

Alley. A Right-of-Way dedicated to Public Use, other than a Street, road, crosswalk, or Easement, designed to provide a secondary means of access for the special accommodation of the property it reaches.

Alteration, Incidental. A change or replacement in the parts of a Structure, such as:

- (a) Change or replacement of interior partitions to improve a nonconforming residential structure, provided no additional Dwelling Units are created thereby;
- (b) Change or replacement of interior partitions in all other types of structures;
- (c) A minor addition on the exterior of a residential structure to provide an uncovered Porch or Patio;
- (d) Making windows or doors in Exterior Walls;
- (e) Strengthening the load bearing capacity in not more than ten percent of the total floor area to permit the accommodation of a specialized unit of machinery or equipment; or
- (f) Replacement of, or minor changes in the capacity of, utility pipes, ducts or conduits.

Alteration, Structural. A change in the supporting members of a Structure, such as bearing walls or partitions, columns, beams, or girders, or any complete restructure of the roof or Exterior Walls. A Structural Alteration shall not include any alteration that could be considered an Incidental Alteration.

Apartment. One or more rooms in a Structure designed and intended for rental occupancy as an independent and separate Dwelling Unit in a Structure containing two or more Dwelling Units. See **Dwelling, Multi-Family**.

Architectural Decoration. An element, design or motif, other than an architectural feature, installed, attached, painted or applied to the exterior of a Structure for the purpose of ornamentation or artistic expression.

As-built. Drawing or certification of conditions as they were actually constructed.

Assembly Hall. A facility or part of a Structure used for the assembly of people for receptions, weddings, parties and similar uses.

Association Hall. A facility for administrative, meeting, or social purposes for a private or nonprofit organization, primarily for use by administrative personnel, members and guests. Examples include, but are not limited to: Lions Club, Veterans of Foreign Wars, etc.

Awning. Any non-rigid material, such as fabric or other approved flexible material, that extends from the Exterior Wall of a Structure and is supported by or attached to a frame.

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Basement. The portion of a Structure having at least one-half its floor-to-ceiling height below the average level of the adjoining ground and with a floor-to-ceiling height of 6.5 feet or more.

Bed and Breakfast Inn (B&B). A dwelling in which, for compensation, up to four (4) guest rooms are provided and, for no additional charge, breakfast is customarily provided to the guests but excluding a Rooming House or a Boarding House

Block. Land that is intended to be used for urban purposes, which is entirely surrounded by Public Streets, highways, public walks, parks, rural land or Drainage channels or a combination thereof.

Buildable Area. The remaining area of a Lot, or Lots if a Project encompasses more than one Lot in accordance with the terms of this Zoning Ordinance, after the setbacks are applied on all sides and any significant areas with a slope greater than one foot vertical change and three feet horizontally are subtracted.

Build-To Line. An alignment established a certain distance from the front property line to a line along which the Structure shall be built.

Bulk plane. An imaginary inclined plane rising over a Lot, or Lots if a Project encompasses more than one Lot in accordance with the terms of this Zoning Ordinance, drawn at a specified angle from the vertical and originating from some location (e.g., Lot line) or height (e.g., height above a Lot line) which together with other provisions of this Zoning Ordinance and Lot size requirements, delineates the maximum height or bulk of any improvement which may be constructed on the Lot or Lots.

Bulk Requirements. Standards that control the height, density and location of structures.

Business. Engagement or enterprise in the purchase, sale, barter or exchange of goods, wares, merchandise or services, the maintenance or operation of offices, or of recreational and amusement enterprises for profit, that is or should be licensed in the Town and that occupies any premises for the conduct of the enterprise, but excluding any Religious Institution.

Canopy. A permanently roofed shelter projecting over a sidewalk, Driveway, entry, window or similar area, which shelter may be wholly supported by a Structure or partially supported by columns, poles or braces extending from the ground. Any roof overhang extending more than three feet from the face of a Structure shall be considered a Canopy.

Capital Improvement. The following public facilities or assets that are owned, supported, or established by the Town:

- (a) Water treatment and distribution facilities;
- (b) Wastewater treatment and disposal facilities;
- (c) Sanitary sewers;
- (d) Stormwater, drainage, and flood control facilities;
- (e) Public road systems and rights-of-way;
- (f) Parks and recreational facilities; and

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(g) Police, emergency medical, rescue, and fire protection facilities.

“Capital Improvements” as defined herein are limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. “Capital Improvement” does not include costs associated with the operation, repair, maintenance, or full replacement of capital improvements. “Capital Improvement” does include reasonable costs for planning, design, engineering, land acquisition, and other costs directly associated with the capital improvements described herein. (Ord. 2017-08, passed 12-11-2017.)

Cemetery. Property used for the permanent internment of human remains. It may be a burial Park for earth internments, a mausoleum for vault or crypt internments or a Columbarium for cinerary internments.

Columbarium. An Accessory Structure to a Religious Institution that is normally a wall, containing one, or more, recesses or cavities, for the depository of the cremated remains of humans.

Community Center. A public Structure used for activities that, through proximity to residents, benefit the surrounding neighborhood. Activities permitted include any combination of the following: meeting space for civic groups, clubs, or organizations; spaces for the provision of daycare services; group cultural and/or recreational activities, whether self-directed or organized; space for artisans, crafters, etc., including occasional (not more than one day each week) sale of such merchandise produced on-premises; and educational and/or instructional programs.

Comprehensive Plan. That certain Plan adopted by the Town Council on June 9, 2007, as amended from time to time under WV Code 8A-3.

Condominium. A common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a Condominium unless the undivided interest in the common elements are vested in the unit owners.

Contiguous. Lots, municipal boundaries or County boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Lots, municipal boundaries or County boundaries that are separated from one another only by a Street, highway, road, other public Right-of-Way or a utility Easement shall be considered Contiguous.

Common Area. Any portion of a development designed for the common use and enjoyment of the unit owners. These areas include green open spaces and may include such other uses as parking lots and pedestrian walkways. Maintenance of such areas is not the responsibility of the Town and shall be set forth by the development association in the form of restrictive covenants, which shall guarantee the maintenance of these areas.

Cooperative. A Multiple-Family dwelling owned and maintained by the residents. The entire Structure and real property is under common ownership as contrasted to a Condominium dwelling where individual units are under separate individual occupant ownership.

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Contributing Resource. A historic site, historic structure or object that adds to the historic architectural qualities, historic associations, or archeological values of the Town because (1) it was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding information about the period, or (2) it independently meets the National Register criteria.

County. The County of Jefferson, West Virginia, and, in context, its geographical limits or its territorial limits of jurisdiction.

Critical Root Zone (CRZ). A circular area centered on a Tree with a diameter of 1.5 times the canopy spread, and in no case, closer than five feet from the trunk of any Tree.

Deck. A Structure, without a roof, accessory to but not necessarily attached to a principal Structure, and which is elevated at least six inches above grade.

Drainage. (1) Surface water run-off; (2) the removal of surface water or groundwater from land by drains, grading or other means which include runoff controls to minimize Erosion and sedimentation during and after construction; or (3) the means for preserving the water supply and the prevention or alleviation of flooding.

Driveway. A private roadway providing access for vehicles to a Parking Space, Private Garage, Dwelling Unit or other Structure.

Driveway, Common. A Driveway shared by adjacent property owners and privately owned and maintained.

Dwelling, Duplex. A freestanding Structure containing two Dwelling Units.

Dwelling, Manufactured Home. A Structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on sight, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used for residential, commercial, Business or institutional purposes with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 885401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal Manufactured Home Dwelling construction and safety standards and regulations promulgated by the Secretary of the United States Department of Housing and Urban Development. The term "Manufactured Home Dwelling or Structure" does not include job site trailers.

Dwelling, Mixed Use. A Structure containing primarily residential uses with a subordinate amount of commercial and/or office uses on the ground floor in the front of the Structure facing the primary Street Frontage. Residential units can be on the ground floor, but cannot be accessed from any portion of the Structure that faces the primary Street.

Dwelling, Modular Home. Any Structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and

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installed on a Lot and designed for long-term residential Use and is certified as meeting the standards contained in the West Virginia State Fire Code.

Dwelling, Multi-Family. A freestanding Structure containing three or more Dwelling Units, whether they have direct access to the outside, or access to a common Structure entrance. Multifamily dwellings can consist of rental apartment Structures, rental or owner occupied Townhouse Dwellings, and rental or owner occupied Condominium Structures, provided that all such freestanding Structures contain three or more Dwelling Units.

Dwelling, Single Family. A freestanding Structure designed solely for occupancy by one Family for residential purposes, as a single housekeeping unit.

Dwelling, Townhouse. Also known as a Rowhouse. A Single-Family Dwelling, with private entrance, which is part of a Structure whose Dwelling Units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for Access, light, and ventilation. Setbacks are measured from the perimeter of the overall Structure.

Dwelling Unit. A single unit providing complete, independent living facilities for a single housekeeping unit or Family intended for occupancy by its owner or under a lease with the owner. In no case shall a motor home, trailer, Hotel, Boarding House, automobile, tent, or portable Structure be considered a Dwelling Unit. Dwelling units are contained within single-Family dwellings (in which case the definition is synonymous), Private Garage and accessory apartments, duplex dwellings, Mixed-Use dwellings, and Multi-Family Dwellings.

Education Facility, Elementary School. A public, private or parochial School offering educational instruction in grades kindergarten through fifth, licensed by the West Virginia Department of Education.

Education Facility, High School. A public, private or parochial School offering educational instruction in grades nine through twelve, licensed by the West Virginia Department of Education.

Education Facility, Middle School. A public, private or parochial School offering educational instruction in grades six through eight, licensed by the West Virginia Department of Education.

Education Facility, Nursery School or Preschool. A public, private or parochial School primarily for children between the ages of three and five, providing preparation for elementary School; includes nursery school and kindergarten.

Elevation. (1) A vertical distance above or below a fixed reference level; or (2) a flat scale drawing of the front, rear or side of a Structure.

Engineer. A person registered by the State of West Virginia through the Board of Registration of Professional Engineers.

Enlargement. An addition to the floor area of a Structure, an increase in the size of any other Structure, or an increase in that portion of property occupied by an allowed Use.

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Erosion. The process by which the ground surface is worn away by the action of wind, water, gravity, ice or a combination thereof, or the detachment and movement of soil or rock fragments.

Establishment. An economic unit, generally at a single physical location, where Business is conducted or services or industrial operations performed.

Excavation. Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

Exterior Architectural Features. The architectural character and general composition of the exterior of a Structure, including, but not limited to, the kind, texture of the Structure material, and the type, design and character of all windows, doors, massing and rhythm, light fixtures, signs, other appurtenant elements and natural features when they are integral to the significance of the Site, all of which are subject to public view from a Public Street, way or place.

Exterior Display. The outdoor display of products, vehicles, equipment and machinery for sale or lease. Exterior display is an outdoor showroom for customers to examine and compare products.

Façade. That portion of any exterior Elevation on the Structure extending from grade to top of the Parapet, wall, or eaves and the entire width of the Structure Elevation.

Façade, Principal. Exterior walls of a Structure which are adjacent to or front on a Public Street, Park, or Plaza. There may be more than one Principal Façade on a Structure.

Façade Modulation. Variations in the plane of a Structure wall that break up the mass and bulk of a Structure.

Family. One or more persons occupying a single Dwelling Unit, provided that unless all members are related by blood, marriage, legal adoption, or legal guardianship, no such family contain more than five non-transient unrelated persons, except where disability requires that more than five unrelated persons reside together; in such cases there shall be no requirement for persons with disabilities to petition, apply or experience a process to obtain approval to live in any zoning district in the Town.

Fence. An artificially constructed barrier or wall of wood, masonry, stone, brick, wire, metal, or other manufactured material or combination of materials that is more than 18 inches in height, the purpose or effect of which is to provide enclosure, protection from intrusion (both physical and visual), to prevent escape, mark a boundary, enclose, screen, restrict access to, or decorate any Lot or Structure.

Fence Height. The vertical distance measured from the top of the Fence to the lowest point of grade on the exterior side of the Fence.

Fill. Sand, gravel, earth or other materials of any composition whatsoever placed or deposited by humans, for purposes of creating a new Elevation of the ground.

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Flag. Any fabric or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision, corporation, lodge, fraternity or sorority, political party, nonprofit organization, charity, club, association or other entity.

Flag, Commercial. A Flag displaying the name, insignia, emblem, or Logo of a profit-making entity.

Flag, Public. A Flag displaying the name, insignia, emblem, or Logo of any nation, state, municipality, or noncommercial organization.

Flood. A general and temporary inundation of normally dry land areas.

Flood-prone area. Any land area susceptible to repeated inundation by water from any source.

Floor Area, Gross. The sum of the gross horizontal areas of the floors of a Structure or Structures measured from the Exterior Walls of the Structure. This definition shall include attic space providing structural headroom of eight feet or more and basement space, unless such space is used primarily for storage.

Floor Area, Net. The gross area of a floor or several floors of a Structure, excluding those areas not directly devoted to the principal or Accessory Use of the Structure, such as storage areas or stairwells, measured from the exterior faces of Exterior Walls or interior walls. Examples of areas to subtract from the Gross Floor Area include stairways, storage rooms, mechanical equipment rooms and other areas generally not accessible to the public.

Footprint, Structure. The gross horizontal area of a Structure measured from the outside of Exterior Walls at Ground Level plus the projecting structures above, whichever is larger. This includes Porches, but excludes roof overhang, uncovered stairs, Patios, Driveways and walkways.

Frontage. (1) The boundary of a Lot fronting on a Public Street; (2) the front Lot line.

Gambling Establishment. An Establishment that offers any form of gambling or games of chance that is regulated under the provisions of the Limited Video Lottery Act codified in the Code of West Virginia, Chapter 29, Article 22B, Section 101.

Garage, Private. A detached Accessory Structure or portion of a main Structure housing the automobiles of the occupants of the premises.

Garage, Public. A Structure or part thereof for the parking or storage of motor vehicles and in which no other Use is conducted, which is available for Public Use.

Gardens. A planned space, set aside for the display, cultivation, and enjoyment of plants including vegetables, flowers, and fruits, which may include the keeping of chickens and/or bees, for private/personal use.

Government Facility. A Structure owned, operated or occupied by a governmental agency to provide a governmental service to the public. Such facilities are generally exempt

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from municipal zoning; except when they are sold or leased to a private firm or person for purposes of conducting a nongovernmental use therein.

Grade Level. A reference plane representing the average ground level about a Structure. Grade Level is the average of the finished ground level at the center of all walls of a Structure. In case walls are parallel to and within five feet of sidewalks, the above-ground level shall be measured at the sidewalks.

Grade, Percentage of. The rise or fall of a slope in feet and tenths of a foot for each 100 feet of horizontal distance.

Ground Cover. Any evergreen or broadleaf evergreen plant that does not attain a mature height of more than one foot. Sod and seed shall also be considered as qualifying groundcover.

Harpers Ferry. See **Town**.

Historic Resources Plan. A document that identifies all Contributing Resources within the subject area, a description of the overall historic context of the Site.

Historic Structure. Any Structure that is (1) listed individually on the National Register of Historic Places or preliminarily determined by the United States Secretary of Interior as meeting the requirements for individual listing on the National Register; (2) certified or preliminarily determined by the United States Secretary of Interior as contributing to the historical significance of a registered Historic District; (3) individually listed on the West Virginia inventory of historic places; (4) individually listed on a Town, City, County, or other local inventory of historic places that has been certified by an approved State program as determined by the United States Secretary of Interior.

Historic Structure Report. A document that consists of (1) a narrative that documents the evolution of a Contributing Resource, its physical description, existing condition assessment and an evaluation of significance, (2) a discussion of historic preservation objectives, together with recommendations for an overall treatment approach and for specific work, (3) photos of existing conditions, and (4) measured drawings.

Home-Based Business. Any Business, occupation, or activity undertaken for gain where the principal office or place of Business is located within a residential Structure or a permitted Accessory Structure that is incidental and secondary to the use of that Structure. Such a Business is not open to the public except by appointment.

Hostel. A Single Family Dwelling that provides inexpensive shared lodging, breakfast, and sanitary accommodations for supervised short term stays, typically for hikers and bikers.

Hotel. A Structure in which lodging is provided and offered to the public for compensation, and that is open to transient guests and is not a Rooming House or Boarding House.

House, Boarding. A Single Family Dwelling that provides inexpensive shared lodging and sanitary accommodations for extended stays, typically serving meals. The Boarder is considered to be in residence at that location.

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House, Rooming. A Single Family Dwelling that provides inexpensive shared lodging and sanitary accommodations for extended stays, typically without serving meals. The Roomer is considered to be in residence at that location.

House Trailer. Any vehicle, with or without motive power, with or without wheels at the time of being placed on such premises or real property, and designed, or modified to be used as a Dwelling Unit.

Impervious Surface. A surface composed of any material that significantly impedes or prevents natural infiltration of water into soil, including but not limited to roofs, Structures, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

Improvement. Modifications to land that increases its value or utility, including but not limited to Structures, road grading, road surfacing, Fences, Retaining Walls, curbs, Street gutters, below- or above-grade utility lines and facilities, storm sewers and drains, sidewalks, signs, modifications to watercourses, water supply facilities, sewage disposal facilities, and Park and recreation equipment (excludes residentially-sized HVAC or similar equipment provided such equipment is compliant with screening and other requirements in this Zoning Ordinance).

Land Surveyor. A person so registered or licensed by the State of West Virginia by the Board of Examiners of Land Surveyors.

Landscaped Area. A portion of Site containing vegetation to exist after construction is completed. Landscaped areas include, but are not limited to, natural areas, buffers, streetscapes, lawns and plantings.

Landscaped Buffer. An area of Landscaping separating two distinct land uses, or a land Use and a public Right-of-Way, and acts to soften or mitigate the effects of one land Use on the other.

Landscaping. Open area devoted primarily to trees, grass, shrubs, or plants to soften Structure lines, provide shade and generally produce a pleasing visual effect of the premises. As complementary features, fountains, pools, screens, decorative lighting, sculpture, or outdoor furnishings may be placed within the area.

Library. A Structure containing printed, pictorial, and digital material for Public Use for purposes of study, reference and recreation.

Loading Space. An Off-Street space or berth on the same Site with a Structure, or Contiguous to a group of Structures, for the temporary parking of a vehicle while loading or unloading merchandise, materials or persons, and which has ingress and egress upon a Street, Alley, other appropriate means of Access.

Logo. The graphic or pictorial presentation of a message, including, but not limited to, the use of shapes, designs, decorations, emblems, trademarks, symbols or illustrations, or the superimposition of letters or numbers or any other use of graphics or images other than the sequential use of letters and numbers.

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Long-term Rental. The Use of a Dwelling Unit offered for rent for occupancy by tenants for a tenancy of greater than 30 days, excluding a Hotel, Rooming House, Boarding House or Bed and Breakfast Inn.

Lot. See **Lot of Record**.

Lot Area. The total horizontal area contained within the Front, Rear and Side Lot lines of any Lot.

Lot, Corner. A Lot located at the junction of two or more intersecting streets.

Lot Coverage. The total area covered, measured from the outside of the Exterior Walls, by all principal and Accessory Structures on a Lot. Driveways, parking areas, open porches, decks, balconies and similar features that are not covered by a roof shall not be counted.

Lot Depth. The distance measured from the Front Lot line to the Rear Lot Line. Where the Front and Rear Lot Lines are not parallel, the Lot depth shall be measured by drawing lines from the Front to Rear Lot Lines at right angles to the Front Lot Line, every ten feet and averaging the length of these lines.

Lot, Double Frontage. A Lot which runs through a Block from Street to Street and which has Frontage on two or more Streets, but not a Corner Lot.

Lot, Flag. A polygonal-shaped Lot with the appearance of a frying pan or flag and staff in which the handle is most often used as the point of Access. The handle, when less than the minimum width for a Lot in the zoning district in which it is located, is not to be used in computing the minimum required Lot area or delineating the minimum required Structure envelope.

Lot, Irregular. A Lot of such shape or configuration that technically meets the area, Frontage and width to depth requirements of the Zoning Ordinance but has unusual elongations, angles, and curvilinear lines.

Lot, Reverse Frontage. A Corner Lot of such size and shape that a Structure erected on it might logically be designed to face on either Adjoining Street, thus causing the Structure to rear on the sideline of any Abutting Lot.

Lot Line. The property line bounding a Lot.

Lot Line, Front. The Lot Line that abuts an existing or dedicated Public Street. In no case shall there be more than two Front Lot Lines applied to any Lot.

Lot Line, Rear. (1) The Lot Line that is opposite and most distant from the Front Lot Line; (2) in the instance of a Rear Lot Line is less than 10 feet in length, or if the Lot forms a point opposite the Front Lot Line, the Rear Lot Line shall be a line 10 feet in length within the Lot, parallel to and at the maximum distance from the Front Lot Line.

Lot Line, Side. Any Lot line which is not a Front Lot Line or a Rear Lot Line.

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Lot of Record. In the Town, a Lot is land within the municipal boundaries that is described by metes and bounds, the description of which has been placed of record in the County, or platted and numbered by S. Howell Brown as shown on maps of the Town dated 16 April 1869, copies of which may be seen on the wall of the office of the Clerk of the Jefferson County Commission and on the wall of the offices of the Town along with subsequent modification to plat boundaries as recorded in the County Deed Books and on the Zoning Map.

Lot, Through. A Lot other than a Corner Lot with Frontage on more than one Street. Through lots Abutting two streets may be referred to as Double Frontage Lots.

Lot Width. The distance between the Side Lot Lines of a Lot at the Structure line.

Marquee. A roof-like structure that cantilevers from the wall of a Structure over its principal entrance, that has no vertical supports other than the wall from which it cantilevers, and that provides a wall surface at least four feet high, generally constructed for purposes of containing a Sign.

Museum. A Structure having public significance by reason of its architecture or former Use or occupancy or a Structure serving as a repository for a collection of natural, scientific, or literary collections, or works of art, and arranged, intended, and designed to be used by members of the public for viewing, with or without an admission charge, and which may include as an Accessory Use the sale of goods to the public.

Nonprofit Organization. Any person(s), partnership, association, corporation or other group legally established under federal and state law whose activities are conducted for unselfish, civic, or humanitarian motives, or for the benefit of others, and not for the gain of any private individual or group and may include, but shall not be limited to, patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, charitable, scientific, historical, athletic, or medical activities.

Off-Site Improvements. Any utility, Structure, or modification of topography located other than on the Site it is intended to serve.

Office, Apartment Rental. An Accessory Structure or Structure, or part thereof, used primarily for the purpose of performing the administrative and clerical duties associated with renting or leasing the Apartment units in an apartment complex.

Office, Associated with Permitted Industrial Land Use. An Accessory Structure or Structure, or part thereof, used primarily for the purpose of performing the administrative and clerical duties associated with the principal permitted industrial land Use.

Office Structure. A Structure used primarily for offices that may include ancillary services for office workers, such as a Restaurant, coffee shop, newspaper, or snack stand.

Office, Business or Professional (Unlimited). A room or suite of rooms or portion of a Structure used for the practices of a profession or for the conduct of a Business that involves the accessory sale of goods from the premises. If the goods or merchandise are sold for delivery on or from the premises and constitute greater than 20 percent of the gross revenue from the office, then the premises shall be considered a store rather than an office.

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Office Park. A development that contains a number of separate Office Structures, supporting uses and open space designed, planned, constructed, and managed on an integrated and coordinated basis, and located on one or more Lots.

Office, Professional. A Structure, or part thereof, used for conducting the affairs of a Business, profession, service industry, or government. Does not include the sale or display of materials or goods.

Open Space. Any land or area, the preservation of which in its present use would: (1) conserve or enhance natural or scenic resources; or (2) promote streams or water supply; or (3) promote conservation of soils, or wetlands; or (4) enhance the value to the public of Abutting or neighboring parks, forests, wildlife preserves, nature reservations, or sanctuaries; or (5) enhance recreational opportunities.

Open Space, Improved. Parks, playgrounds, swimming pools, ball fields, plazas, landscaped green spaces, and other areas that are created or modified by man. Improved Open Space shall not include schools, Community centers or other similar areas in public ownership.

Open Space, Natural. Areas of natural vegetation, water bodies, or other landforms that are to be left undisturbed. Creation of a graded and surfaced walking trail through areas of Natural Open Space shall constitute disturbance of the area in the amount of the length of the walking trail multiplied by its approximate average width. Natural Open Space shall not include schools, community centers or other similar areas in public ownership.

Ordinance Compliance Officer. Any person or persons duly designated, appointed or employed by any commission, board or agency of the Town, or of any jurisdiction that the Town Council has duly designated to exercise any power or authority under any law, ordinance or rule or regulation under its or their jurisdiction.

Parapet. The portion of a wall which extends above the roofline.

Park. Any area that is predominately open space, available to the public and used principally for active or passive recreation, and not used for a profit-making purpose.

Parking, Off-Street. Space occupied by automobiles on premises rather than streets.

Parking, On-Street. The storage space for an automobile that is located within the Street Right-of-Way.

Parking, Shared. A public or private parking area used jointly by two or more users.

Parking Lot, Commercial. A private Parking Lot that is the stand alone Use of the property, and whose stalls are leased to individuals.

Parking Lot, Public. A publicly owned or operated open area other than a Street or Alley, designed to be used for the temporary parking of more than four motor vehicles, whether free or for compensation, and available for use by the public or as an accommodation for clients or customers.

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Parking Lot, Restricted Accessory. A Parking Lot, whether free or for compensation, and available for private use or as an accommodation for clients or customers, that provides parking that is accessory to a Use on that Lot or a separate Contiguous Lot.

Parking Space. A space in a garage, parking lot, or marked parking area, not less than 8.5 feet wide clear dimension and 18 feet long clear dimension, reserved for the parking of only one automobile.

Parking Space, Compact. A space in a garage, parking lot, or marked parking area, not less than 7.5 feet wide clear dimension and 15 feet long clear dimension, reserved for the parking of only one compact automobile.

Parking Space, Handicap. A space in a garage, parking lot, or marked parking area not less than 13 feet wide and 18 feet long in clear dimension, reserved exclusively for an automobile registered with the State with handicapped license plates or displaying an official State issued handicapped placard.

Parking Structure. A Structure designed to accommodate vehicular Parking Spaces that are fully or partially enclosed or located on the deck surface of a Structure. This definition includes Public Garages, deck parking and underground or under Structure parking areas.

Patio. A level surfaced area directly adjacent to a principal Structure, without walls or a roof. A Patio may be constructed of any material or combination of materials, and is typically constructed at Grade Level or slightly higher.

Paved Surface Area. Ground surface covered with cobblestones, clay fired bricks, concrete precast paver units, poured concrete with or without decorative surface materials, blacktop, or other asphalt or rubber mixture which may include sand or gravel as an ingredient and which creates a hard surface. A graded natural surface or one covered with rolled stone or overlaid with loose gravel is not considered a paved surface.

Pennant. Any lightweight plastic, fabric or other material, whether or not containing a message of any kind, which is suspended from a rope, wire, string or pole, usually in series, and which is designed to move in the wind.

Performance Bond. Any security that may be accepted by the Town as a guarantee that improvements required as part of an application for a Project Permit are satisfactorily completed and that damage to public infrastructure is satisfactorily repaired.

Permit, Project. A document of approval for a Project issued by the Proper Authority upon the application of any person seeking an approval to undertake such Project within the Town for which approval is required.

Person. Any individual, association, company, corporation, entity, firm, organization or partnership, singular or plural, of any kind.

Personal Services Establishment. A Business which is associated with the grooming or health of persons or the maintenance or repair of personal wardrobe articles and accessories, and may include a barber shop, beauty parlor, shoe repair shop, self-service

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laundry, but not a tattoo parlor. The definition shall apply whether or not the individual engaged in the offering of said service is required to be licensed by the State of West Virginia.

Plaza. An open space that may be improved, landscaped, or paved usually surrounded by Structures or streets.

Porch. A covered but unenclosed projection from the main wall of a Structure that may or may not use columns or other ground supports for structural purposes. If a Porch is uncovered it is considered to be a Deck.

Professional Services Establishment. An Establishment engaged in providing Professional Services such as consulting, legal, engineering, accounting, architectural and the like, but not including personal services.

Project. A Project includes: (1) construction, reconstruction, alteration or enlargement of any Exterior Architectural Features of a Structure; (2) demolition or relocation of a Structure; (3) construction, reconstruction, alteration, enlargement or relocation of a Sign; (4) the implementation of any Use of a Structure or Lot where such Use of such Structure or Lot did not begin until after the date on which this Zoning Ordinance was enacted or was subsequently amended if such Use of such Structure or Lot was lawful prior to such subsequent amendment; or (5) the intensification of any Nonconforming Use of a Structure or Lot where the Nonconforming Use of such Structure or Lot has not been abandoned and had begun prior to the enactment of this Zoning Ordinance or prior to a subsequent amendment of this Zoning Ordinance if such Use was lawful prior to such subsequent amendment.

Proper Authority. That individual, commission or committee to whom a certain authority has been delegated by Town Council resolution or by the Mayor's appointment.

Public Services (Police or Fire). Police and fire service establishments owned, operated and managed by the Town or County.

Recreational or Sports Facility, Group. A private athletic or sports facility designed to serve a large number of people as opposed to individuals or individual families. Such facilities include but shall not be limited to arenas, auditoriums, stadiums, play fields, tracks, and country clubs. Such facilities may contain rooms and other provisions for social functions and the serving of food or alcoholic beverages.

Recreational Facility, Small. A private facility designed to serve a small number of people for free time activities such as exercise, music, games, reading, arts and crafts, or dance. Such facilities may contain rooms for social functions and the serving of food or alcoholic beverages.

Recreational Vehicle (RV). A vehicle built on a single chassis, and designed to be self-propelled or towed by another vehicle. A Recreational Vehicle is not designed or intended for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use. This definition includes vehicles such as travel trailers, motor homes, boats, house-boats, and campers.

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Religious Institution. A Structure where persons assemble for religious worship or expression of religious faith and which is maintained and controlled by a religious body organized to sustain worship or expression of religious faith, together with all Accessory Structures and Structures and uses associated with the primary purpose. Such Structures include churches, synagogues, temples, mosques, or other Structures for worship and religious activities, including schools, daycare centers.

Religious Organization Bulletin Board. A Sign on the premises of a Religious Institution that gives information about that Religious Institution.

Repair or Maintenance. An activity that restores the character, scope, size, or design of a serviceable area, Structure, or land Use to its previously existing, authorized, and undamaged condition. Activities that change the character, size or scope of a project beyond the original design and drain, dredge, Fill, Flood, or otherwise alter additional regulated wetlands are not included in this definition.

Residential Care Facility. A residential dwelling used for long-term care of residents on a commercial basis.

Restaurant. A commercial Establishment where food and beverages are prepared, served, and consumed primarily within the principal Structure and where food sales constitute more than 60 percent of the gross sales receipts. Take-out and walk-away services are included.

Retail Sales Establishment. A Business having as its primary function the supply of merchandise or wares to the end consumer. Such sales constitute the primary function of the Business when such sales equal at least 80 percent of the gross sales of the Business.

Retaining Wall. A wall or terraced combination of walls used principally to retain more than 18 vertical inches of material and not used to support, provide a foundation for, or provide a wall for a Structure.

Rezoning. An amendment to the Zoning Map to effect a change of the designated land Use district.

Right-of-Way. A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a Street, trail, waterline, sanitary sewer or other public utilities or facilities.

Service Establishment. See Personal Services Establishment or Professional Services Establishment.

Setback, Front. The distance between the Street Right-of-Way line and the closest point of the foundation of a Structure or projection thereof.

Setback, Rear. The shortest distance between the Structure line and the Rear Lot Line.

Setback, Side. The shortest distance between the Structure line and the Side Lot Line.

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Short -term Rental. The Use of a Dwelling Unit offered for rent for transient occupancy by tenants for a tenancy of 30 days or less, excluding a Motel, Hotel, Rooming House, Boarding House or Bed and Breakfast Inn.

Sidewalk Sale. A seasonal or occasional sale held on the sidewalk or other Structure along the front or side of the place of Business where goods are offered for sale to the public, typically at a discounted price.

Sign. Any device including but not limited to writing, letter work, letters, words, numerals, figures, emblems, illustrations, decorations, pictorial representations, pictures, emblems, devices, symbols, word marks, service marks, trademarks, flags, banners, pennants, device figures, device characters or any part or combination of these used for visual communication intended to attract the attention of the public and be visible from the public Right-of-Way or other properties.

Sign, Abandoned. A Sign which no longer identifies a bona fide Business conducted or product sold on the premises, or the premises to which such Sign relates if such Sign is an Off-Premises Sign. A Sign shall be deemed abandoned when these conditions have been in existence for a period exceeding one year.

Sign, Animated. Any Sign that uses movement or change of lighting to depict action or create a special effect or scene.

Sign, Awning. A Sign located on an Awning. See **Canopy Sign**.

Sign, Back-to-Back. Two or more integrally connected Signs facing in opposite directions and separated by not more than five feet.

Sign, Banner. Any Sign with or without characters, letters, illustrations, or ornamentations applied to cloth, paper, flexible plastic, or fabric of any kind with only such material for backing. All banners are Temporary Business Signs.

Sign, Structure. Any Sign attached to any part of a Structure.

Sign, Structure Marker. Any Sign indicating the name of a Structure and date and incidental information about its construction. Such Sign typically is cut into a masonry surface or made of bronze or other permanent material.

Sign, Business Identification. Any Sign located within and upon the premises of a Business that pertains to the name, purposes and conduct of the Business.

Sign, Business Information. Any Sign that is not a Business Identification Sign but rather pertains to operations (such as "open" or "closed") or pertains to means for access (such as "entrance up stairs").

Sign, Business Merchandise. Any Sign that lists or describes the goods or articles for sale or types of services offered by the enterprise (such as menus).

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Sign, Canopy. Any Sign that is a part of or attached to a structural protective cover over a door, entrance, window or outdoor service area. A Marquee Sign is not a Canopy Sign.

Sign, Changeable Copy. Any Sign designed so that letters or numbers attached to the Sign can be periodically changed to indicate a different message.

Sign, Commercial Message. Any sign, wording, Logo or other representation, except for the actual name of the Business, that, directly or indirectly, names, advertises or calls attention to a Business, product, service or other commercial activity.

Sign, Building Construction. Any Sign bearing the names of contractors, architects, engineers and the like, or advertising, promotions, price ranges and similar information.

Sign Copy. Any word, letter, number or emblem affixed to the Sign surface either permanently or in removable form.

Sign, Directional. An On-Premise Sign that includes information assisting in the flow of pedestrian or vehicular traffic such as enter, exit, and one-way. A Directional Sign excludes commercial messages and logos but may include information, that has a purpose secondary to the Use of the Site on which it is located, such as “no parking,” “entrance,” “loading only,” “telephone,” and similar information and directives. A Directional Sign may also include information stating the hours of operation of a Business, emergency telephone numbers, credit card usage, or other information of a similar nature.

Sign, Directory. A ground or Structure Sign that lists tenants or occupants of a Structure or project with unit numbers, arrows or other directional information.

Sign, Electronic Message Board. A Sign with a fixed or changing display/message that is electronically programmed and can be modified by electronic processes.

Sign, Externally Illuminated. A Sign illuminated primarily by light directed toward or across it or by backlighting from a source not within it. Sources of illumination for such signs may be in the form of gooseneck lamps, spotlights, or luminous tubing.

Sign, Flashing. A Sign, the illumination of which is not constant in intensity when in use, and which exhibits sudden or marked changes in lighting effects.

Sign Face. The area of a Sign on which the copy is placed.

Sign, Freestanding. A Sign that is attached to, erected on, or supported by some structure (such as a post, mast, frame, or other structure) that is not itself an integral part of or attached to a Structure whose principal function is something other than support.

Sign, Ground. Any Sign attached to the ground. See Freestanding Sign.

Sign, Internally Illuminated. A Sign whose light source is either located in the interior of the sign so that the rays go through the face of the sign, or which is attached to the face of the sign and is perceived as a design element of the sign.

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Sign, Marquee. A Sign attached to or mounted on a Marquee.

Sign, Menu-Board. An accessory Sign providing items and prices associated with a drive-thru window.

Sign, Monument. A Freestanding Sign where the base of the sign structure is on the ground or a maximum of 12 inches above the adjacent grade. The width of the top of the sign structure can be no less than 90 and no more than 120 percent of the width of the base.

Sign, Neon. A Sign containing glass tube lighting in which a gas and phosphors are used in combination to create a colored light.

Sign, Nonconforming. A Sign lawfully erected and maintained before the effective date of the Zoning Ordinance that does not conform with the requirements of the Zoning Ordinance.

Sign, Off-Premise. A Sign that directs attention to a Business, commodity, service, or entertainment not exclusively related to the premises where such a Sign is located or to which it is affixed.

Sign, On-Premise. Any Sign identifying or advertising a Business, person, activity, goods, services, or products, located on the premises where the sign is installed and maintained.

Sign, Permanent Business. Any Business Identification Sign, Business Information Sign or Business Merchandise Sign and not a Temporary Business Sign.

Sign, Pole. A Sign that is mounted on a freestanding pole(s) or other support so that the bottom edge of the sign face is six feet or more above the grade. Also called a pylon sign.

Sign, Political. A Sign attracting attention to political candidates or issues, expressing support for a candidate for public office or another position regarding a public figure or issue, but bearing no commercial message.

Sign, Portable. Any Sign not permanently attached to the ground or other permanent Structure or a Sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs made as A-frames or T-frames; and balloons used as signs.

Sign, Post and Panel. A Sign consisting of one or more panels which are supported between two posts and which is permanently placed in the ground.

Sign, Projecting. Any Sign attached to a Structure wall and extending laterally more than 18 inches from the face of such wall.

Sign, Public Information. Any Sign erected and maintained by public officials or public agencies, or approved and authorized for use by state or local government authorities.

Sign, Real Estate. A Sign advertising real property for sale or for lease.

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Sign, Roof. A Sign erected, constructed, and maintained above the eaves of a Structure.

Sign, Sandwich Board. A Sign not permanently attached to the ground or some type of permanent Structure; a Sign connected to or located on A or T frames; a two-sided Sign attached to boards.

Sign, Shingle. A Sign suspended from and located entirely under a covered Porch, covered walkway or Awning.

Sign, Special Purpose. A Sign advertising or announcing a special community wide event or activity conducted by, or sponsored by, or on behalf of a unit of local government, a charitable organization, or a nonprofit corporation. For purposes of this term, a special community wide event or activity is one that occurs not more than twice in any 12-month period and seeks to attract donations, participants, or customers throughout the Town.

Sign, Suspended. A Sign that is suspended from the underside of a horizontal plane surface and supported by such surface.

Sign, Temporary Business. Any Business Identification Sign, Business Information Sign or Business Merchandise Sign not a Permanent Business Sign that is used only temporarily and is not permanently mounted for which a Sign Permit is required.

Sign, Traffic. A Sign indicating federal, state, or municipal regulations for automobile, truck, bicycle or pedestrian movement.

Sign, V-Type. For purposes of computing surface area, is two separate signs if the angle between the two outer surfaces is less than 60 degrees; otherwise the wings shall be considered one Sign.

Sign, Wall. Any Sign painted on or attached to and extending not more than six inches from an Exterior Wall in a parallel manner.

Sign, Window. Any Sign that is visible to the public Right-of-Way through the glassed areas of a Structure including numbering, lettering, or writing, pictorial representation, emblem, Flag, or any other figure of similar character. The window area covered by signage shall not exceed 25 percent of the total window square footage, but may be increased to 50 percent of the total window square footage if there are no Wall Signs on the premises.

Signplate, Structure. A Sign indicating the name and address of a Structure, or the name of an occupant thereof, and the practice of a permitted occupation therein.

Site. The property, including one or more Lots, on which a Project is to take place or is taking place. A Site includes property on which a Project has been completed but only if the commencement of such Project occurred on or after the date on which this Zoning Ordinance was enacted or was subsequently amended if such Project would not have been subject to this Zoning Ordinance prior to such subsequent amendment. Furthermore, any other property set forth in a Project Permit application shall be considered part of the Site for the corresponding Project so long as: (1) such Project Permit application states that such other

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property is to be part of such corresponding Project and (2) the inclusion of such other property is otherwise permitted by this Zoning Ordinance.

Standards and Guidelines. Any and all standards and guidelines for Projects that are set forth in this Zoning Ordinance, which includes the standards and guidelines set forth in Appendix A, Appendix B and Appendix C of this Zoning Ordinance.

Storage, Enclosed. Storage that is completely screened from view by walls and a roof.

Storage Facility, Indoor Self. A Structure containing separate, individual and private storage spaces of varying sizes that are leased or rented by individual lease for varying periods of time, with the Use contained within one Structure and the storage bays accessed primarily from the interior of the Structure.

Storage, Facility. One or more structures containing separate, individual and private storage spaces of varying sizes leased or rented by individual leases for varying periods of time, with the Use contained in one or more Structures with the storage bays accessed primarily from the exterior of the Structure or Structures.

Story. That portion of a Structure above ground level at the Structure line that is between the floors, except that the top Story shall be that portion of a Structure included between the upper surface of the top floor and the ceiling or roof above.

Street. A way designated or intended for general Public Use, open to vehicular and pedestrian travel.

Street, Arterial. A Street designated for large volumes of traffic movement. Certain Arterial Streets may be classed as limited access highways to which entrances and exits are provided only at controlled intersections and access is denied to abutting properties.

Street, Collector. A Street which primarily collects traffic from Local Streets and feeds it to the arterial network. Collector streets provide circulation within neighborhood areas.

Street, Cul-de-sac. A Street with a single common ingress and egress and with a turnaround at the end.

Street, Dead-end. A Local Street open at one end only and without a special provision for vehicles turning around.

Street Frontage. The distance for which a Lot Line adjoins a Public or Private Street from one Lot Line intersecting said Street to the furthest Lot Line intersecting the same Street.

Street, Frontage Road. A minor Street, parallel to and adjacent to an Arterial Street, whose primary purpose is providing access to properties that abut it.

Street, Half. A Street where the full cross section, curb to curb, is constructed in more than one phase.

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Street, Local. A minor Street which collects and distributes traffic between Lots and Collector or Arterial Streets, with the principal purpose to provide access to abutting property.

Street, Major. A primary or secondary arterial roadway as designated on the official community plan or as designated by the Town.

Street, Paper. A public Right-of-Way platted as a Street on the Howell Brown map of Harpers Ferry dated 26 April 1869 which has not been subsequently improved by the Town for vehicular access and which has not been ceded to the US Government as part of the National Park.

Street, Public. Any pre-existing County roadway heretofore annexed by the Town, and which forms a part of the Town by reason of such annexation, or any Street or road granted to and accepted by the Town Council of the Town.

Street, Private. Any road or Street that is not publicly owned and maintained and used for access by the occupants of a development, their guests, and the general public.

Street, Residential. A Street used primarily for access to properties that abut it, usually residential.

Structure. Anything constructed or erected for Use, occupancy or ornamentation whether installed on, above or below the surface of land or water that requires the location on the ground or that is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility and surface treatments such as parking lots, patios and driveways. A Structure does not include such things as garden ornaments or other non-permanent objects.

Structure Height. The vertical distance to the highest point of the roof for flat roofs; to the Deck line of mansard roofs; and to the average height between eaves and the ridge for gable, hip and gambrel roofs measured from the curb level if the Structure is not more than 10 feet in distance from the front Lot line, or from the Grade Level in all other cases. This height does not include a Parapet up to two feet when such a Parapet is intended to shield rooftop machinery from view. Note: The actual topmost height of a Structure roof segment or its elements (e.g., chimney, etc.) may exceed this calculation.

Structure, Accessory. A subordinate Structure, such as a garage, a shed, a storage Structure, a swimming pool or any other Structure detached from but located on the same Lot or Site as a Principal Structure and ordinarily used only by the owner or occupant of the Principal Structure and not as a residence. The Use of a subordinate Structure must be accessory or complimentary to the Use of the Principal Structure. An Accessory Structure having any part of a wall in common with a Dwelling Unit is considered part of the main Structure.

Structure, Detached. A Structure with no vertical common or party wall with another Structure.

Structure, Nonconforming. A Structure that lawfully existed prior to the enactment of the Zoning Ordinance or prior to a subsequent amendment of this Zoning Ordinance if such

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Structure would have been lawful prior to such subsequent amendment, but which is not in compliance with the requirements of the Zoning Ordinance for the district in which the Structure is located.

Structure, Principal. A Structure in which is conducted the Principal Use of the Lot or Site on which it is located.

Substantial Damage. Damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before-damaged condition would equal or exceed 50 percent of the fair market value of the Structure before the damage occurred.

Substantial Improvement. Any 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. Includes Structures that have incurred "Substantial Damage" regardless of the actual repair work performed. The term does not, however, include any project for Improvement of a Structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the Ordinance Compliance Officer and that are the minimum necessary to assure safe living conditions.

Town. The municipal Corporation of Harpers Ferry.

Tree. A plant having at least one well-defined stem or trunk and normally attaining a mature height of at least 15 feet, with an average mature spread of 15 feet, and having a trunk that shall be kept clear of leaves and branches at least six feet above grade at maturity.

Tree, Public. Any Tree located on Town-owned or controlled property including parks, Street Right-of-Ways, parkways, etc.

Use. Any purpose for which a Structure is maintained or occupied; or any activity, occupation, Business, or operation carried on in a Structure.

Use, Accessory. A Use that is (1) customary and incidental to the Principal Use located on the same Lot or Site; (2) subordinate in area, extent and purpose to the Principal Use; (3) contributes to the comfort, convenience, or necessity of the Principal Use; and (4) is located on the same Lot or Site and in the same zoning district as the Principal Use.

Use, Conditional. A Use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the Board of Zoning Appeals and upon issuance of a Conditional Use Permit, and subject to the limitations and conditions specified in this Zoning Ordinance.

Use, Nonconforming. Any use of a Lot or Structure that does not conform with the Zoning Ordinance, but such use lawfully existed prior to the enactment of the Zoning Ordinance or prior to a subsequent amendment of this Zoning Ordinance if such Use would have been lawful prior to such subsequent amendment and the use has not been Abandoned.

Use, Permitted. A Use that is not a Conditional Use and is permitted in a district by right, upon satisfaction of the standards and requirements of the Zoning Ordinance.

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Use, Principal. The primary Use of any Lot, Site or Structure under the Zoning Ordinance.

Use, Public. A use by an agency or department of the Town, County, state, or federal government. This shall also include public utilities or uses by any organization that receives funding either all or in part from any agency or department of the Town, County, state, or federal government. This shall also include Structures and premises used in the operation of the Public Use.

Variance. A deviation from the minimum standards of the Zoning Ordinance.

Viewshed. The area within view from a defined observation point.

Voluntary Proffer. A written offer by a landowner to the Planning Commission or Town Council whereby the landowner offers to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project. (Ord. 2017-08, passed 12-11-2017.)

Wall, Exterior. A vertical, structural component of a Structure that encloses habitable or usable space; a Parapet extending not more than 12 inches above a flat roof shall be considered part of the Exterior Wall for purposes of determining signage.

Zoning Map. The map of the Town on which is depicted one or more classifications or zones under the Zoning Ordinance, including overlays, enacted 8 August 1977, as amended by the Town Council from time to time.

Zoning Ordinance. The zoning ordinance of the Town, enacted 8 August 1977, as amended by the Town Council from time to time. Where any reference is made to this Zoning Ordinance, such reference shall also include and incorporate any and all provisions set forth in Appendix A, Appendix B and Appendix C, which are attached hereto.

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ARTICLE 1303 Project Permits

- 1303.01 Purpose.**
- 1303.02 Project Permit required; standards and Guidelines.**
- 1303.03 Types of Project Permits; determination of Proper Authority.**
- 1303.04 Site Plan review.**
- 1303.05 Scope of projects.**
- 1303.06 Procedure; Project Permit application; fees.**
- 1303.07 Validity and expiration of Sign Permits for projects; inspections.**

CROSS REFERENCES

Building regulations generally—see WV Code 8-12-5(28), 8-12-13 *et seq.*
Permits for construction or alteration—see WV Code 8-12-14
Municipal inspections—see WV Code 8-12-15

1303.01 Purpose.

The purpose of this Article 1303 is to establish rules and regulations for Projects, including the procedure for obtaining certain permits and approvals.

1303.02 Project Permit required; standards and Guidelines.

- (a) Project Permit must be obtained before any Project may proceed. Any Person before proceeding with a Project shall obtain a Project Permit therefor. To be valid, each Project Permit shall be signed by the Proper Authority and the issuance thereof shall be based on:
 - (1) The enforcement of the Zoning Ordinance; or
 - (2) The order, decision or decree of a decision-making body or court with specific jurisdiction over the subject matter.
- (b) Project Permits. Every permit issued by a decision-making body or official of the Town under this Zoning Ordinance shall be generally known as a Project Permit. Thus, a Project Permit is a general term used to identify all specific types of permits issued by a decision-making body or official of the Town under the Zoning Ordinance. Therefore, where this Zoning Ordinance makes reference to the term “Project Permit” in its singular form, more than one of the specific types of permits referenced in Section 1303.03 of this Article may be encompassed by such reference.

Example – Assume a Project consists of activities for which a Zoning Compliance Permit and a Sign Permit must be obtained. When Section 1303.02 (a) of this Article, which states that “any person before proceeding with a Project, shall obtain a Project Permit therefor”, is applied to such circumstance, the term “Project Permit” shall be construed to mean that the applicant shall obtain a Zoning Compliance Permit and a Sign Permit before proceeding with such Project.

- (c) Standards and Guidelines. All Projects shall adhere to and comply with the Standards and Guidelines set forth in this Zoning Ordinance.
- (d) E-911 coordination. If a Project encompasses the establishment of a new physical

HISTORY:

Ord. 2017-01 (passed 02-25-2017) superseded all previous building and related ordinances, including the former Article 1303, which was a section of Ord. 2015-03 (passed 01-29-2015) and Ord. 2015-07 (passed 07-13-2015).

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address or the alteration of any existing physical address, no Project Permit shall be issued without confirmation, in writing, that the applicant has requested an E-911 address from the Jefferson County Addressing Office.

1303.03 Types of Project Permits; determination of Proper Authority.

- (a) Purpose. The purpose of this section 1303.03 is to:
 - (1) Identify which specific types of Project Permits an applicant is required to obtain before proceeding with a certain Project; and
 - (2) Determine which decision-making body or official of the Town is deemed the Proper Authority for issuing each specific type of Project Permit and reviewing the application therefor.
- (b) Sign Permit. If a Project includes erecting, constructing, reconstructing, altering or relocating any Sign, a Sign Permit shall be obtained from the Proper Authority before proceeding with such Project. The Ordinance Compliance Officer shall be deemed the Proper Authority for issuing a Sign Permit and reviewing the application therefor except in cases where a proposed Sign:
 - (1) Does not satisfy the minimum standards of this Zoning Ordinance, and the applicant is seeking a Variance under Article 1326 of this Zoning Ordinance;
 - (2) Is not sufficiently similar to a Sign explicitly listed as a permissible Sign under this Zoning Ordinance;
 - (3) Is part of an application for a Conditional Use Permit, or is part of a condition imposed on an applicant pursuant to a Conditional Use Permit, unless the Board of Zoning Appeals expressly declares otherwise; or
 - (4) Is an Off-Premises Sign requiring a Conditional Use Permit under Section 1316.04(a)(9) of Article 1316 of this Zoning Ordinance.
- (c) Zoning Compliance Permit.
 - (1) When required. If a Project includes implementing any Permitted Use or changing a Nonconforming Use to a Permitted Use, or if a Project includes the construction, reconstruction, alteration or enlargement of any Exterior Architectural Features of a Structure as seen from the public view and such construction, reconstruction, alteration or enlargement does not require the applicant to obtain a Conditional Use Permit or Variance, a Zoning Compliance Permit shall be obtained from the Proper Authority before proceeding with such Project. However, a Zoning Compliance Permit shall not be required for a proposed Repair of any Structure that replicates existing Exterior Architectural Features and uses identical materials, but if the scope of a proposed Repair encompasses more than 15% of a Structure, a concept plan shall be submitted to the Proper Authority for review to ensure that a Zoning Compliance Permit is not required.
 - (2) Proper Authority for Zoning Compliance Permit. The Ordinance Compliance Officer shall be deemed the Proper Authority for issuing a Zoning Compliance Permit and reviewing the application therefor except in cases where a proposed Project requiring a Zoning Compliance Permit:
 - A. Does not satisfy the minimum standards of this Zoning Ordinance, and the applicant is seeking a Variance under Article 1326;
 - B. Concerns a proposed Use that is not sufficiently similar to a Use explicitly listed as a Permitted Use under this Zoning Ordinance;
 - C. Concerns a proposed Use that is listed as a Conditional Use under this Zoning Ordinance; or
 - D. Concerns any proposed Exterior Architectural Feature that is not

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sufficiently similar to an Exterior Architectural Feature explicitly listed as permissible under this Zoning Ordinance.

- (d) Conditional Use Permit. If a Project encompasses a Conditional Use that is set forth in this Zoning Ordinance, a Conditional Use Permit shall be obtained from the Board of Zoning Appeals in accordance with Article 1324 of this Zoning Ordinance before proceeding with such Project. The Board of Zoning Appeals shall be deemed the Proper Authority for issuing a Conditional Use Permit and reviewing the application therefor.
- (e) Determination of Proper Authority. In any case where the Ordinance Compliance Officer is not deemed the Proper Authority for the purpose of (i) issuing a Sign Permit and reviewing the application therefor or (ii) issuing a Zoning Compliance Permit and reviewing the application therefor, the Board of Zoning Appeals shall be deemed the Proper Authority.
- (f) Variance. If a proposed Project for which an applicant is seeking to obtain a Project Permit does not satisfy the minimum standards of this Zoning Ordinance, the applicant must request a Variance from the Board of Zoning Appeals in accordance with Article 1326 of this Zoning Ordinance, and the applicant shall not proceed with such Project unless and until the Board of Zoning Appeals approves the requested Variance and issues the related Project Permit.

1303.04 Site Plan Review.

- (a) Purpose. The purpose of Site Plan Review is to prescribe a review procedure for Projects by which consistency with the 2007 Harpers Ferry Comprehensive Plan, as amended by Town Council from time to time, can be achieved.
- (b) When required. Site Plan Review shall be required for all Projects in which the Board of Zoning Appeals is deemed the Proper Authority under Section 1303.03 of this Article. If a Project that encompasses more than one Project Permit is subject to Site Plan Review and the applicant has been permitted to submit only one Project Permit application, such Project shall only be subject to one Site Plan Review. In all other cases, the Board of Zoning Appeals shall conduct a Site Plan Review for each Project Permit in which the Board of Zoning Appeals is deemed the Proper Authority under Section 1303.03 this Article.
- (c) Contents of Site Plan. If a Project is subject to Site Plan Review, the applicant for such Project shall submit a Site Plan to the Boarding of Zoning Appeals at the same time the corresponding Project Permit application is submitted. A Site Plan shall include, at a minimum, a scaled drawing of the Site or, if practical, photographs of the Site, either of which shall include, if applicable, the following:
 - (1) Lot Lines and Easements;
 - (2) Roof plan of any Structures;
 - (3) Location of existing and proposed Structures and permanent signs;
 - (4) Location of existing trees six inches or greater diameter at breast height, indicating which trees are proposed to be removed;
 - (5) Location of Off-Street Parking and any Loading Spaces;
 - (6) Location and dimensions of Street and Right-of-Way dedications;
 - (7) Location of points of entry and exits for vehicles and pedestrians and internal vehicle circulation patterns upon the property;
 - (8) Location of any Fences and Retaining Walls, including an indication of their height and material of construction;
 - (9) Location of exterior lighting devices;
 - (10) Locations of all paved and Impervious Surfaces and Landscaped Areas; and

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- (11) Location(s) of temporary construction fence(s).
- (d) Additional requirements. Depending on the size and scope of the Project, the Board of Zoning Appeals may also require any or all of the following:
- (1) A grading plan, prepared by a registered Engineer licensed to practice in the State of West Virginia, for grading intended to support a Structure grading that will divert a Drainage course, showing:
 - A. Existing and proposed contours on the Site in increments of two feet;
 - B. Proposed storm water Drainage and Erosion control measures; and
 - C. All trees greater than six inches in diameter at 4.5 feet above average ground level at the base of the Tree.
 - (2) A Historic Resources Plan.
 - (3) A construction plan for any Project where the total value exceeds \$100,000.
 - (4) A preliminary Landscaping Plan showing the main features of intended Landscaping.
 - (5) A scale model of the Project or computer generated 3D views of the Project from designated viewpoints may be required of larger Projects, as determined by the Board of Zoning Appeals.
 - (6) A Performance Bond when there is substantial apparent risk to publicly owned infrastructure.
 - (7) A lighting plan when substantial outdoor luminaires exist or are to be added. A lighting plan shall include the following elements:
 - A. A key legend to the proposed lighting that provides the following information:
 1. Type and number of luminaire equipment (fixtures), including the "cut off characteristics", indicating manufacturer and model number(s).
 2. Lamp source type (bulb type, i.e. high pressure sodium), lumen output, and wattage.
 3. Mounting height with distance noted to the nearest property line for each luminaire.
 4. Types of timing devices used to control the hours set for illumination, as well as the proposed hours when each fixture will be operated.
 5. Total lumens for each fixture, and total square footage of areas to be illuminated.
 6. Lighting manufacturer-supplied specifications ("cut sheets") that include photographs of the fixtures, indicating the certified "cut off characteristics" of the fixture.
 - B. Foot-candle distribution, plotting the light levels in foot-candles on the ground, at the designated mounting heights for the proposed fixtures. Maximum luminance levels should be expressed in foot-candle measurements on a grid of the Site showing foot-candle readings in every five or ten-foot square. The grid shall include light contributions from all sources (i.e. pole mounted, wall mounted, Sign, and Street lights.) and shall show foot-candle renderings five feet beyond the property lines.
 - C. If requested by the Board of Zoning Appeals, an environmental impact statement regarding the impact of the exterior lighting proposed on flora, fauna, and the night sky.
 - (8) Other information which is pertinent and which may, by general policy, be required by all applicants.

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- (e) Site Plan Review procedure. Notwithstanding any provision of this Zoning Ordinance to the contrary and if practical and reasonable under the circumstances, Site Plan Review shall be conducted concurrently with the review of any Project Permit application.
- (f) Findings required. Before granting approval of a Site Plan, the Board of Zoning Appeals shall find that the proposed Site Plan:
 - (1) Meets the intent and specific standards and criteria prescribed in this Zoning Ordinance; and
 - (2) Is consistent with the Comprehensive Plan. ^[1303.04]

1303.05 Scope of projects.

- (a) Scope of Projects. A Project shall be limited to and only take place upon one Site. However, the property on which an Off-Premise Sign is located shall be considered part of the Site of the Project if the following conditions are met:
 - (1) An applicant is applying for a Project Permit to erect, alter, reconstruct or relocate an Off-Premises Sign;
 - (2) Such applicant is also applying for a Project Permit for any other purpose except an Off-Premise Sign; and
 - (3) Such applicant has been permitted to submit one Project Permit application to obtain both Project Permits.
- (b) Projects taking place on more than one Lot. In addition to the provisions under Section 1316.04(a)(9), Article 1316 of this Zoning Ordinance concerning Off-Premises Signs, there are circumstances under which the Site of a Project is limited to one Lot, and there are other circumstances under which the Site of a Project includes more than one Lot.
 - (1) Site of a Project is limited to one Lot. For a Single Family Dwelling, Duplex Dwelling and any single-occupancy Structure, the Site shall be limited to the subdivided Lot on which such Single Family Dwelling, Duplex or single-occupancy Structure is or will be located.
 - (2) Site of a Project may include more than one Lot. For multi-Family Dwellings and multiple-occupancy Structures, the Site shall be all land that is or will be occupied by such Multi-Family Dwellings or multiple-occupancy Structures as well as all adjoining property under the same ownership. For vacant property, the Site shall be all of the Adjoining vacant property under the same ownership. However, if explicitly stated in a Project Permit application, adjoining property under the same ownership may be excluded from a Site so long as any and all activities conducted on such adjoining property do not and will not violate any provision of this Zoning Ordinance.

1303.06 Procedure; Project Permit application; fees.

- (a) Submission of application and supporting documents. Each person desiring a Project Permit shall submit an application therefor together with any documents, exhibits, reports, studies or other items required by the Proper Authority or desired by such person. An application for a Project Permit shall be submitted in writing along with four additional copies and signed by the owner of record of the property or his designee. For Projects of a smaller scale, some requirements for supporting documents may be waived by the Proper Authority so long as any such waivers are permitted by West

FOOTNOTES:

- 1303.04 Ord. 2022-01 (passed 03-24-2022) created provisions for the regulation of fences and retaining walls. See also § 1304.02, Appendix A, and Appendix B.

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- Virginia law and acknowledged in writing.
- (b) Project requiring multiple Project Permits. If a Project requires an applicant to obtain more than one Project Permit, a separate Project Permit application for each such Project Permit shall be filed with and submitted to the Proper Authority. However, if practical, appropriate and otherwise permissible under this Zoning Ordinance, the Proper Authority may permit an applicant to submit one Project Permit application for more than one Project Permit.
 - (c) Review of application and issuance of Project Permit by Proper Authority. A Project Permit shall be issued by the Proper Authority, and the application for such Project Permit shall be reviewed by the Proper Authority. The specific type of Project Permit for which a Project Permit application is submitted shall determine which decision-making body or official of the Town has the authority to issue such specific type of Project Permit and review the application therefor. When a decision-making body or official of the Town has the authority to issue a Project Permit and review the application therefor, such decision-making body or official shall be deemed the Proper Authority for purposes related only to the issuance of such Project Permit and review of the application therefor. Where reference is made to the Proper Authority in any provision of this Zoning Ordinance, the meaning given to any such reference shall be determined in accordance with Section 1303.03 of this Article.
 - (d) Complete application required. No application for a Project Permit shall be approved unless it is complete; including all required supporting documents or, in lieu thereof, a duly executed waiver from the Proper Authority waiving the requirements for any such supporting documents. If a Project requires Site Plan Review under Section 1303.04 of this Article, no application for a Project Permit shall be complete until the applicant shall have provided at least five copies of the documents required by Site Plan Review.
 - (e) Payment of application fee. At the time a Project Permit application is submitted, the applicant shall pay a non-refundable application fee to the Clerk of the Town, which will provide for the cost of review, administration, and management of the application process. No Project Permit application shall be considered complete until the application fee therefor and other required deposits are paid in full to the Clerk of the Town. The applicable fee schedule shall be established by resolution of the Town Council, and no part of any application fee paid pursuant to this Zoning Ordinance shall be returnable to the applicant unless specifically provided for in the fee schedule approved by Town Council. However, government agencies shall be exempt from the application fee imposed by this Zoning Ordinance.
 - (f) Approval required before amending terms or conditions of Project Permit. It shall be a violation of this Zoning Ordinance for any person to modify or alter any terms or conditions of a Project Permit application after its submission unless such person obtains prior approval from the Proper Authority for such modification or alteration. It shall also be a violation of this Zoning Ordinance for any person to whom a Project Permit has been issued to take any action, or fail to take any action, that is contrary to any term or condition on which such Project Permit was issued.
 - (g) Resubmittal of Project Permit application. No Project Permit application shall be accepted if the corresponding Project has been previously denied within the preceding 12 months.

1303.07 Validity and expiration of Sign Permits for projects; inspections.

- (a) Sign Permit.
 - (1) Validity period. Once issued, a Sign Permit shall expire 24 months after the

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date of issuance unless authorized implementation of the Project for which the Sign Permit was issued has commenced. If authorized implementation of such Project has commenced within 24 months, a Sign Permit shall expire 36 months after the date of issuance. Once a Project for which a Sign Permit was issued is complete, a Sign Permit shall remain valid so long as the terms and conditions on which such Sign Permit was issued remain satisfied.

- (2) Extension. If authorized implementation of a Project for which a Sign Permit has not commenced, within 24 months of the issuance of such Sign Permit and upon written request, the Proper Authority may extend the validity period for such Sign Permit for an additional 12 months. Only one extension may be granted.
- (3) Inspection. For every Project in which a Sign Permit is issued, the Proper Authority shall conduct an initial inspection and upon completion of such Project, a final inspection.
- (4) Maintenance of Permit. Upon such final inspection, if the Proper Authority determines that the subject Sign complies with all terms and conditions of such Sign Permit, the applicant therefor shall keep and maintain such Sign Permit at the location to which it relates and shall, upon request, make such Sign Permit available for inspection by the Proper Authority or another official or decision making body of the Town.

(b) Zoning Compliance Permit.

- (1) Validity period. Once issued, a Zoning Compliance Permit shall expire 24 months after the date of issuance unless authorized implementation of the Project for which the Zoning Compliance Permit was issued has commenced. If authorized implementation of such Project has commenced within 24 months, a Zoning Compliance Permit shall expire 36 months after the date of issuance. Once a Project for which a Zoning Compliance Permit was issued is complete, such Zoning Compliance Permit shall remain valid so long as the terms and conditions, if any, on which such Zoning Compliance Permit was issued remain satisfied.
- (2) Extension. If authorized implementation of a Project for which a Zoning Compliance Permit has not commenced, within 24 months of the issuance of such Zoning Compliance Permit and upon written request, the Proper Authority may extend the validity period for such Zoning Compliance Permit for an additional 12 months. Only one extension may be granted.
- (3) Inspection. For every Project in which a Zoning Compliance Permit is issued, the Proper Authority shall conduct an initial inspection and upon completion of such Project, a final inspection.
- (4) Maintenance of Permit. Upon such final inspection, if the Proper Authority determines that the subject Project complies with all terms and conditions of such Zoning Compliance Permit, the applicant therefor shall keep and maintain such Zoning Compliance Permit at the location to which it relates and shall, upon request, make such Zoning Compliance Permit available for inspection by the Proper Authority or another official or decision making body of the Town.

(c) Conditional Use Permit.

- (1) Validity period. Once issued, a Conditional Use Permit shall expire 24 months after the date of issuance unless authorized implementation of the Project for which the Conditional Use Permit was issued has commenced. If authorized implementation of such Project has commenced within 24 months, such Conditional Use Permit shall expire 36 months after the date of issuance. Once

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a Project for which a Conditional Use Permit was issued is complete, such Conditional Use Permit shall remain valid so long as the terms and conditions including all future terms and conditions as set forth by the Board of Zoning Appeals, on which such Conditional Use Permit was issued, are and remain satisfied.

- (2) Extension. If authorized implementation of a Project for which a Conditional Use Permit has not commenced, within 24 months of the issuance of such Conditional Use Permit and upon written request, the Board of Zoning Appeals may extend the validity period for such Conditional Use Permit for an additional 12 months. Only one extension may be granted.
 - (3) Inspection. For every Project in which a Conditional Use Permit is issued, the Board of Zoning Appeals shall conduct an initial inspection and upon completion of such Project, a final inspection.
 - (4) Maintenance of Permit. Upon such final inspection, if the Board of Zoning Appeals determines the subject Project complies with all terms and conditions of such Conditional Use Permit, the applicant therefor shall keep and maintain such Conditional Use Permit at the location to which it relates and shall, upon request, make such Conditional Use Permit available for inspection by the Board of Zoning Appeals or another official or decision making body of the Town.
- (d) Authority to conduct Inspections. The Proper Authority shall have the authority to conduct the inspections referenced in this Section 1303.07 of this Article. The Proper Authority, or a designee of the Proper Authority, may conduct additional inspections of Projects for which a Project Permit application has been submitted or for which a Project Permit has been issued. The Proper Authority shall have a reasonable basis for conducting any such additional inspections and shall conduct such additional inspections in a reasonable manner. In circumstances when the Board of Zoning Appeals is deemed the Proper Authority, the Board of Zoning Appeals may nominate an individual member of the Board of Zoning Appeals to conduct any inspections that are required or permitted under this Zoning Ordinance.

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ARTICLE 1304 Site Development Standards

1304.01 Purpose.

1304.02 Setbacks, Footprint, coverage, Structure orientation and height limit.

1304.03 Off-Street Parking.

1304.01 Purpose.

This purpose of this Article is to establish general design and other standards for Projects.

1304.02 Setbacks, Footprint, coverage, Structure orientation and height limit.

- (a) Fences and retaining walls. Fences and retaining walls are not subject to setback requirements in Section 1304.02(b), but must be placed or erected upon a Lot as follows:
- (1) The property owner / contractor is responsible for locating the property survey pins and marking the property line alongside the proposed fence location; this may be done with a string line tied to stakes set adjacent to the located survey pins. The survey pins must remain exposed until the posthole inspection has been completed.
 - (2) All fences and retaining walls must be constructed according to the standards and guidelines described in *Appendix A: Historic District Standards and Guidelines* of this Part.
 - (3) Fences and retaining walls bordering Town rights-of-way may be installed up to, but not over, the property line. Fences and retaining walls bordering other private property may be installed up to, but not closer than, two inches from the property line.
- (b) Setbacks for Buildings, Structures, and Other Improvements. Structures and other improvements shall be placed or erected upon a lot as follows:
- (1) The Front Setback from an abutting street, as measured from the property line abutting the street, shall be:
 - A. Consistent with the setbacks of a majority of other Structures on the block and across the street;
 - B. On a transitional property between distinctive areas of Setback, such as between Structures that are historic structures and those which are not, the Setback should defer to that of the Historic Structures; and
 - C. In all other cases, the minimum Front Setback shall be 15 feet.
 - (2) Rear Setback, as measured from the property line, shall be:
 - A. Consistent with the setbacks of a majority of other Structures on the block and across the street;
 - B. On a transitional property between distinctive areas of Setback, such as between Structures that are Historic Structures and those which are not, Rear Setback should defer to that of the Historic Structures; and
 - C. In all other cases, the minimum Rear Setback shall be 15 feet.
 - (3) Side Setback as measured from the property line, shall be:
 - A. Consistent with the setbacks of a majority of other Structures on the block and across the street;

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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- B. On a transitional property between distinctive areas of Setback, such as between Structures that are historic structures and those Structures which are not, Side Setback should defer to that of the historic structure; and
 - C. In all other cases, the Side Setback shall be a minimum of 10 feet.
- (c) Applicability of Standards for Setbacks. The term Setback and the variations thereof (Side Setback, Rear Setback, etc.), as defined by this Zoning Ordinance, are generally used in the context of and apply to Lot Lines. However, as recognized in Section 1303.05(b) of Article 1303, certain Projects may encompass more than one Lot. Therefore, notwithstanding any provision of this Zoning Ordinance to the contrary and if practical and reasonable under the circumstances, the Proper Authority may apply the standards for Setbacks, as set forth in Section 1304.02(a) of this Article, to the Site, or a portion of the Site, of a Project that encompasses more than one Lot.
- (d) Structure Footprint and coverage.
- (1) Provided that the total Coverage of all Structures is within the Buildable Area and does not exceed 50% of the size of such Lot or is determined to be consistent with coverage of a majority of Historic Structures on the block and across the street, the maximum Structure Footprint for a Single Family Dwelling, shall be as follows:
 - A. A main Dwelling Unit may not have a Structure Footprint exceeding 1,600 square feet plus up to 500 square feet for a single Story attached Private Garage.
 - B. The total Structure Footprint of all Accessory Structures may not exceed 250 square feet unless these include a detached single Story Private Garage where in such cases a total of 550 square feet is allowed.
 - C. The total coverage of all parking and Driveway areas on the Lot may not exceed 1,000 square feet.
 - (2) Greater coverage within the Buildable Area may be permitted for a Single Family Dwelling if the Lot is determined to be consistent with coverage of a majority of structures on the block and across the street so long as the total coverage does not exceed 60% of the Lot coverage within the Buildable Area and the following criteria are satisfied:
 - A. A main Dwelling Unit does not have a Structure Footprint exceeding 2,300 square feet, which is in addition to the permitted 500 square feet for a single Story attached Private Garage.
 - B. The total Structure Footprint of all Accessory Structures does not exceed 350 square feet unless these include a detached single Story Private Garage where in such case a total of 750 square feet is allowed.
 - C. The total coverage of all parking and Driveway areas on the Lot does not exceed 1,400 square feet.
- (e) Height limit. Except as otherwise specified in this Zoning Ordinance, the maximum Structure Height shall be 35 feet or within 10 percent of the average Structure Height of Abutting Structures that are clearly visible from the street or public way directly in front of the Structure in question. ^[1304.02]

1304.03 Off-Street Parking.

Single Family Dwelling Units, where feasible and in accordance with historic preservation goals, shall provide two Off-Street Parking spaces located on the Buildable Area of the Lot.

FOOTNOTES:

1304.02 Ord. 2022-01 (passed 03-24-2022) created provisions for the regulation of fences and retaining walls. See also § 1303.04, Appendix A, and Appendix B.

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ARTICLE 1310 Establishment of Zoning Districts and Zoning Map

1310.01 Zoning Districts.

1310.02 Zoning Map.

CROSS REFERENCES

Zoning districts generally—see WV Code 8A-7-1 *et seq.*

1310.01 Zoning Districts.

- (a) Base zoning. For the purpose of carrying out the provisions of this Zoning Ordinance, the incorporated area of the Town is hereby divided into two underlying (or base) zoning classifications as set forth in this Zoning Ordinance, and as marked on the official Zoning Map certified by Town Council and consistent with the Comprehensive Plan. The Rights-of-Way, both used and unused, are publicly owned and carry the least intensive zoning of the Abutting properties along each Block.
- (b) Historical significance of Town. In 1979, the Town was nominated and then designated as a historic district on the National Register of Historic Places as the Harpers Ferry Historic District. This designation recognizes those resources that contribute to the cultural, social, economic, political and architectural history of the Town. In harmony with the Comprehensive Plan, the Town recognizes that the preservation of historic character and architecture is primary to the safeguarding of the cultural, social, religious and economic heritage of the Town. The Town recognizes the importance of preserving historic structures and land throughout the Town in order to:
 - (1) Protect the heritage of the historic sites by preserving the cultural, social, economic, political, architectural or archaeological history;
 - (2) Foster urban and civic beauty;
 - (3) Promote the preservation and the use of historic district for the education, welfare, and pleasure of the residents of the Town and the region; and
 - (4) Strengthen the local economy.

1310.02 Zoning Map.

The zoning classification for all lots is established on a map entitled “The Zoning Map of the Corporation of Harpers Ferry” certified by Town Council, dated and on display at the office of the Town. The Zoning Map, including all explanatory matter thereon, is made a part of this Zoning Ordinance.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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ARTICLE 1311 Residential District; Uses

1311.01 Designation of Residential District.

1311.02 Uses allowed.

CROSS REFERENCES

Zoning districts generally—see WV Code 8A-7-1 *et seq.*

1311.01 Designation of Residential District.

Residential zoning classification (R) is intended to provide neighborhoods and living accommodations to residents, businesses and visitors in a manner consistent with the goals of the Comprehensive Plan. All of the incorporated areas of the Town not otherwise designated are hereby declared to be included in a Residential District.

1311.02 Uses allowed.

(a) Permitted uses.

- (1) One Single Family Dwelling Unit per Lot but excluding tents, cabins and House Trailers or mobile homes, except that not more than one trailer or mobile home may be temporarily used as a residence on a Lot while a dwelling is being constructed thereon, but such excluded use shall not be continued for more than one year.
- (2) Short-term Rentals, including Bed and Breakfast Inns, vacation rentals, or Hostels; providing they (a) obtain valid business licenses; (b) pay all applicable taxes, including Business and Occupation, Sales and Use, and Room Occupancy taxes; and (c) abide by Town ordinances applicable to all properties within the residential zone, including parking, noise, and lighting restrictions.
- (3) Any Home-Based Business, provided it: (a) is maintained by the resident and having no more than one non-resident employee or daily worker on Site, (b) does not require any extension or external modification of the dwelling or Accessory Structure(s), and (c) does not involve any outward evidence of such Use other than one Sign that otherwise complies with Article 1316 Signs.

(b) Conditional Uses. The following Conditional Uses may be authorized upon application to the Board of Zoning Appeals for a Conditional Use Permit as long as any proposed Conditional Use will not be detrimental to other Permitted Uses in the Residential District or to Abutting Lots in the Business District

- (1) Religious Institution, Education Facility, public Library, public Museum, Community Center, Public Services (Police or Fire) Facility, Association Hall, publicly-owned Park, or publicly-owned playground provided that such use is consistent with the residential nature of the neighborhood.
- (2) Residential Care Facility, provided it is owner-occupied, with (a) no more than four bedrooms for use by residents of which one bedroom may be in an Accessory Structure that includes toilet and bathing facilities; (b) no more than eight residents at one time; and (c) no more than two resident guests to a bedroom, provided that such Use is consistent with the residential nature of the neighborhood and follows the constraints of a Home-Based Business and

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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provided that at least one Off-Street Parking space is available for every two occupied bedrooms. ^[1311.02]

FOOTNOTES:

1311.02 Ord. 2021-08 (passed 11-08-2021) amended this section to bring it into compliance with WV Code § 8-1-5a.

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ARTICLE 1312 Business District; Uses

1312.01 Designation of Business District.

1312.02 Uses allowed.

CROSS REFERENCES

Zoning districts generally—see WV Code 8A-7-1 *et seq.*

1312.01 Designation of Business District.

Business zoning classification (B) is intended to provide goods and services to residents, businesses and visitors in a manner consistent with the goals of the Comprehensive Plan. All Lots designated as Business zoning on the official Zoning Map certified by Town Council are hereby declared to be included in a Business District.

1312.02 Uses allowed.

(a) Permitted uses.

- (1) Any Residential District permitted use.
- (2) Restaurant, provided any such Structure shall be at least 25 feet from any Abutting Lot in a Residential District.
- (3) Retail Sales Establishment, Personal Services Establishment or other Professional Services Establishment.
- (4) Dwelling Unit or Units over a permitted Business Establishment.

(b) Conditional Uses. The following Conditional Uses may be authorized upon application to the Board of Zoning Appeals for a Conditional Use Permit as long as any proposed Conditional Use will not be detrimental to other Permitted Uses in the Business District or to Abutting Lots in the Residential District:

- (1) Any Residential District Conditional Use.
- (2) Apartment house, Hotel, Office Structure, Association Hall, Parking Lot (Commercial, Restricted Accessory, and Public) or Public Garage.
- (3) Small Recreational Facilities provided any such facility shall be at least 25 feet from any Abutting Lot in a Residential District.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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ARTICLE 1313 Promontory Overlay District

1313.01 Purpose; relation to base zoning.

1313.04 Promontory Overlay District.

1313.01 Purpose; relation to base zoning.

- (a) The purpose of the Promontory Overlay District is to achieve specific land design goals and regulate the uses of land within certain areas of the Town where special circumstances justify the modification of base zoning district provisions.
- (b) Except as modified by this Article 1313, the provisions of the applicable base zoning district apply to all areas within the Promontory Overlay District. If the provisions conflict, the applicable Promontory Overlay District provisions prevail.
- (c) Whenever an overlay district is established, any petition by a landowner to change the base zoning district should not be construed to be a petition to change the overlay district unless expressly stated in the petition.

1313.04 Promontory Overlay District.

(a) Creation of the Promontory Overlay District.

- (1) Recital. The Promontory, at the end of East Ridge Street overlooking the confluence of the Potomac and Shenandoah Rivers, is recognized as a unique land area visible from National Historic Park land in Maryland and Virginia, large sections of Harpers Ferry historic neighborhoods and the Potomac River Bridge. The Promontory has historically enjoyed a Viewshed encompassing the Blue Ridge Gap, the highlands along the Potomac River, and the Lower Town peninsula, and has been the site of a renowned hotel since 1888. The boundaries of this Overlay District are shown on the official Zoning Map of Harpers Ferry located in Town Hall and form a single boundary enclosing one area of contiguous properties including the rights-of-way owned by the Corporation of Harpers Ferry.
- (2) Parcels within the Overlay. The Zoning Map is hereby amended to create and establish the Promontory Overlay District, including the following Lots or Parcels in District 5 as they existed on the effective date of this ordinance: Map 2, Parcels 34.1, 44, 44.1, 45, 46, 47, 48, 49, 50, 51, 52, 52.1, 53, 54, 54.1; and Map 3, Parcels 1, 2, 3, 4, 52. (Note: Tax Map 3, Parcel 54 is shown on the property deed of 2007 as Map 3, Parcels 52 and 54, which have been combined.) The Promontory Overlay District also includes the full width of the rights-of-way of Ridge Street, Columbia Street and Lancaster Street adjacent to any or all of the parcels described herein, except that portion of Ridge Street west of the full width of its intersection with Columbia Street.
- (3) Operability.
 - A. No Structure within the Promontory Overlay District may be constructed, reconstructed, altered, enlarged, diminished, demolished or relocated in any manner described in Section 1313.04 unless an application with plans has been reviewed and approved by the Board of Zoning Appeals in accordance with Section 1313.04, the Historic District Standards and

HISTORY:

Ord. 2017-03 (passed 05-19-2017, effective 06-01-2017) created the Promontory Overlay District. Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015), which was further refined by Ord. 2015-07 (passed 07-13-2015), contained the previous Article 1313, creating the Historic Overlay District, an area contiguous with the Harpers Ferry Historic District.

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Guidelines (Appendix A of Part 13 — Project and Zoning Code), and all other relevant provisions of the Codified Ordinances of Harpers Ferry.

- B. Before making any decision on such application, the Board of Zoning Appeals will invite and obtain recommendations thereon from the Historic Landmarks Commission. Any recommendation by the Historic Landmarks Commission to the Board of Zoning Appeals will not be binding on either the applicant, the Town or the Board of Zoning Appeals.
- (4) Concept Design review. Before an applicant for any Conditional Use in the Promontory Overlay District may make an application to the Board of Zoning Appeals therefor, the applicant must submit to the Planning Commission a Concept Design for review and input thereon.
 - A. The following elements must be addressed in the Concept Design:
 - 1. Concept Design Plan. The Concept Design Plan must provide basic information such as the overall size and scope of the project and the objectives the applicant expects to accomplish.
 - 2. Model. The applicant must provide a simple physical scale model or a 3D digital model of the Concept Plan for the Promontory Overlay District and an area encompassing 400 feet on all sides.
 - 3. Historic Resources Plan. The applicant must also submit a Historic Resources Plan. The applicant is encouraged to consult the Historic Landmarks Commission regarding the Historic Resources Plan before its submission of a Concept Design Plan.
 - B. Review process. The Planning Commission will review the submitted materials and may require a public hearing within 30 days of its submission. Within 60 days of a public hearing, if any, but no later than 90 days after submission of such materials, the Planning Commission must give the applicant a statement whether the proposal, if constructed, would likely conform with the Comprehensive Plan and the objectives of the Promontory Overlay District.
 - C. Not binding. Discussions, statements or opinions of any member of the Planning Commission or the Planning Commission itself, written or otherwise, about the Concept Design Plan or the Historic Resources Plan made during the review or after it is completed are not binding on the Board of Zoning Appeals, the Corporation of Harpers Ferry, or any division or body thereof.
- (5) Conflict with the underlying district. The provisions of Section 1313.04 are to be interpreted and enforced to harmonize with, and not as a substitution for, the provisions of the Zoning Ordinance establishing and creating the underlying districts or classifications for the same Lots and Parcels in the Promontory Overlay District. To the extent there is a direct conflict between the provisions of Section 1313.04 and other provisions of the Zoning Ordinance, then the provisions of Section 1313.04 prevail.
- (6) Severability. If any provision of Section 1313.04 or the application thereof to any person or circumstance is held invalid, then the invalidity should not affect other provisions or applications of Section 1313.04 that can be given effect without the invalid provision or application. To this end, the provisions of Section 1313.04 are severable.
- (b) Objectives of the Promontory Overlay District. The objectives of the Promontory Overlay District are to:
 - (1) Provide for building, land use, and site design appropriate to the Promontory

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and its buildings, including preservation of historic resources, woodlands and Viewsheds;

- (2) Provide for a notable and economically viable hotel and for other tourist accommodations on designated contiguous parcels to preserve and enhance historic resources in the Promontory Overlay District while limiting commercial activities within the underlying Residential District of the Promontory Overlay District to the same or similar commercial activities permitted in the Residential District;
 - (3) Provide for architectural compatibility with the existing historic structures in the Promontory Overlay District and the larger community, thus integrating the overlay properties into the fabric of the surrounding neighborhoods as a transition and a buffer to a hotel on the Promontory;
 - (4) Emphasize appropriate design and context sensitivity in Concept Design Planning and building design that can adapt this historic site to modern standards and ensure preservation of the site for future generations;
 - (5) Preserve existing access to public land within existing paved and unpaved rights-of-way (e.g., paper streets) within the Promontory Overlay District, including access to observation areas;
 - (6) Provide for increased Lower Town customer base, employment opportunities for local residents, new Town residents and increased overall revenue for the Town;
 - (7) Encourage sustainable design principles throughout the District for all properties, in accordance with Leadership in Energy and Environmental Design (LEED) certifications, whenever feasible; and
 - (8) Preserve, provide and maintain views from the Promontory toward the confluence of the Potomac and Shenandoah Rivers.
- (c) Permitted Uses in the Promontory Overlay District. Except as Section 1313.04(a)(3) provides, if an owner of any Lot, Parcel, Structure, or Historic Structure within the Promontory Overlay District wishes to pursue any use already permitted in the zoning district under the Zoning Ordinance as of the effective date of this ordinance, then such use or uses are Permitted Uses, so long as the use or uses are neither an Enlargement nor a Non-Conforming Use that has been determined to be an Abandonment.
- (d) Conditional Uses within the Promontory Overlay District in which the Hilltop House Hotel is preserved. If an owner of any Lot, Parcel, Structure, or Historic Structure within the Promontory Overlay District wishes to pursue a use within the Promontory Overlay District that would retain and preserve the Hilltop House Hotel in the National Register of Historic Places while also modifying, altering or adding on to any Historic Structure within the Promontory Overlay District or modifying or altering any Exterior Architectural Feature of any Historic Structure within the Promontory Overlay District, then, upon application to the Board of Zoning Appeals, the Conditional Uses in the Promontory Overlay District, subject to the restrictions or conditions in Section 1313.04(f), are:
- (1) For any Lot, Parcel, Structure, or Historic Structure located in a Commercial district:
 - A. Hotel;
 - B. One or more Restaurants with an aggregate seating capacity of no more than 340 people, serving hotel guests and the general public;
 - C. Recreational Facilities such as an indoor spa, pool, fitness areas and recreational rooms serving hotel guests only;
 - D. Social or business functions serving hotel guests; and

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- E. A gift and sundries shop for hotel guests.
- (2) For any existing Lot, Parcel, Structure, or Historic Structure in Block E with a frontage on Washington Street and within a Residential District (which includes and is limited to District 5, Map 2, Lots 48, 49, 50, 52, 53 and 54):
 - A. Long-Term Rental;
 - B. Short-Term Rental; and
 - C. Businesses substantially similar to Home-Based Businesses permitted in a Residential District, so long as the businesses are under the day-to-day management of the hotel operator.
- (3) Conditional uses in the Promontory Overlay District under Section 1313.04(d) are subject to the following additional restrictions or conditions:
 - A. A hotel must have the same building footprint as that of the Hilltop House Hotel as of the effective date of Section 1313.04 of the Zoning Ordinance.
 - B. A Single-Family Dwelling used for Long-term Rental or Short-Term Rental must:
 - 1. Retain those Exterior Architectural Features that conform to the Historic District Standards and Guidelines;
 - 2. Include (i) no more than four guest bedrooms; (ii) no more than eight guests at one time; and (iii) no more than three guests in a bedroom;
 - 3. Remain in such a condition that the future use thereof by a person other than the operator of the hotel would not violate this Zoning Ordinance as it exists on the effective date of Section 1313.04 of this Zoning Ordinance; and
 - 4. Maintain one Off-Street Parking space for each occupied guest bedroom in one or more Restricted Accessory Parking Lots.
 - C. Notwithstanding subsection 1313.04(d)(3)(B)(2), Single-Family Dwellings in the Promontory Overlay District under the day-to-day management or the hotel operator may not include or offer more than 20 guest bedrooms in the aggregate.
- (4) Conditional Uses in the Promontory Overlay District under Section 1313.04(d)(1) may be subject to reasonable additional restrictions or conditions imposed by the Board of Zoning Appeals so long as they are ancillary to the restrictions or conditions in Section 1313.04(d)(3).
- (5) Restricted Accessory Parking Lots.
 - A. Any Restricted Accessory Parking Lot or Lots for Long-Term Rental and Short-Term Rental use:
 - 1. Must contain no fewer than two Parking Spaces for each Single Family Dwelling;
 - 2. Must be confined to a Restricted Accessory Parking Lot or Lots within 120 feet of the southern edge of the East Ridge Street right-of-way within Map 2, Block E; and
 - 3. May be within the Side Setbacks of these Contiguous Lots in Block E and cross internal Lot Lines.
 - B. Any Restricted Accessory Parking Lot or Lots east of Columbia Street within the Promontory Overlay District must contain a number of Parking Spaces, including Compact Parking Spaces and Handicapped Parking Spaces, equal to a number derived by calculating (i) a minimum ratio of 1.35 Parking Spaces per hotel guest room and (ii) a minimum ratio of

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0.25 spaces per restaurant seat, but may not, in the aggregate, exceed 150 Parking Spaces.

- C. Different parking ratios other than those set forth in Section 1313.04(d)(5)(B) may be used upon application to the Board of Zoning Appeals based upon a study using accepted industry methods or standards.

- (e) Conditional Uses within the Promontory Overlay District in which the Hilltop House Hotel is not preserved. If an owner of any Historic Structure within the Promontory Overlay District wishes to pursue a use within the Promontory Overlay District that would de-list the Hilltop House Hotel from the National Register of Historic Places, then, upon application to the Board of Zoning Appeals, the Conditional Uses in the Promontory Overlay District, subject to the restrictions or conditions in Section 1313.04(f), are:
- (1) For parcels located in a Commercial district:
 - A. Hotel;
 - B. One or more Restaurants with an aggregate seating capacity of no more than 340 people, serving hotel guests and the general public;
 - C. Recreational Facilities such as an indoor spa, pool, fitness areas and recreational rooms serving hotel guests only;
 - D. Social or business functions serving hotel guests; and
 - E. Gift and sundries shop for hotel guests.
 - (2) For Single-Family Dwellings or parcels located in a Residential district east of Columbia Street under Hotel management:
 - A. Offices and Retail Sales Establishments or other similar non-residential uses, including (i) Recreational Facilities such as an indoor spa, pool, fitness areas and recreational rooms serving hotel guests only; (ii) social or business functions serving hotel guests; and (iii) gift and sundries shop for hotel guests, related ordinarily to the ancillary operations of the hotel, so long as:
 1. The Exterior Architecture Features as a Single Family Dwelling are maintained and all such uses remain under the day-to-day management of the hotel as evidenced by a formal document assigning management responsibilities to the hotel managers or by hotel ownership of the property; and
 2. Each Single Family Dwelling, and the parcel on which each such Single Family Dwelling is located, remain in such a condition that the future use thereof by a person other than the operator of the hotel would not violate this Zoning Ordinance as it exists on the effective date of Section 1313.04 of the Zoning Ordinance.
 - B. Long-Term Rental.
 - C. Short-Term Rental.
 - D. Businesses substantially similar to Home-Based Businesses permitted in a Residential District, so long as the businesses are under the day-to-day management of the hotel operator.
 - E. Restricted Accessory Parking Lot or Lots east of Columbia Street in a Residential District within the Promontory Overlay District may include surface (at-grade) parking, one level of above-grade parking located over a level of surface grade parking; provided, however, that all parking is confined to the northern 120 feet of Map 2, Block E, along the southern edge of the East Ridge Street right-of-way; and further provided that if such parking is located on a Lot on which a Single Family Dwelling is located, each such Single Family Dwelling remains in such a condition

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that the future use thereof by a person other than the operator of the hotel would not violate the Zoning Ordinance as it exists on the effective date of Section 1313.04 of the Zoning Ordinance.

- (3) For Single-Family Dwellings or parcels located in a Residential district east of Columbia Street not under Hotel management, all Conditional Residential Uses set forth in Section 1313.04(e)(2)(A) and no others.
- (4) Conditional uses in the Promontory Overlay District under Section 1313.04(e) are subject to the following additional restrictions or conditions:
 - A. A Single-Family Dwelling used for Long-Term Rental or Short-Term Rental must:
 - 1. Retain those Exterior Architectural Features that conform to the Historic District Standards and Guidelines;
 - 2. Include (i) no more than four guest bedrooms; (ii) no more than eight guests at one time; and (iii) no more than three guests in a bedroom;
 - 3. Remain in such a condition that the future use thereof by a person other than the operator of the hotel would not violate this Zoning Ordinance as it exists on the effective date of Section 1313.04 of this Zoning Ordinance; and
 - 4. Maintain one Off-Street Parking space for each occupied guest bedroom in one or more Restricted Accessory Parking Lots.
 - B. Notwithstanding subsection 1313.04(e)(4)(A)(2), Single-Family Dwellings in the Promontory Overlay District under the day-to-day management or the hotel operator may not include or offer more than 20 guest bedrooms in the aggregate.

(f) Standards for Conditional Uses in the Promontory Overlay District. The following standards apply to the Promontory Overlay District:

- (1) Determination of mitigation. Before issuing any Conditional Use permit, the Board of Zoning Appeals shall determine that the uses pursued and for which a Conditional Use Permit would be issued, including restrictions or conditions thereto, will mitigate adverse effects on Permitted Uses in the Promontory Overlay District and on Lots or Parcels Abutting the Promontory Overlay District.
- (2) Parking. Restricted Accessory Parking Lot or Lots east of Columbia Street within the Promontory Overlay District must contain a number of Parking Spaces, including Compact Parking Spaces and Handicapped Parking Spaces, equal to a number derived by calculating a minimum ratio of 1.35 Parking Spaces per hotel guest room; provided, however, that a different parking ratio other than that set forth in Section 1313.04(d)(5)(B) may be used upon application to the Board of Zoning Appeals based up a study using accepted industry methods or standards.
- (3) Hotel height.
 - A. The Maximum Building Height of any Hotel or other Structure shall not exceed 55 feet above the average road grade level of that portion of East Ridge Street between Columbia Street and Lancaster Street as of the effective date of this ordinance.
 - B. Notwithstanding Section 1313.04(f)(3)(A) to the contrary, upon review of an application and at the request of the Town, the Board of Zoning Appeals may reduce the Maximum Building Height of a Hotel or other Structure, or all or a portion thereof, directly in proportion to the capacities of existing fire and water services to serve the proposed Hotel

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- or other Structure, either by itself or in the aggregate with other proposed uses of the owner thereof.
- C. For purposes of Section 1313.04(f)(3)(A), the Maximum Building Height of a Hotel does not apply to a signature tower or other historic feature on the Hotel; however, notwithstanding the foregoing to the contrary, the Board of Zoning Appeals, case by case, may impose a Maximum Building Height on such signature tower or other feature on the Hotel based on (i) the mass and scale of the Hotel when considered in the context of the mass and scale of the signature tower or other feature on the Hotel, and (ii) the Historic District Standards and Guidelines.
- (4) Setback. There shall be a Setback of no less than 115 feet from the easternmost boundary of the Right-of-Way of Columbia Street as it exists on the effective date of this ordinance and the nearest exterior wall of any Structure for occupancy, including, without limitation, a Hotel.
- (5) Open Space. Accounting for the footprints of all Structures, existing or to be constructed under a Conditional Use Permit within this Overlay District, there must remain no less than 40 percent of Open Space in the Overlay District excluding any public Right-of-Way or land under public ownership.
- (6) Water conservation measures. All Landscaping should be drought tolerant, or served with a drip system or rainwater collection system until established.
- (7) Traffic flow and access, pedestrian flow and access. All traffic, including deliveries, buses and guests, to and from the Hotel complex, including any ancillary uses in Residences, must be directed onto Columbia Street. Street design and signing must be undertaken in a manner such that Hotel guest vehicles, any public clientele vehicles and service vehicles are not required nor allowed to traverse East Ridge Street west of Columbia Street. An application to the Board of Zoning Appeals must include the following:
- A. A study using industry standards and methods acceptable for historic communities is required to be submitted to the Board of Zoning Appeals to determine any effects and best management of Hotel traffic upon the historic street grid of Harpers Ferry and the road system of Bolivar, as well as the entrances and exits for U.S. Route 340. The principal aim of the study must address that peak traffic loads for Hotel operations will not place a significant burden on these communities; and
- B. An overall pedestrian circulation plan, including general public and visitors, including provisions for any improvements and facilities to safely accommodate pedestrian flow.
- (8) Hotel Parking. No vehicle standing or idling may be allowed anywhere in the Promontory Overlay District other than to load or unload persons or goods. Use of any additional Off-Street Parking for guests and for workers provided outside of this Overlay District must be identified in the application and is subject to approval by the Board of Zoning Appeals.
- (9) Signs. All signs must be part of an approved sign plan and must be coordinated in design while individually complying with Article 1316, except that a small number of signs, possibly on public property, may be included in the plan to ensure traffic is routed correctly to the entrance of the hotel via Columbia Street. Consideration should be given to a hotel address corresponding to the intersection of Columbia and Washington Streets as a means to assure navigation systems will route the traffic to that specific location.
- (10) Water and sewage infrastructure. Any increase in required public water or

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sewage infrastructure capacity above the historical use levels of the existing Hotel while in operation is to be made available with the cost of the additional infrastructure capacity, including plant capacity and distribution lines, as required, borne by the applicant, including credit for the Capital Capacity Fee, in accordance with Article 905 of the Codified Ordinances of Harpers Ferry.

(g) Supplementary Design Standards for the Promontory Overlay District.

- (1) Scope. The following Site and Architectural Design standards apply to all new nonresidential Structures, including without limitation a Hotel and Structures accessory to a Hotel or the redevelopment of any existing Hotel and Structures accessory to a Hotel within the Promontory Overlay District. These standards emphasize appropriate design and context sensitivity in Concept Design Planning and building design, with a goal towards adapting this historic site to ensure preservation of the site for future generations. The Supplementary Design Standards are in addition to the Historic District Standards and Guidelines in Appendix A of this Part 13 Project and Zoning Code, which also apply to all construction, reconstruction, alteration, enlargement, demolition and relocation of Structures within the Promontory Overlay District.
- (2) Architecture and Building Design Features. The architectural design, materials and colors of any new Hotel and Structures accessory to a Hotel and other Buildings or Structures, including additions and alterations thereto, must be compatible with the overall appearance, history and cultural heritage of contributing structures in the Historic District.
 - A. Architecture. Hotel Buildings may be either traditional in their architectural character or be a contemporary expression of traditional styles and forms, respecting the scale, proportion, character and materials of Contributing Resources in the Historic District.
 - B. Roofing. Desired roofing materials include slate (either natural or man-made), shingle (either wood or architectural asphalt) and metal formed to resemble standing seams. Roof color must be within the range of colors found on Contributing Resources in the Historic District. While pitched roofs and similar traditional styles are preferred, flat roofs with articulated parapets and cornices are allowed.
 - C. Screening. Screening must be employed for large work area doors and open bays. Screening may include but is not limited to hedges, fencing and walls consistent with the Historic District Standards and Guidelines.
 - D. Hotel Building Façades. Treatments to reduce the massing effects of large Hotel structures include but are not limited to the following:
 1. Repeating window patterns at established intervals;
 2. Providing balconies, arcades, porches or bay windows at established intervals;
 3. Changing the roofline with dormers, stepped roofs, fasciae, articulated parapets, cornices, gables or other roof elements;
 4. Use of architectural detailing at the ground level; or
 5. Use of Façade Modulation to create intervals that reflect and respect historic structures.
 - E. Multistory Buildings: Base and top treatments. The base and top treatments of Structures greater than two stories in height must have a clearly recognizable base, middle and top. A clearly recognizable base may consist of but is not limited to:
 1. Thicker walls, ledges or sills;

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2. Integrally textured materials such as natural stone or other masonry;
 3. Integrally colored and patterned materials such as smooth finished stone or tile; or
 4. Lighter or darker colored materials, mullions or panels. A clearly recognizable top may consist of but is not limited to:
 - i. Three-dimensional cornice treatments, other than just colored stripes or bands, with integrally textured materials such as natural stone or other masonry or differently colored materials;
 - ii. Sloping roof with overhangs and brackets; or
 - iii. Stepped parapets.
- F. Architectural detail: Entrances, awnings. The following guidelines apply to the architectural detail of Hotel structures:
1. Customer entrances. Primary customer entrances must be clearly defined and highly visible, but in no case may such new features encroach upon public property unless approved by Town Council following a Public Hearing on the matter. Examples of such entrance features include but are not limited to:
 - i. Awnings or porticos;
 - ii. Overhangs, recesses/projections;
 - iii. Arcades;
 - iv. Raised corniced parapets over the door;
 - v. Distinctive roof forms;
 - vi. Arches, outdoor patios;
 - vii. Display windows;
 - viii. Integral planters or wing walls that incorporate landscaped areas and / or places for sitting.
 2. Awnings.
 - i. Awning colors must be compatible with the overall color scheme of the façade from which any awning projects. Solid colors or subtle striped patterns are preferred.
 - ii. Awnings for rectangular openings must be simple shed shapes. Semicircular shaped awnings must be used for arches.
- G. Building materials and colors. All construction, reconstruction, alteration and enlargement projects must use high-quality materials and colors that are compatible with and reflect the character of Contributing Resources in the Historic District.
1. Building materials.
 - i. Materials must be used that have similar texture, dimension and appearance as are appropriate to the Town's historic character. Exterior materials must be natural in appearance, with preference given to wood or wood-appearance siding, natural stone, stucco and brick of a shape, color and texture similar to that found elsewhere in Harpers Ferry.
 - ii. All buildings must be constructed or clad with materials that are durable and of a quality that will retain their appearance over time.

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- iii. Unprotected or unpreserved natural wood or wood paneling may not be used as a principal exterior wall material, but durable synthetic materials with the appearance of wood may be considered, as permitted by the Historic District Standards and Guidelines (Part 13 – Project and Zoning Code, Appendix A).
 - iv. Exterior building materials may not include the following:
 - Vinyl siding;
 - Concrete block;
 - Corrugated metal siding;
 - Precast concrete systems; or
 - Architectural stone veneers massed on any elevation.
 - v. In selecting exterior building materials, consideration must be given to the appropriateness of the materials to the scale of building proposed.
 - vi. Gutters must have a profile or configuration consistent with the building design.
2. Building color.
- i. Color schemes shall tie building elements together and shall be used to enhance the architectural form of a building.
 - ii. All building projections, including but not limited to flues and vents, must match or complement in color the predominant color of the surface from which they project.
 - iii. Intense, bright or fluorescent colors are prohibited.
- H. Hotel Site Amenities. Site amenities should contribute to the character of the Historic District. Any Hotel construction, reconstruction, alteration and enlargement must incorporate three or more of the following separate site amenities:
- 1. Patio or plaza with seating area;
 - 2. Mini-parks, squares, or greens;
 - 3. Transportation amenities, including bus stops and bike racks, where appropriate;
 - 4. Fountain or water feature;
 - 5. Promenade;
 - 6. Public art (e.g., sculpture, statue);
 - 7. A taller Exterior Architectural Feature (e.g., a tower, spire or interesting roof form); and
 - 8. Other unique or distinctive Exterior Architectural Feature.
- I. Mechanical / utility equipment screening. Mechanical and utility equipment detracts from the character of an area. Steps should be taken to mitigate the negative visual and acoustic impacts of mechanical and utility equipment systems on surrounding development. Height restrictions in the Standards for Conditional Uses in the Promontory Overlay District given in 1313.04(f)(3) also apply to mechanical and utility equipment screening. Such screening is limited to a height that obscures visibility of the equipment from a public way or public viewpoint in Harpers Ferry.
- 1. All mechanical equipment and utilities must be either screened from view or located so that such items are not visible from public

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- rights-of-way or adjoining residential areas. Large trash receptacles, dumpsters, utility meters, and above ground tanks, etc., must be similarly screened.
2. Mechanical / utility screening must be an integral part of the building structure.
 3. Rooftop mechanical equipment (including elevator equipment, HVAC equipment, etc.) must be concealed in penthouse structures designed as an integral part of the building or screened with parapet.
- J. Fencing and walls. Fencing and walls shall be provided that complement the design of the overall development and surrounding properties, and is harmonious with the Harpers Ferry Historic District.
1. Walls and fences must be constructed of high-quality materials, such as brick, natural stone, protected or treated wood, and / or ornamental metal compatible with those materials used in the Hotel. Chain link fencing is prohibited.
 2. Fences must not interfere with visual integration of District residences with Adjacent neighborhoods.
- (3) Landscaping.
- A. Landscaping Plan. For all Hotel construction, reconstruction, alteration and enlargement in the Promontory Overlay District, a Landscaping Plan will be required and must be submitted to the Tree Committee by the owner of such property or structure, or by the owner's authorized agent, for review, and the Tree Committee must make a non-binding recommendation to the Board of Zoning Appeals within 45 days of receipt of such a plan. The plan must include adequate landscaped screening for mitigating and buffering impacts of Columbia Street traffic on Abutting and nearby residential properties to the west. The plan must preserve large existing trees or replace them with mature trees and be consistent with section 1104.06(a) of the Codified Ordinances of Harpers Ferry and the Harpers Ferry Tree Plan and Standards.
- B. Parking Area. When leafed out at full maturity, landscaping must:
1. Provide shade for any uncovered parking area as approved by the Board of Zoning Appeals; and
 2. Break up the expanse of any uncovered parking area as viewed from adjoining properties or from higher vantage points within Harpers Ferry, as approved by the Board of Zoning Appeals.
- (4) Lighting. These lighting requirements supplement and are in addition to the general Outdoor Lighting Standards (Part 13 – Project and Zoning Code, Appendix C).
- A. Compatibility with surrounding area. The lighting plan must consist of recognizable, distinctive designs and fixtures that are compatible with or complement surrounding neighborhoods.
 - B. Lighting for security. Security lighting must be fully shielded and use a decorative fixture.
 - C. Lighting for pedestrian areas. Pedestrian-level bollard lighting, ground-mounted lighting or other low glare controlled fixtures mounted on landscape walls shall be used to light pedestrian walkways.
 - D. Decorative, historic-style light fixtures are required within the District.
 - E. Light fixtures may be no higher than other similar fixtures in the Historic

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District. Surrounding land uses will be considered when determining appropriate pole height.

- F. Parking lot light fixtures shall be located within landscape areas or parking lot islands.
- G. Lighting mounted on concrete bases is discouraged. If concrete bases are necessary to protect the light fixture, bases must be decorative and not unfinished concrete.
- H. Concrete bases may not be more than two feet in height. Concrete bases may be painted to match the finish of the fixture. Square light pole bases must be mounted on square concrete forms.
- I. Awning or Canopy lighting. Acceptable fixtures and methods of illumination include:
 - 1. Recessed fixtures incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the awning or canopy.
 - 2. Indirect lighting where light is beamed upward and then reflected down from the underside of the awning or canopy. Such fixtures must be shielded such that direct illumination is focused exclusively on the underside of the awning or canopy.

(5) Parking area design.

- A. Uncovered Parking must be screened and landscaped.
- B. Parking lots may not substantially obstruct public Viewsheds.
- C. Parking lots or areas must be landscaped with trees and shrubs and, when possible, mature trees should be preserved and incorporated into landscape setbacks or islands.
- D. Pedestrian pathways or sidewalks incorporated into parking lots or areas must be clearly marked and visible.

(6) Access and circulation.

- A. Traffic and pedestrian connectors must mitigate impact to the adjacent residential neighborhoods.
- B. Pedestrian walkways must ensure access to and between any Adjacent public park, public viewshed or other public right-of-way.

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ARTICLE 1316 Signs

- 1316.01 Purpose and objectives.**
- 1316.02 Exempt Signs.**
- 1316.03 Prohibited Permanent and Temporary Signs.**
- 1316.04 General provisions.**
- 1316.05 Regulations of signs.**
- 1316.06 Permit procedures for Temporary Business Signs.**
- 1316.07 Permit procedures for permanent signs.**
- 1316.08 Special Purpose Signs.**
- 1316.09 Religious Organization Bulletin Boards.**
- 1316.10 Real Estate Signs.**
- 1316.11 Building Construction Signs.**
- 1316.13 Maintenance.**

CROSS REFERENCES

Power to regulate—see WV Code 8-12-5(31)
Unauthorized signs—see Ord. Art. 313.06

1316.01 Purpose and objectives.

The purpose of this Article is to protect the public health, safety, convenience, comfort, and general welfare within the Town. This Article regulates the time, place, design, and manner in which signs are displayed to achieve the following objectives:

- (a) Permit non-commercial signs on any private property within the Town, subject to the provisions of this Zoning Ordinance;
- (b) Permit signs without unconstitutionally regulating the information displayed by each sign;
- (c) Permit signs where language and symbols do not violate constitutionally guaranteed freedom of speech;
- (d) Permit signs that do not constitute a hazard to the public safety;
- (e) Permit commercial signs appropriate to the historic character, the use and zoning classification of each property within the Town;
- (f) Create a more aesthetically pleasing Town environment; and
- (g) Eliminate visual clutter within the Town.

1316.02 Exempt Signs.

The following signs shall be exempt on the basis that they implement a compelling government interest in protecting the health and safety of persons and property in the Town, and shall not require Sign Permits:

- (a) Temporary or permanent signs erected and maintained by the Town, County, State or Federal Government for traffic direction, official meetings or for direction to or identification of a Government Facility or event.
- (b) Directional Ground Signs not to exceed two signs per Driveway indicating vehicular

HISTORY:

Ord. 2015-07 (passed 07-13-2015) amended the text of the previous Article 1717 and moved it to Article 1316. Ord. 2015-07 was further refined by Ord. 2017-01 (passed 02-25-2017).

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entrance and exit locations with size not to exceed three square feet per Sign face and four feet in height.

- (c) Flag, emblems and insignias of national, state or local political subdivisions.
- (d) Name and / or address descriptions mounted to the front wall of a building, fence, porch, lamppost, or similar post in the front yard not to exceed two square feet in sign area.
- (e) Any window Sign located inside or behind a window shall not be subject to the provisions of this Article provided that the window Sign is located in a Structure where a commercial or industrial Use is permitted as a Principal Use, and provided that it is not more than 25% of any window area in a single window unit.
- (f) Flags which are considered to be home flags that are placed to show spirit, pride, seasonal theme or activity.
- (g) Real estate signs.
- (h) Religious Bulletin Boards.
- (i) Temporary political campaign signs less than four square feet and placed on private property provided they are not posted more than 60 days before the political event and are removed within 14 days following the event.
- (j) Building Construction Signs in accordance with 1316.11 of this Article.

1316.03 Prohibited Permanent and Temporary Signs.

All signs not expressly permitted or exempt under this Article are prohibited in the Town. Such prohibited signs include but are not limited to:

- (a) Abandoned Signs.
- (b) Beacons and searchlights, except for emergency health or safety purposes.
- (c) Billboards and other Off-Premise Signs, except as may be permitted by Section 1316.04(a)(9) of this Article.
- (d) Flashing Signs or intermittent lighting of signs, including time and temperature and message center signs.
- (e) Animated Signs.
- (f) Pennants, streamers and similar devices.
- (g) All helium, gas and air balloons or air dancers for promotional purposes.
- (h) Roof Signs.
- (i) Signs attached to any tree or utility pole and signs painted directly on rocks, trees and other natural features.
- (j) Any private signs, announcements, opinions, and notices placed on public property.
- (k) Any Sign, which constitutes a traffic hazard or a detriment to public safety or may be confused with traffic control signal or device or the light of an emergency or road equipment vehicle.
- (l) Signs, which make use of words, symbols, phrases or characters in such a manner as to interfere with, mislead or confuse traffic.
- (m) Signs or parts thereof which are erected within or above a Public Street or Right-of-Way.
- (n) Spinning devices or strings of spinning devices.
- (o) Electronic Message Board Signs.
- (p) Window Signs, including approved Temporary Business Signs in any district, which cover more than twenty-five percent (25%) of the total window area on a single window unit.
- (q) Signs with bright reflective paint, neon lights, photoluminescence, black lights, color shifting lights, and any back lit or internally lit signs.

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- (r) Vinyl banners except as Special Purpose Signs (see Section 1316.08 of this Article).

1316.04 General provisions.

All signs shall be designed, erected, altered, reconstructed, moved and maintained in accordance with the provisions of this Article unless specifically modified by another provision of this Article. A Sign Permit shall be required for the construction, erection, relocation or alteration of any Sign, unless specifically exempted by this Article.

- (a) No Sign shall be moved, replaced or altered except that the text of an approved Business or Organizational Merchandise Sign may be changed at the discretion of the owner to reflect the day's changes of menu, changes in approved business information, or items on sale that day.
- (b) Maintenance. Every sign, whether requiring a Sign Permit or not, shall be maintained in safe, presentable and good structural condition at all times, including replacement of defective parts and painting and cleaning of said sign.
- (c) Removal of Dangerous or Defective Signs. The Ordinance Compliance Officer may immediately remove or cause to be removed any sign deemed to be a danger, defective or hazardous to persons or property.
- (d) Removal of Unlawful Signs in the Public Right of Way. The Proper Authority may remove, or cause to be removed any unlawful sign in a public right-of-way.
- (e) Sign Location with Respect to Frontages. Sign area permitted by virtue of premises having Lot Frontage or Structure Frontage shall be located only along that Frontage which generates the permitted Sign area.
- (f) Commercial Messages. All commercial information conveyed by any Sign permitted under this Article must pertain to the premises on which the Sign is located, except as specifically approved under Section 1316.04(a)(9) of this Article.
- (g) Sign Spacing Requirements. No projecting, ground, pole or Freestanding Sign shall be located within twenty-five (25) feet of another projecting, ground, pole or Freestanding Sign.
- (h) Duration of Temporary Signs. Temporary signs as permitted by this Article may be erected for a period not to exceed sixty (60) days, except as otherwise dictated in this Article. Extensions to the sixty-day limitation may be permitted by the Proper Authority upon application and demonstration of reasonable justification by the agent or owner of the temporary sign.
- (i) Exception to Off-Premises Sign Prohibitions. Upon application and approval of a Conditional Use Permit by the Board of Zoning Appeals in accordance with Article 1324 of this Zoning Ordinance, an Off-Premise Sign(s) may be permitted for a specified period of limited duration and subject to renewal or removal at the discretion of the Board of Zoning Appeals.
- (j) Signs illuminated with one small spotlight per side, shining upon the sides of the Sign which have lettering, are permitted, except such illumination shall not exceed 820 lumens per lighted side of the Sign. The spot lights shall be positioned close enough to the Sign to focus the light on the center of the Sign. The light shall be focused such that negligible light bypasses the Sign and any escaping light is not obtrusive, or beamed so that the direct light source impinges upon the eyes of pedestrians, drivers in vehicles on the Street, or adjacent properties.
- (k) Multiple Business Occupancy. In a Structure or grouping of Structures or premises with multiple Business occupants, signage should be apportioned on the basis of square footage of Structure space occupied or other suitable methods of apportionment.

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1316.05 Regulations of signs.

- (a) All Business and organizational Identification, Information and Merchandise signs are to consist of flat panels, made of natural materials (such as wood, metal, or stone). Medium Density Fiberboard (MDF), Medium Density Overlay (MDO), High Density Overlay (HD) and High Density Urethane are acceptable alternative materials.
- (b) All Business and organizational Identification signs shall not exceed six square feet in size. Their frame or support can be of wood or metal brackets or chains. They may be lettered or decorated on one or both sides. Identification signs shall be located within and upon the premises to which they pertain. One Identification Sign is permitted for each Frontage containing a public entrance.
- (c) All Business and organizational Information Signs shall not exceed three square feet. No more than two Information Signs are permitted per Establishment.
- (d) All Business and organizational Merchandise Signs shall not exceed six square feet. No more than two Merchandise signs are permitted per Establishment.
- (e) During only the hours the Business or organization is open, not more than two banners or flags may be displayed upon the premises except that State flags may be flown at any hours as allowed by state laws, and the national Flag may be flown in accordance with 4 USC, Chapter 1, sections 1 and 2, and Executive Order 10834 issued pursuant thereto. Flags and Banner Signs may not exceed six square feet total for all displayed.
- (f) No Sign shall be hung so that its bottom edge is less than seven feet above a pedestrian thoroughway.
- (g) The owner of any Business that is no longer operating as evidenced by the fact that it no longer has a valid business license shall have not more than 30 days to remove all signs.

1316.06 Permit procedures for Temporary Business Signs.

- (a) A new or short term business or organization may apply for a Sign Permit for more than one temporary sign on one Project Permit application if all information required by this Zoning Ordinance is included for each Sign requested so long as the Ordinance Compliance Officer is deemed the Proper Authority under Section 1303.03 of this Zoning Ordinance for purposes of issuing any such requested Sign Permits and reviewing the application therefor.
- (b) The Proper Authority is granted authority to issue Sign Permits for temporary signs.

1316.07 Permit procedures for permanent signs.

- (a) In addition to any other requirements set forth in this Zoning Ordinance, an application for a Sign Permit must be accompanied by plans showing all dimensions, the shape, material, character, lettering style, colors, design, full text, and exact location proposed. If the Sign is not to be located flat against an exterior Structure wall, the application must include an Elevation drawing and the details as to material, shape and location of the standard, pole or bracket or other support to which the Sign will be attached. The size and location of all existing signs must be provided.
- (b) Any Person may apply for more than one Sign Permit on one Project Permit application if:
 - (1) All information required by this Zoning Ordinance is included for each Sign Permit requested; and
 - (2) The requested Sign Permits pertain to the same Project.
- (c) The Ordinance Compliance Officer is deemed the Proper Authority under Section 1303.03 of this Zoning Ordinance for purposes of issuing such requested Sign Permits

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and reviewing the application therefor.

1316.08 Special Purpose Signs.

- (a) Special Purpose Signs do not require a Sign Permit.
- (b) All Special Purpose Signs shall be removed by midnight of the day following the event for which the signs are displayed. If such signs are not removed within that time period the police are authorized to remove and confiscate the signs.
- (c) The Ordinance Compliance Officer may review the appropriateness of any Special Purpose Sign displayed and remove Special Purpose Signs that are inconsistent with the standards of this Zoning Ordinance.

1316.09 Religious Organization Bulletin Boards.

- (a) Permanently erected Religious Organization Bulletin Boards do not require a Sign Permit; however, any organization proposing to erect such a bulletin board should submit a simple plan or drawing of the proposed sign, with all proposed lettering, to the Ordinance Compliance Officer for approval prior to installation.
- (b) There shall be no more than one bulletin board, not to exceed 16 square feet in size, for each organization. The bulletin boards shall be of traditional design and constructed of natural materials such as wood insofar as possible. Artificial material such as plastic or plexiglass may be used in window-type cabinet structures, but glass is preferred.

1316.10 Real Estate Signs.

- (a) A real estate agency or property owner may display one “for sale” or one “for rent” Real Estate Sign of customary design not to exceed four square feet in size on the property offered for sale or rent. All information on Real Estate signs shall be closely related to the sale of the property upon which the Sign is posted. No general information concerning a Real Estate firm, except for address, telephone number and website, and no information advertising the sale of other, unrelated, property is permitted.
- (b) No Sign Permit is required for a Real Estate Sign.
- (c) In the case of an “Open House”, one Directional Sign may be displayed during daylight hours of the open house. The Directional Sign may not be placed on a public Right-of-Way without written permission of the Ordinance Compliance Officer.
- (d) The Ordinance Compliance Officer may, with the assistance of the Police as required, exercise the authority to remove any Real Estate Signs which are in violation of the provisions of this Article. The confiscated Sign may be retrieved from the Town within thirty days upon payment of \$50.00. Confiscated signs not retrieved within 30 days shall be disposed of by the Town.

1316.11 Building Construction Signs.

- (a) Construction Signs do not require a Sign Permit.
- (b) Construction Signs may list company, corporation, individual name or names, communications information such as phone numbers and email addresses, and types of work or expertise offered by the company or individual and may be placed only on private property with permission of the property owner where and when work is taking place. Construction Signs may not exceed four square feet in size, and are limited to one such sign at each Site. Signs must be removed when work is completed.
- (c) The Ordinance Compliance Officer may, with the assistance of the Police as required, remove any Construction Signs which are in violation of the provisions of this Article. The confiscated Sign may be retrieved from the Town within thirty days upon payment of \$50.00. Confiscated signs not retrieved within 30 days shall be disposed of by the Town.

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1316.12 Maintenance.

It shall be the responsibility of the owner or agent of all Signs displayed under the provisions of this Article to properly maintain them. They shall be cleaned and repainted at necessary intervals so that they remain legible and neat. The Ordinance Compliance Officer may order maintenance as deemed appropriate. If an order to conduct maintenance is not followed within thirty days of such an order coming into force it shall be considered a violation of this Zoning Ordinance.

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ARTICLE 1322 Nonconforming Provisions

1322.01 Purpose.

1322.02 Nonconformities.

1322.03 General provisions.

1322.04 Mitigation of Nonconforming Uses, Signs and Structures.

1322.01 Purpose.

Many Nonconforming Uses, Signs and Structures that exist for a long period of time become an integral part of a neighborhood's character and function. It is possible that, with appropriate mitigation, a Nonconforming Use, Sign or Structure may be made conforming to meet an important purpose of the Zoning Ordinance to preserve the overall historical integrity of neighborhoods. The following establishes procedures for bringing a Nonconforming Use, Sign or Structure into conformance.

1322.02 Nonconformities.

The following are the three types of nonconformities within this Zoning Ordinance.

- (a) Nonconforming Uses. As defined.
- (b) Nonconforming Structures. As defined.
- (c) Nonconforming Signs. As defined.

1322.03 General provisions.

- (a) Change or conversion of Nonconforming Use, Structure or Sign. Except as set forth below,
 - (1) Use. A Nonconforming Use shall not be altered, enlarged or replaced with any other Nonconforming Use.
 - (2) Structure. A Nonconforming Structure shall not be altered or enlarged.
 - (3) Sign. A Nonconforming Sign shall not be altered, enlarged or replaced with another Nonconforming Sign.
- (b) Abandonment or discontinuance of a Nonconforming Use.
 - (1) Presumption of Abandonment. Abandonment will be presumed unless the owner of the property can show that a Nonconforming Use, Structure and Sign has not been Abandoned. For Nonconforming Uses that require a Business license and payment of Business and Occupation (B&O) or sales tax, the necessary proof of continued Use will be a valid license and a proper submission of an official Business income tax return for the period in question.
 - (2) Continuation. Nothing in this Zoning Ordinance shall prevent the replacement of any nonconforming Structure damaged or destroyed by fire, windstorm, snowstorm, rainstorm, Flood or other casualty damage beyond the control of the owner, provided such replacement utilizes the original Structure footprint (Gross Floor Area at ground level) or less, does not increase the original Net Floor Area of the original Structure, does not encroach on public property and otherwise complies with this Zoning Ordinance. Such replacement shall commence within 18 months of the damage or destruction.
 - (3) Future use. Except as otherwise set forth below, if a Use, Structure or Sign is

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015), Ord. 2015-09 (passed 11-09-2015), and Ord. 2017-01 (passed 02-25-2017).

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Abandoned, then any future Use, future alterations to such Structure or future alteration of such Sign, must conform with the provisions of this Zoning Ordinance.

- (c) Alteration, Enlargement, or extension of a Nonconforming Use.
 - (1) Normal Maintenance of a Nonconforming Structure, or of a conforming Structure containing a Nonconforming Use, including necessary repairs and incidental alterations which do not extend the Nonconforming Use are permitted.
 - (2) No structural alteration shall be made to any Structure containing a Nonconforming Use, except in the following situations:
 - A. The alteration is required by law;
 - B. The alteration will result in eliminating the Nonconforming Use; or
 - C. A Structure that is located in a Residential District and which contains residential Nonconforming Uses may be altered to improve livability, provided no structural alteration shall be made which would enlarge the Structure or change its external appearance visible from a public way.
 - (3) If a Structure is conforming but the property on which such Structure is located contains a Nonconforming Use, such Structure shall not be altered or enlarged in any manner that would enlarge such Nonconforming Use.
- (d) Nonconforming Structure. Nonconforming Structures shall not be altered or expanded in a manner that increases the degree of the nonconformity.

1322.04 Mitigation of Nonconforming Uses, Signs and Structures.

- (a) Procedure. An owner of a Nonconforming Use, Sign or Structure may apply to the Board of Zoning Appeals for a Conditional Use Permit for mitigation in accordance with Article 1324 of this Zoning Ordinance.
- (b) Criteria for removing nonconforming status of a Nonconforming Use or Structure. In addition to the criteria for approval of a Conditional Use Permit in Article 1324, the Board of Zoning Appeals must first find that the applicant meets the following requirements in order to issue a Conditional Use Permit:
 - (1) The Nonconforming Use, Sign or Structure has minimal nonconformities and is integrated into the neighborhood's function; or
 - (2) The Nonconforming Use or Structure has regular patronage by neighborhood residents or employment of neighborhood residents in performing the Nonconforming Use.
- (c) Findings. Upon finding that a Nonconforming Use, Sign or Structure satisfies the requirements of Section 1322.04(b) of this Article, the Board of Zoning Appeals may attach mitigating conditions or other such conditions, as it deems necessary, to protect the health, safety, and general welfare of the public and surrounding property owners, including, but not limited to:
 - (1) Screening of equipment and material not normally found in a residential neighborhood; or
 - (2) Elimination of nuisances such as noise, light, waste materials, congested On-Street Parking, or similar conflicts through appropriate management practices.
- (d) Effect. Upon granting a Conditional Use Permit, in accordance with Article 1324 of this Zoning Ordinance, and upon compliance with any conditions placed on it, the Board of Zoning Appeals shall have a notation placed on the Zoning Map stating that the property has a Conditional Use Permit and the application case number and date thereof. Granting a Conditional Use Permit makes the Nonconforming Use, Sign or Structure conform to the specifics of the conditional approval, thereby eliminating the nonconformity.

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ARTICLE 1324 Conditional Use Permit Approval Procedure

- 1324.01 General.**
- 1324.02 Application.**
- 1324.03 Required findings.**
- 1324.04 Conditions of approval.**

CROSS REFERENCES

Conditional use—see WV Code 8A-1-2(d)

1324.01 General.

The Board of Zoning Appeals may issue Conditional Use Permits only after a public hearing is conducted by the Board of Zoning Appeals. The public hearing is intended to determine whether the Conditional Use complies with all applicable provisions of the Zoning Ordinance and its proposed location and design are such that it meets the needs of the community for such Conditional Use without creating significant adverse conditions or a nuisance in the neighborhood.

1324.02 Application.

To apply for a Conditional Use Permit, a Project Permit application shall be submitted to the Board of Zoning Appeals. Notice and timelines regarding a Conditional Use Permit shall conform to the following:

- (a) Within ten days of receipt of an application for a Conditional Use Permit, the Board of Zoning Appeals shall set a time for a public hearing of the application and give notice. A public hearing must be held within 45 days of receipt of the application unless the Board of Zoning Appeals requires expert advice in which case the limit is 75 days.
- (b) At least 15 days before the date set for a public hearing on an application, the Board of Zoning Appeals shall publish a notice of the date, time and place of the public hearing on the application as a Class I legal advertisement in compliance with the provisions of Article Three, Chapter 59 of West Virginia State Code and written notice shall be given to the interested parties as determined by the Board of Zoning Appeals.
- (c) The applicant shall be required to pay for the cost of public notice and written notice to interested parties in accordance with a fee schedule approved by the Town Council. The costs of expert studies shall be borne by the applicant.
- (d) At a public hearing, any interested party may appear in person, by agent or by an attorney licensed to practice in this state.
- (e) Every decision by the Board of Zoning Appeals must be in writing and state findings of fact and conclusions of law on which the Board of Zoning Appeals based its decision.
- (f) The written decision by the Board of Zoning Appeals shall be rendered within 30 days after the date of the last public hearing pertaining to such decision. If the Board of Zoning Appeals fails to render a written decision within 30 days, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a *writ of mandamus*.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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1324.03 Required findings.

The Board of Zoning Appeals shall grant a Conditional Use Permit only if, from the facts established within the application, at the public hearing and by investigation, the following conditions have been found:

- (a) That the location, size, design and operating characteristics of the proposed Conditional Use will be compatible with the Abutting uses and Abutting Structures, with consideration given to harmony in scale, bulk, lot coverage, and Structure density; to the availability of civic facilities and utilities, to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity and physical character of surrounding streets; and to any other relevant impact of the proposed Conditional Use; and
- (b) The impact and location of the proposed Conditional Use are consistent with the Comprehensive Plan.

1324.04 Conditions of approval.

The Board of Zoning Appeals may establish any reasonable conditions of approval as determined appropriate or necessary to remain consistent with the Comprehensive Plan and with this Zoning Ordinance.

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ARTICLE 1326 Variance Approval Procedure

- 1326.01 Purpose.**
- 1326.02 Variance.**
- 1326.03 Application.**
- 1326.04 Required findings.**

CROSS REFERENCES

Variances—see WV Code 8A-7-11

1326.01 Purpose.

The purpose of this Article is to provide relief from the strict and literal requirements of this Zoning Ordinance under certain circumstances when a property owner is facing a unique or unusual hardship created by the physical characteristics of the property owner's land.

1326.02 Variance.

If a proposed Project for which an applicant is seeking to obtain a Project Permit does not satisfy the minimum standards of this Zoning Ordinance, the applicant must request a Variance from the Board of Zoning Appeals in accordance with this Article, and the applicant shall not proceed with such Project unless and until the Board of Zoning Appeals approves the requested Variance and issues the related Project Permit. No Variance shall be approved if the approval of such Variance would:

- (a) Permit a Use that is otherwise prohibited in the applicable Zoning District; or
- (b) Change the zoning classification of any property.

1326.03 Application.

- (a) To request a Variance, a Project Permit application shall be filed with the Board of Zoning Appeals, which shall state the grounds on which the Variance is requested and include a statement describing the specific provision or provisions of this Zoning Ordinance from which the Variance is sought.
 - (1) If a request for a Variance directly relates to and is being sought solely in conjunction with a Sign Permit or Zoning Compliance Permit, the applicant may file one Project Permit application with the Board of Zoning Appeals.
 - (2) If a request for a Variance directly relates to and is being sought in conjunction with a Conditional Use Permit, a separate Project Permit application for each shall be filed with and submitted to the Board of Zoning Appeals, but if practical, appropriate and otherwise permissible under this Zoning Ordinance, the Board of Zoning Appeals may permit the applicant to submit one Project Permit application for both.
- (b) Notice and hearing timelines for a Variance determination shall conform to the following.
 - (1) Within ten days of receipt of an application for a Variance, the Board of Zoning Appeals shall set a time for a public hearing of the application and give notice. A public hearing must be held within 45 days of receipt of the application unless

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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the Board of Zoning Appeals requires expert advice in which case the limit is 75 days.

- (2) At least 15 days before the date set for a public hearing on an application, the Board of Zoning Appeals shall publish a notice of the date, time and place of the public hearing on the application as a Class I legal advertisement in compliance with the provisions of Article Three, Chapter 59 of West Virginia State Code and written notice shall be given to the interested parties as determined by the Board of Zoning Appeals.
- (3) The applicant shall be required to pay for the cost of public notice and written notice to interested parties in accordance with a fee schedule approved by the Town Council. The costs of expert studies may be borne by the applicant.
- (4) At a public hearing, any interested party may appear in person, by agent or by an attorney licensed to practice in this state.
- (5) Every decision by the Board of Zoning Appeals must be in writing and state findings of fact and conclusions of law on which the Board of Zoning Appeals based its decision.
- (6) The written decision by the Board of Zoning Appeals shall be rendered within 30 days after the date of the last public hearing pertaining to such decision. If the Board of Zoning Appeals fails to render a written decision within 30 days, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a *writ of mandamus*.

1326.04 Required findings.

- (a) The Board of Zoning Appeals may approve a request for a Variance, in whole or in part, conditionally or unconditionally, and may only consider the facts presented with the Project Permit application or at the public hearing. The Board of Zoning Appeals shall have the authority to impose specific conditions as part of its approval in order to protect the public health, and for reasons of safety, comfort and convenience (e.g., to ensure compatibility with surrounding properties). A request for a Variance may be denied and an approved Variance may be revoked by the Board of Zoning Appeals:
 - (1) If the applicant fails to comply with a reasonable request of the Board of Zoning Appeals for furnishing specific information related to the requested Variance; or
 - (2) For failing to satisfy any conditions that are or were contingent upon the Board of Zoning Appeals approving the requested Variance.
- (b) The Board of Zoning Appeals shall approve a requested Variance if the following criteria are satisfied:
 - (1) The approval of the Variance will not adversely affect the public health, safety or welfare, or the rights of the abutting property owners or residents;
 - (2) The request for the Variance arises from special conditions or attributes which pertain to the property and were not created by the person requesting the Variance;
 - (3) The approval of the Variance will eliminate an unnecessary hardship and permit a reasonable Use of the land; and
 - (4) The approval of the Variance will allow the intent of the Zoning Ordinance to be observed and substantial justice done.

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ARTICLE 1328 Appeals

- 1328.01 Appeal to Board of Zoning Appeals.**
1328.02 Notice and hearing of appeal.
1328.03 Stays; exception.
1328.04 Appeal to the Circuit Court of Jefferson County.

CROSS REFERENCES

Generally—see WV Code 8A-7-1 *et seq.*
Appeal process—see WV Code 8A-8-10 *et seq.*
Board of Zoning Appeals established—see Ord. Art. 134

1328.01 Appeal to Board of Zoning Appeals.

- (a) An appeal from any order, requirement, decision or determination made by the Planning Commission or an administrative official charged with the enforcement of a zoning ordinance or rule and regulation adopted under this Zoning Ordinance, shall be filed with the Board of Zoning Appeals.
- (b) The appeal shall:
- (1) Specify the grounds of the appeal;
 - (2) Be filed within 30 days of the written order, requirement, decision or determination made by the Planning Commission or an administrative official charged with the enforcement of a zoning ordinance ; and
 - (3) Be on a form prescribed by the Board of Zoning Appeals.
- (c) Upon request of the Board of Zoning Appeals, the Planning Commission or administrative official shall transmit all documents, plans and papers constituting the record of the action from which the appeal originated. ^[1328.01]

1328.02 Notice and hearing of appeal.

Notice and hearing timelines for an appeal shall conform to the following:

- (a) Within ten days of receipt of the appeal, the Board of Zoning Appeals shall set a time for a hearing of the appeal and give notice. A hearing must be held within 45 days of receipt of the appeal.
- (b) At least 15 days before the date set for the hearing on the appeal, the Board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of Article Three, Chapter 59 of West Virginia Code and written notice shall be given to the interested parties.
- (c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.
- (d) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.
- (e) Every decision by the Board of Zoning Appeals must be in writing and state findings of

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and 2017-01 (passed 02-25-2017). This article was previously codified as 1321. Recodified as Article 1328 by Town Council action on 02-09-2015.

FOOTNOTES:

1328.01 Ord. 2021-05 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-10.

PART THIRTEEN — PROJECT AND ZONING CODE

fact and conclusions of law on which the board based its decision. If the Board of Zoning Appeals fails to provide findings of fact and conclusions of law adequate for its decision by the circuit court and, as a result of the failure, the Circuit Court of Jefferson County returns an appealed matter to the Board of Zoning Appeals and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the Circuit Court of Jefferson County returns the matter with or without restrictions, the Board of Zoning Appeals shall pay any additional costs for court filing fees, service of process and reasonable attorneys' fees required to permit the person appealing the Board of Zoning Appeals' decision to return the matter to the Circuit Court of Jefferson County for completion of the appeal.

- (f) The written decision by the Board of Zoning Appeals shall be rendered within 30 days after the hearing. If the Board of Zoning Appeals fails to render a written decision within 30 days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a *writ of mandamus*.

1328.03 Stays; exception.

- (a) When an appeal has been filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided below.
- (b) A stay may not be had:
 - (1) If the decision-making body or official from where the appeal was taken certifies in writing to the Board of Zoning Appeals that a stay would cause imminent peril to life or property;
 - (2) Upon further proceedings, including, but not limited to, submissions to and reviews by any official or any decision-making body; or
 - (3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.
- (c) If the written certification is filed pursuant to the above, then proceedings or work on the Site shall not be stayed.
- (d) Nothing in this Article prevents a party from obtaining a restraining order.

1328.04 Appeal to Circuit Court of Jefferson County.

- (a) Every decision or order of the Planning Commission or Board of Zoning Appeals is subject to review by certiorari.
- (b) Within thirty days after a decision or order by the Planning Commission or Board of Zoning Appeals, any aggrieved person may present to the Circuit Court of Jefferson County, a duly verified petition for a writ of certiorari setting forth:
 - (1) That the decision or order by the Planning Commission or Board of Zoning Appeals is illegal in whole or in part; and
 - (2) Specify the grounds of the alleged illegality.
- (c) Upon filing a petition for a writ of certiorari with the Clerk of the Circuit Court of Jefferson County, the petitioner shall cause a notice to be issued and served by the sheriff of Jefferson County upon:
 - (1) The adverse party, as shown by the record of the appeal in the office of the Planning Commission or Board of Zoning Appeals; and
 - (2) The chairperson or secretary of the Planning Commission or Board of Zoning Appeals, as applicable.
- (d) The adverse party is any property owner appearing at the hearing before the Planning Commission or Board of Zoning Appeals in opposition to the petitioner.
- (e) If the record shows a written document containing the names of more than three property owners opposing the request of the petitioner, then the petitioner is required

PART THIRTEEN — PROJECT AND ZONING CODE

to cause notice to be issued and served upon the three property owners whose names first appear upon the written document. Notice to the other parties named in the written document is not required.

- (f) The notice shall:
 - (1) State that a petition for a writ of certiorari has been filed in the Circuit Court of Jefferson County asking for a review of the decision or order of the Planning Commission or Board of Zoning Appeals;
 - (2) Designate the affected premises; and
 - (3) Specify the date of the decision or order that is the subject of the petition for a writ of certiorari.
- (g) Service of the notice by the sheriff on the chairperson or secretary of the Planning Commission or Board of Zoning Appeals shall constitute notice there to the Planning Commission or Board of Zoning Appeals. Service of the notice by the sheriff to the Town and to any official or board of the Town charged with the enforcement of this Zoning Ordinance shall constitute notice to the Town. No further summons or notice with reference to the filing of such petition shall be necessary.
- (h) As an alternative to the requirements for notice prescribed in the preceding subsections of Section 1328.04 of this Article, notice is sufficient upon a showing that the chairperson or secretary of the Planning Commission or Board of Zoning Appeals and all adjacent landowners to the affected premises have received personal service of process of the notice containing information as required by this Article. As to all other interested parties, notice shall be sufficient if notice containing information as required in Section 1328.04(f) of this Article is published as a Class III-0 legal advertisement in Jefferson County.
- (i) Within 20 days after a petition for a writ of certiorari is presented, the Planning Commission, or Board of Zoning Appeals must show the Circuit Court of Jefferson County cause why a writ of certiorari should not be issued.
- (j) If the Planning Commission or Board of Zoning Appeals fails to show the court or judge that a writ should not be issued, then the Circuit Court of Jefferson County may allow a writ of certiorari directed to the Planning Commission or Board of Zoning Appeals.
- (k) The writ shall prescribe the time in which a return shall be made to it. This time shall be not less than ten days from the date of issuance of the writ and may be extended by the Circuit Court of Jefferson County.
- (l) The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.
- (m) The Circuit Court of Jefferson County may, upon application and on notice to all parties to the decision or order and on due cause shown, grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the Circuit Court of Jefferson County.
- (n) The staying order may be issued by the Circuit Court of Jefferson County without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.
- (o) The return to the writ of certiorari by the Planning Commission or Board of Zoning Appeals must concisely set forth the pertinent facts and data and present material to show the grounds of the decision or order appealed. The return must be verified by the secretary of the Planning Commission or Board of Zoning Appeals.
- (p) The Planning Commission or Board of Zoning Appeals does not have to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.
- (q) The Circuit Court of Jefferson County may consider and determine the sufficiency of

PART THIRTEEN — PROJECT AND ZONING CODE

the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the Planning Commission or Board of Zoning Appeals on the facts set out in the petition and return to the writ of certiorari.

- (r) If it appears to the Circuit Court of Jefferson County that testimony is necessary for the proper disposition of the matter, the Circuit Court of Jefferson County may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.
- (s) In passing upon the legality of the decision or order of the Planning Commission or Board of Zoning Appeals, the Circuit Court of Jefferson County may reverse, affirm or modify, in whole or in part, the decision or order.

PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1329 Amendments

- 1329.01 Purpose.**
- 1329.02 Initiation.**
- 1329.03 Application; fee.**
- 1329.04 Amendment without hearing.**
- 1329.05 Zoning Map amendments.**
- 1329.06 Hearing and report.**
- 1329.07 Enactment.**

1329.01 Purpose.

The purpose of this Article 1329 is to prescribe the procedure by which amendments to the text of the Zoning Ordinance and to the Zoning Map may be made.

1329.02 Initiation.

- (a) Any amendment to the Zoning Ordinance may be initiated by the Town Council.
- (b) The Planning Commission or the owners of 50% or more of the real property in the area to which the petition relates, may petition to amend the Zoning Ordinance. The petition must be signed and presented to the Planning Commission if the petition is by 50% or more of owners of real property in the area to which the petition relates. The petition must be signed and presented to the Clerk of the Town if the petition is by the Planning Commission. Petitions by land owners shall be submitted on an approved application form.
- (c) An amendment to the Zoning Map may be sought by an owner of property within the Town by submitting the proposed amendment on an approved application form to the Planning Commission.

1329.03 Application; fee.

The Town Council must adopt by resolution an approved application form and set the fee schedule for Zoning Map amendments by the owner of a property within the Town.

1329.04 Amendment without hearing.

- (a) The Town Council may amend the Zoning Ordinance without satisfying the requirements of Section 1329.06 of this Article as long as the proposed amendment is not a Zoning Map amendment or an amendment that changes the allowed dwelling unit density of any Lot.
- (b) Before the Town Council may adopt such an amendment, the Planning Commission shall make a recommendation to the Town Council on:
 - (1) Whether the proposed text Amendment is consistent with the Comprehensive Plan; and
 - (2) Whether the proposed text Amendment is consistent with the intent and purpose of the Zoning Ordinance.
- (c) If such proposed amendment is not consistent with the preceding, the Town Council, before adopting such proposed amendment, must find, with the advice of the Planning Commission, that there have been major changes of an economic, physical or social

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

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nature within the area involved which were not anticipated when the Comprehensive Plan was adopted and that those changes have substantially altered the basic characteristics of the area.

1329.05 Zoning Map amendments.

If an application submitted by a land owner is for a reclassification of property to a different zoning district classification on the Zoning Map, the applicant shall address all the following in its application unless the Planning Commission determines otherwise. The Planning Commission shall give reasonable consideration and make a recommendation to Town Council on the following matters, as appropriate:

- (a) Whether the proposed zoning district classification is consistent with the Comprehensive Plan.
- (b) Whether there are any changed or changing conditions in the area affected that make the proposed rezoning appropriate.
- (c) Whether the range and intensity of uses in the proposed zoning district classification are compatible with the uses permitted on other property in the immediate vicinity.
- (d) Whether adequate utility, sewer and water, transportation, and other facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned.
- (e) The impact of the proposed rezoning on storm water Runoff.
- (f) The effect of uses allowed by the proposed rezoning on the structural capacity of the soil.
- (g) The effect of uses allowed by the proposed rezoning on the volume of vehicular (including construction) traffic and on traffic and pedestrian safety.
- (h) Whether a reasonably viable economic use of the subject property exists under the current zoning.
- (i) The effect of the proposed rezoning on the environment or natural features, wildlife habitat, vegetation, water quality and air quality.
- (j) Whether the proposed rezoning encourages economic development activities in areas designated by the Comprehensive Plan and provides desirable employment and enlarges the tax base.
- (k) Whether the proposed rezoning considers the current and future requirements of the community as to the use of the land.
- (l) Whether the proposed rezoning encourages the conservation of existing properties, particularly Contributing Resources, and their values.
- (m) Whether the proposed rezoning considers trends of growth or changes, employment, and economic factors, the need for housing, probable future economic and population growth of the Town.
- (n) The effect of the rezoning on natural, scenic, archaeological, or historic features of significant importance.

1329.06 Hearing and report.

- (a) Public hearing. If the Planning Commission does not initiate a proposed amendment, no later than 60 days after an application for a Zoning Map amendment or an amendment that changes the allowed dwelling unit density of any Lot, has been accepted as complete, the Planning Commission shall hold a duly noticed public hearing on the proposed amendment. At least 30 days prior to the public hearing, the Planning Commission shall publish notice of the date, time and place of the public hearing in a local newspaper of general circulation in the area affected by the

PART THIRTEEN — PROJECT AND ZONING CODE

proposed amendment, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of the West Virginia Code.

- (b) Report to Council. If the Planning Commission did not initiate the proposed amendment, no later than 60 days after its last public hearing meeting on the amendment, the Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment, which shall be based on the criteria set forth in Section 1329.04(b) and Section 1329.04(c) of this Article. Failure to meet this deadline, or such shorter period as the Town Council may direct, shall be deemed a recommendation of approval by the Planning Commission. Upon receipt of such recommendation, the Town Council, within 195 days of when the application was submitted to the Planning Commission, shall decide whether to adopt or deny the proposed amendment.
- (c) Amendment initiated by Planning Commission. If the Planning Commission does initiate a proposed amendment, no later than 60 days after an application for a Zoning Map amendment or an amendment that changes the allowed dwelling unit density of any Lot has been accepted as complete, the Town Council shall hold a duly noticed public hearing on the proposed amendment. At least 30 days prior to the public hearing, the Town Council shall publish notice of the date, time and place of the public hearing in a local newspaper of general circulation in the area affected by the proposed amendment, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of the West Virginia Code. Within 195 days of when the application was submitted, the Town Council shall decide whether to adopt or deny the proposed amendment.

1329.07 Enactment.

An enacted amendment to the Zoning Map shall be dated and certified by the Town Council and filed with the Town Recorder, the Planning Commission and Clerk of the Jefferson County Commission. An enacted amendment to the text of the Zoning Ordinance shall be filed with the Clerk of the Jefferson County Commission.

PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1330 Enforcement

- 1330.01 General Provisions.**
- 1330.02 Responsibility for Administration and Enforcement.**
- 1330.03 Enforcement agent.**
- 1330.04 Public nuisance declared.**
- 1330.05 Injunction; costs.**
- 1330.06 Penalty; fines.**
- 1330.07 Notice.**

1330.01 General Provisions.

- (a) No commission, board, agency, officer, or employee of the Town shall issue, grant, or approve any permit, license, certificate, or other authorization for any Project that would not be in compliance with the provisions of this Zoning Ordinance.
- (b) In administering the provisions of this Zoning Ordinance, the standard rule of rounding numbers to the nearest whole shall apply. When the unit of measurement results in a fraction less than one-half, the fraction shall be disregarded; fractions of one-half or more shall require the addition of one unit of measure.

1330.02 Responsibility for Administration and Enforcement.

- (a) It shall be the duty of the Board of Zoning Appeals to:
 - (1) Perform reviews of Project Permit applications as necessary to determine compliance with the provisions of this Zoning Ordinance.
 - (2) Maintain permanent and current records of all Project Permit applications and related records required by this Zoning Ordinance and of the hearings and actions thereon.
 - (3) Conduct investigations as necessary to determine compliance with this Zoning Ordinance.
 - (4) Participate in the abatement of violations of this Zoning Ordinance and aid in the prosecution of such violations.
- (b) It shall be the duty of the Ordinance Compliance Officer to:
 - (1) Maintain in current status the official Zoning Map.
 - (2) Provide information regarding this Zoning Ordinance upon request by citizens and public agencies.

1330.03 Enforcement agent.

The Ordinance Compliance Officer shall be delegated the responsibility to enforce this Zoning Ordinance. The Ordinance Compliance Officer shall cause to have promptly investigated every written complaint reasonably alleging any violation thereof to determine if a violation has occurred.

1330.04 Public nuisance declared.

Any Structure erected, raised or converted, or land or premises used in violation of any provision this Zoning Ordinance is a public nuisance and the owner of the Structure, land or premises shall be liable for maintaining a public nuisance.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and Ord. 2017-01 (passed 02-25-2017).

PART THIRTEEN — PROJECT AND ZONING CODE

1330.05 Injunction; costs.

- (a) The Planning Commission, the Board of Zoning Appeals or the Ordinance Compliance Officer may seek an injunction in the Circuit Court of the Jefferson County where the affected property is located to (i) restrain a person or unit of government from violating the provisions of this Zoning Ordinance; or (ii) direct a person or unit of government to remove a Structure erected in violation of the provisions of this Zoning Ordinance.
- (b) If the Planning Commission, the Board of Zoning Appeals or the Ordinance Compliance Officer is successful in any such suit, the respondent shall bear the costs of the action.

1330.06 Penalty; fines.

Any person who violates any provision of this Zoning Ordinance shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than \$50.00 or more than \$500.00 per day. Each day during which any violation continues shall constitute a separate offense.

1330.07 Notice.

When it appears that a violation of this Zoning Ordinance has occurred, the Town shall notify the responsible person by means of a written Violation Notice. The Violation Notice shall specify the nature of the violation and shall request that the violation be terminated within 30 days from the date appearing on the Notice. Failure to terminate the violation within the requested time shall be cause for the Ordinance Compliance Officer to:

- (a) Seek an injunction in the Circuit Court of Jefferson County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the removal of structures or land uses from the property involved, or
- (b) Pursue a warrant for the arrest of the person responsible for the violation and seek a conviction in the Circuit Court of Jefferson County.

PART THIRTEEN — PROJECT AND ZONING CODE

PART THIRTEEN—APPENDIX A Historic District Standards and Guidelines

See separate document for contents of Appendix A.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015). Appendix A was included in Ord. 2015-02 and Ord. 2015-07.

PART THIRTEEN — PROJECT AND ZONING CODE

PART THIRTEEN—APPENDIX B Standards for Project Activities

See separate document for contents of Appendix B.

HISTORY:

Appendix B was enacted by Ord. 2015-04 (passed 02-09-2015, effective 02-16-2015). Refined by Ord. 2015-07 (passed 07-13-2015).

PART FIFTEEN — FIRE PREVENTION CODE

PART FIFTEEN — FIRE PREVENTION CODE

Article 1505. Open Burning.

PART FIFTEEN — FIRE PREVENTION CODE

ARTICLE 1505 Open Burning

- 1505.01 Purpose.**
1505.02 Outdoor burning prohibited.
1505.25 Variances.
1505.99 Penalty.

CROSS REFERENCES

Authority of local departments—see WV Code 29-3A

1505.01 Purpose.

In order to protect and promote the public health, safety, comfort and general welfare of the residents of the Town and to protect property and property values, the Town Council of Harpers Ferry finds it necessary and advisable to adopt this article.

1505.02 Outdoor burning prohibited.

No person, firm, business or corporation shall at anytime burn out of doors any leaves, trash, rubbish, wood, garbage, paper, tires or any other combustible materials anywhere or anytime within the corporate limits of the Town of Harpers Ferry. This Article shall not be construed to prohibit the use of outdoor natural wood, charcoal or gas fires in a suitable and safe apparatus designed to contain the fire. A suitable and permitted fire receptacle is defined as a metal or ceramic container, specifically designed for holding fires, not exceeding 3 feet across at any point, neither in height nor width, and equipped with a functional screen or lid.

1505.25 Variances.

The Mayor may grant a written variance of the requirements of this ordinance if he or his representative believes that the variance request does not jeopardize property or public safety. The Mayor may delegate the authority to grant a variance to the Chief of Police. A written request for a variance must be submitted, and the Mayor's reply, or that of his representative, either granting or denying the variance, must also be in writing. Denial of a variance request may be appealed to the Town Council, which will have final say in the matter.

1505.99 Penalty.

- (a) Any person, firm, business or corporation violating any provision of this article or failing to comply therewith or with any of the requirements thereof shall be guilty of a misdemeanor punishable by a fine of not less than one hundred twenty-five dollars (\$125.00) nor more than five hundred dollars (\$500.00) and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- (b) The Mayor or such person as may be designated, is hereby expressly authorized and empowered to institute and maintain civil actions before any court or competent jurisdiction to restrain by injunction violations of this article, notwithstanding the penalties for the violation thereof set forth herein. (Ord. 86-3, passed 5-22-1986. Ord. 07-01, passed 4-9-2007.)

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

CHAPTER ONE – Building and Land Use Regulations.

CHAPTER TWO – Subdivision Regulations.

CHAPTER THREE – Derelict, Vacant, and Uninhabitable Structures.

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

CHAPTER ONE – Building and Land Use Regulations.

Article 1701. Authority.

Article 1702. Words, Terms and Phrases.

Article 1709. Voluntary Proffers.

Article 1711. Floodplain Ordinance.

Article 1713. Stormwater Management.

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1701 Authority

1701.01 Authority.

1701.02 Relationship to other ordinances.

1701.03 Interpretation, conflict and severability.

CROSS REFERENCES

Zoning authority generally—see WV Code 8A-7-1 *et seq.*

1701.01 Authority.

The Building, Land Use and Subdivision Code is enforceable only within the municipal boundaries of the Town and is established under the authority granted under WV Code 8A-6-2 and 8A-7-1 *et seq.* This Part is intended to comply with the provisions of 8A-6-2 and 8A-7-1 *et seq.* (Ord. 2017-08, passed 12-11-2017.)

1701.02 Relationship to other ordinances.

- (a) The Building, Land Use and Subdivision Code shall include any and all other provisions of the Codified Ordinances of Harpers Ferry that are necessary for an understanding of the Building and Housing Code and the attainment of its purposes. The Town Council and the Town intend that all ordinances related to land use, and all orders, rules and regulations established under these provisions, be enforced, interpreted and construed as a uniform system of land use regulation.
- (b) All departments, officials, agents and employees of the Town that or who are vested with the duty or authority to issue permits, certificates or approvals, shall conform to the provisions of the Project and Zoning Code and the Building, Land Use and Subdivision Code, and shall issue no permit, certificate or approval for any use, Structure or activity if the same would conflict with the provisions of the Project and Zoning Code and the Building, Land Use and Subdivision Code unless otherwise provided for by law. Any permit, certificate or approval issued in conflict with the provisions of the Project and Zoning Code and the Building, Land Use and Subdivision Code shall be null and void and, in no event, shall act as a waiver of the standards and requirements of these regulations. (Ord. 2015-03, passed 01-29-2015.)

1701.03 Interpretation, conflict and severability.

- (a) In their interpretation and application, the regulations in this Building, Land Use and Subdivision Code shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare.
- (b) The Building, Land Use and Subdivision Code is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law. Where the conditions imposed by, or under, these regulations are different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, statute or other provision of law, the provisions that are more restrictive and that impose the higher or greater standards shall control, except where federal or state law otherwise forbids it.
- (c) The provisions of the Building, Land Use and Subdivision Code are severable. If any part or provision of these regulations or their application to any person or

HISTORY:

Ord. 2015-03 (passed 01-29-2015, effective 02-16-2015) created Article 1701. Ord. 2015-03 was further refined by Ord. 2015-07 (passed 07-13-2015).

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or their application to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application. (Ord. 2015-03, passed 01-29-2015.)

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1702 Words, Terms and Phrases

1702.01 Definitions of words, terms and phrases.

CROSS REFERENCES

Definitions generally—see WV Code 8A-1-2 *et seq.*

1702.01 Definitions of words, terms and phrases.

For purposes of this Part Seventeen, the words, terms and phrases shall have the definitions or meanings ascribed to them within Article 1302. Articles 1711 and 1713 contain additional definitions of relevance to those Articles. If not defined in Article 1302 or within other sections of any of the ordinances of the Town, any word, phrase or term shall have the meaning or meanings ascribed to them in any standard or widely published dictionary or American Planning Association publication. Defined words, terms and phrases are not operable unless and until they are enacted into ordinances. The absence of use in ordinances denotes inoperability under these ordinances. (Ord. 2015-03, passed 01-29-2015.)

HISTORY:

Ord. 2015-03 (passed 01-29-2015, effective 02-16-2015) created Article 1702. Ord. 2015-03 was further refined by Ord. 2015-07 (passed 07-13-2015).

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

ARTICLE 1709 Voluntary Proffers

- 1709.01 Conditions and requirements.**
- 1709.02 Reasonability of conditions.**
- 1709.03 Unacceptable Voluntary Proffers.**
- 1709.04 Acceptable Voluntary Proffers.**

CROSS REFERENCES

Conditions as part of final plat approval—see WV Code 8A-6-2 *et seq.*

1709.01 Conditions and requirements.

The owner or the contract owner of real property requesting subdivision or site plan approval for real property, not already subject to proffer conditions, may volunteer to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project, including, but not limited to, constructing certain capital improvements, either on-site or off-site, and / or volunteer to provide cash in lieu of constructing the improvements (“Voluntary Proffer”), under the following specific conditions and requirements, in accordance with Final Plat approval in Section 1726.03 of Part Seventeen of the Codified Ordinances:

- (a) The Voluntary Proffer must be in writing in a form acceptable to the Corporation of Harpers Ferry (the “Town”);
- (b) The Voluntary Proffer must be offered to the Planning Commission for their recommendation to the Town Council prior to the public hearing before the Town Council;
- (c) It must be demonstrated that the subdivision or site development gives rise to the need for such Voluntary Proffer;
- (d) The Voluntary Proffer addresses projects contained in the Town’s capital improvements program and is reasonably related to the development project;
- (e) The Voluntary Proffer may contain items not normally within the capital improvements program; however, if accepted by the Town, the proffer will be added to the Town’s capital improvement program;
- (f) The Voluntary Proffer, once accepted by the Town Council, is binding upon both parties and cannot be amended unless agreed upon by both parties;
- (g) The owner or contract owner has the right to rely on the good faith of the Town once the Voluntary Proffer is implemented. The Town agrees that there will be no attempt to materially restrict, reduce, or modify the uses or density of the approved development unless there has been a mistake or change in circumstances that substantially affect the public health, safety, or welfare, or a change in state or federal law;
- (h) No proposed site plan, Preliminary Plat, or Final Plat of the owner or contract owner containing a Voluntary Proffer will be considered that requires an amendment to the Town’s Zoning Ordinance or the Town’s Comprehensive Plan unless all of the requirements for amendments to that Zoning Ordinance and / or Comprehensive Plan are first obtained in accordance with other provisions of the Codified Ordinances;
- (i) The Planning Commission or Town Council may not reject a proposed Preliminary Plat, Final Plat, or site plan solely upon the grounds that an owner or contract owner has failed or refused to include a Voluntary Proffer in that owner’s or contract owner’s

HISTORY:

Ord. 2017-08 (passed 12-11-2017) created Article 1709.

PART SEVENTEEN — BUILDING, LAND USE AND SUBDIVISION CODE

- proposed development plan; and
- (j) A Voluntary Proffer May not be accepted by the Planning Commission or Town Council that is in lieu of an impact fee that would otherwise go to schools unless approved by the Jefferson County Board of Education.

1709.02 Reasonability of conditions.

For purposes of this section, a condition contained in a Voluntary Proffer is considered reasonable if:

- (a) The development project results in the need for the conditions;
- (b) The conditions have a reasonable relation to the development project; and
- (c) All conditions are in conformity with the Town's Zoning Ordinance and Comprehensive Plan.

1709.03 Unacceptable Voluntary Proffers.

Unacceptable Voluntary Proffers include, but are not limited to:

- (a) On-site structure(s) without which the property could not be developed (e.g., water lines, sewer lines, stormwater management control structures, pump stations, booster stations, etc.).
- (b) Requirements detailed in the Zoning Ordinance, subdivision regulations, stormwater management regulations, or standard details.
- (c) Improvements in excess of what the Town requires and desires (e.g., 30-foot paved street when Town requirement is for 28 feet for the type of street anticipated).
- (d) Conformance to the master street plan rights-of-way, easements, and pavement sections.

1709.04 Acceptable Voluntary Proffers.

Acceptable Voluntary Proffers include, but are not limited to:

- (a) A financial investment in the Town's Water Works plant and distribution systems in order to provide capacity for clean water in a dependable manner to new development.
- (b) A financial investment in the Harpers Ferry-Bolivar Public Service District sewer plan and infrastructure to provide additional capacity to accommodate the new development.
- (c) A financial investment in the Friendship Fire Company, or its successor, for equipment to support fire protection required by new development.
- (d) A financial investment in the Town's Police Department to support operational needs generated by new development.
- (e) Park or open-space acreage beyond the minimum requirements.
- (f) Improvements to Town parks (e.g., play equipment, backstops, fencing, landscaping, street furniture, restrooms, etc.).

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ARTICLE 1711 Floodplain Ordinance

- 1711.01 General provisions.
- 1711.02 Words, terms and phrases.
- 1711.03 Establishment of the Floodplain area.
- 1711.04 Utilization of the Floodplain area.
- 1711.05 Criteria for Project and Site Plan approval.
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- 1711.08 Appeals and penalties.
- 1711.09 Government actions.
- 1711.10 Severability and municipal liability.
- 1711.11 Enactment.

CROSS REFERENCES

Authority to enact—see WV Code 7-1-3v

Authority to eliminate hazards to public health and safety—see WV Code 7-1-3kk

Requirement as part of Land Development ordinances—see WV Code 8A-4-2

Requirement as part of Land Development plan and Plat—see WV Code 8A-5-7

Authority to enact as part of zoning ordinances—see WV Code 8A-7-2

1711.01 General provisions.

(a) Intent.

The intent of this ordinance is to:

- (1) Promote the general health, welfare, and safety of the community.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian, and to protect natural Drainage.
- (4) Assure the County Assessor obtains information concerning Improvement of real property as required by West Virginia State Code 11-3-3A.
- (5) Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

(b) Abrogation and Greater Restrictions. This ordinance supersedes any ordinance currently in effect for Floodplain areas. Any other ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(c) Applicability. It shall be unlawful for any Project Permit to be issued in the designated Floodplain area unless a Floodplain Certificate of Compliance has been obtained from the Floodplain Administrator or a waiver has been approved in writing by the Planning Commission, the Mayor, or the Mayor's designee based upon a finding of Reasonably Safe From Flooding. A Certificate of Compliance cannot be approved or waived unless a Site Plan has been approved based upon an application containing elevation data for the entire Site (see Article 1305.03(b)(1)). A waiver decision may be appealed to the Town Council within 30 days and a result obtained within 60 days. Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are

HISTORY:

Art. 1711 was enacted by Town Council on 12-14-2009. Amended by Ord. 2015-07 (passed 07-13-2015).

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consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding..

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.

- (d) Matters not provided for specifically. Where conditions are encountered that are not specifically provided for herein, the Planning Commission 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. A Planning Commission decision may be appealed to the Town Council within 30 Days and receive a decision within 60 days.

1711.02 Words, terms and phrases.

For the purpose of this Article, the rules and definitions given in Article 1302 shall apply. The following definitions are added for use in this Article.

Base flood. The flood, which has been selected to serve as the basis upon which the Floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

Base Flood Elevation. The water surface elevation of the Base Flood in relation to the datum specified on the community's Flood Insurance Rate Map; for purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Certificate of Compliance, Floodplain. A certification that the entire development, including the elevation of fill or the Lowest Floor of a Structure is in compliance with all of the provisions of this ordinance.

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 Floodplain.

Flood Insurance Rate Map (FIRM). An official map of a community, on which the Administrator of the NFIP has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS). The official report in which the Federal Emergency Management Agency (FEMA) has provided flood profiles, Floodway information, and water surface elevations.

Floodplain.

- (1) A relatively flat or low land area adjoining a river, Stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or Runoff of surface waters from any source.

Floodplain Administrator. The President of the Planning Commission shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.

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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.

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.

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.

Lowest Floor. The lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2-93 (FIA-TB-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 is not built so as to render the Structure in violation of the applicable non-elevation design requirements of this ordinance.

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.

Principally Above Ground. Where at least 51 percent of the actual cash value of a Structure, less land value, is above ground.

Reasonably Safe From Flooding. Means that during the Base Flood, water will not damage Structures and any subsurface waters related to the Base Flood will not damage existing or proposed Structures.

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 (FEMA) in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

1711.03 Establishment of the Floodplain area.

(a) Identification.

- (1) The identified Floodplain area shall be those areas of the Corporation of Harpers Ferry 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 Corporation of Harpers Ferry by the Federal Emergency Management Agency (FEMA) dated 18 December 2009 or the most recent revision thereof.
- (2) The identified Floodplain area shall also be those areas of the Corporation of

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Harpers Ferry which have been identified as flood hazard areas by the Corporation of Harpers Ferry by use of historic or other technical data and shown on the Corporation of Harpers Ferry "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 Floodplain areas. The identified Floodplain shall consist of the following four specific areas:
- (1) The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the FIRM. The term shall also include Floodway areas identified in other studies for the Approximated area discussed in Section D below. In Floodplain 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 Planning Commission, be considered to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the Floodplain as measured from the top of the bank nearest the Site to the upland limit of the 100 year Floodplain boundary.
 - (2) The Floodway Fringe area (F2) shall be those areas 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 (F3) 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 area (F4) 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. For these areas, elevation and Floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering 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.
- (c) Changes in designation of area.
- (1) The delineation of the identified Floodplain area may be revised by the Planning Commission 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 Insurance Administration (FIA).
 - (2) A community'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 community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
 - (3) The Planning Commission may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical

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information such as flood of record, historic high water marks and/or topographic data.

- (d) Elevations prevail.
 - (1) If the lowest natural grade adjacent to proposed Development within an identified flood hazard area is at or above the Base Flood Elevation specified in the Flood Insurance Study, the structure shall not be required to conform to the flood prevention design and construction standards or flood-related Development codes in Article 1711.04. Topographic data certified by a registered professional engineer or licensed professional surveyor shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator. The applicant is advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the Special Flood Hazard Area designation removed from the Parcel or Structure.
 - (2) If the lowest natural grade adjacent to proposed Development is below the Base Flood Elevation specified in the Flood Insurance Study, the Site shall be considered to be within the Floodplain area and the proposed Structure shall be required to conform to all appropriate provisions of this Ordinance.
- (e) Boundary disputes. Should a dispute concerning any Floodplain area boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Town Council. The burden of proof shall be on the appellant / applicant.

1711.04 Utilization of the Floodplain area.

- (a) Floodway (F1).
 - (1) Within any Floodway area (F1), 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 will not result in any increase in the Base Flood Elevation.
 - (2) 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.
 - (3) 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.
 - (4) When the Floodway is the only reasonable alternative the applicant shall demonstrate that the Floodway encroachment is the minimum necessary to accomplish the project.
 - (5) 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.
- (b) Floodway fringe (F2) and Approximated Floodplain (F4).
 - (1) In the Floodway Fringe (F2) and Approximated Floodplain (F4), 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.
 - (2) In the Approximated Floodplain (F4) the Floodplain Manager shall review, or

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shall cause to be reviewed, all proposed Development not covered by sub-section B below to determine (1) the amount being invested and (2) the specific flood risk at the Building Site and assign a "minimal, moderate or significant" risk level. This information shall then be used together with the "Corporation of Harpers Ferry Approximate A zone administrative procedures" to determine the level of technical data required to establish a height above which the Development will be "Reasonably Safe From Flooding".

- (3) All Subdivision proposals and other proposed new Developments which are proposed to take place either fully or partially within the Approximated Floodplain area (F4) and which are greater than ten (10) Lots or two (2) acres, whichever is the lesser, shall include base flood elevation data.
- (4) This 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.
- (5) 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.
- (c) AE area without Floodway (F3). Within any AE area without Floodway, 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 area where determined.
- (d) Alteration or relocation of a Stream.
 - (1) Whenever a developer intends to alter or relocate a Stream within the Floodplain Area, the developer shall notify in writing, by certified mail, the Corporation of Harpers Ferry Floodplain Administrator, the West Virginia Division of Homeland Security and Emergency Management, 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 Insurance Administration. In addition, prior to issuing the Certificate, the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval. Contact information for State and Federal permitting authorities as well as addresses for required notification of appropriate County, State & Federal government agencies are contained in the Corporation of Harpers Ferry Stream Alteration administrative procedures.
 - (2) The developer shall also assure the Planning Commission in writing that the 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 professional Engineers, 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

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- 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 ordinance.
 - (5) The developer is required to provide the community 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 1711.08 of this ordinance.
 - (6) The applicant must 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 must pay any fees or other costs assessed by FEMA for this purpose.

1711.05 Criteria for Project 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 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 2-93 (FIA-TB-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) Approved by County Health Department for Well, Septic and other permits.
- (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 West Virginia 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.

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- (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 acknowledgment that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.
 - (7) An acknowledgment 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 West Virginia Code of State Regulations, Title 28, Series 4, and all addenda to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The community does not require and will not keep copies of the contracts or addenda. Failure to present contract or addenda 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. 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 ordinance.

Depending on the type of Structure involved, the following information shall also be included in the application for work within the Floodplain Area:

- (1) For Structures to be elevated two feet above the Base Flood Elevation:
 - A. A plan showing the size of the proposed Structure and its relation to the Lot where it is to be constructed.
 - B. 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.
 - C. 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.
 - D. 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.
 - E. 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.
 - F. A Non-conversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas

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below Base Flood Elevation that are 5 feet high or more). This agreement shall state:

- (i) 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 ordinance.
 - (ii) 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 8.3 of this ordinance.
- (2) 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 ordinance. 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.

 - A. 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.
 - B. 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.
 - C. 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 the Structure in question, together with attendant utility and sanitary facilities is designed so that:
 - (i) 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.
 - (ii) 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.
- (3) For Structures constructed of flood resistant materials – used solely for parking of vehicles, or storage (Accessory Structures only):
 - A. 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.
 - B. An elevation report or certificate, based on finished construction, must be prepared by a licensed professional surveyor or others of demonstrated

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qualifications. This certificate or report must confirm that the Structure in question, together with attendant utilities is designed so that:

- (i) Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-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.
- (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or Architect 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.

C. 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 8.3 of this ordinance.

(d) Site Plan criteria. The owner or developer of any proposed Development, including Subdivisions Commercial Development and Manufactured Home Parks, shall submit a preliminary Site Plan to the Floodplain Administrator that includes the following information:

- (1) Name of registered professional Engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
- (2) A map showing the location of the proposed Subdivision and / or Development with respect to Floodplain areas, proposed Lot sites, and fills. In addition, it is required that all Subdivision proposals and other proposed new Developments which are proposed to take place either fully or partially within the approximated Floodplain (F4) 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. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the Base Flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed 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 technical methods used correctly reflect currently accepted technical concepts.

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- (3) Where the Subdivision and / or Development lie partially or completely in the Floodplain 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 Floodplain areas.
- (4) Where the Subdivision or other Development Site lies partially in the Floodplain area and all proposed Development including fill will take place on natural grade a significant vertical distance above the Floodplain boundary depicted on the map, preparation 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 and clearly delineate the area to be developed and the location of the Floodplain areas as depicted on the FEMA map. A registered professional Engineer, licensed professional surveyor or others of demonstrated qualifications must certify the Site Plan.
- (e) Restrictions to Subdivision of land in Floodplain areas. Subdivision of land in the Floodplain area must result in Lots that include a buildable portion outside of the identified 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 Floodplain limits. All new Structures must be sited on the portion of the subdivided Lot that is located outside of the identified flood hazard area.

1711.06 Specific requirements.

- (a) Design and construction standards. 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 Floodplain Area.
 - (1) Basements and Lowest Floors.
 - A. Residential Structures - All new construction, relocation, substantial Improvements, including repair of substantial damage, of residential Structures must have the Lowest Floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
 - B. Non-residential Structures - All new construction, relocation, substantial Improvements, including repair of substantial damage, of nonresidential Structures must 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.
 - C. 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 must either be certified by a registered professional Engineer or meet or exceed the following minimum criteria:

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- (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.
- (2) A Non-conversion Agreement shall be signed by the applicant on all flood-proofed Structures and any elevated Structures when the community 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 ordinance.
 - 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 8.3 of this ordinance.
- (3) Manufactured home placement. Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus, manufactured homes shall not be sited within identified flood hazard areas.
- (4) Accessory Structures.
 - A. Except as provided in subsection 2 below, Accessory Structures shall be located out of the Floodplain area or elevated to two feet above the Base Flood Elevation.
 - B. Where Accessory 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:
 - (i) Structures shall be no more than 600 square feet in size and valued at less than \$10,000.00.
 - (ii) Floors shall be at or above grade on at least one side.
 - (iii) Structures shall be located, oriented and constructed to minimize flood damage.
 - (iv) 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.
 - (v) Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2) shall be used in the construction of the Structure from the lowest structural element to two feet above the Base Flood Elevation.
 - (vi) Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - (vii) The venting requirements contained in Section 6.1 (A) are

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applicable and shall be strictly adhered to.

- (5) A Non-conversion Agreement shall be signed by the applicant stating that the use of the Accessory 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 ordinance. 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 8.3 of this ordinance.
- (6) Recreational vehicle placement. Recreational vehicles to be placed within any Floodplain area shall either:
 - A. Be on site for fewer than 180 consecutive days; or,
 - B. 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.
- (7) Harpers Ferry officially recognizes the beneficial functions the Floodplain serves in storage and transportation of water during floods. Placement of fill in the Floodplain area is discouraged and should be minimized. Placement of fill in the Floodplain is restricted to functional purposes such as elevating a Structure. Placement of fill to dispose of spoil from excavation, elevation of 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. All fill placed in the Floodplain 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 Harpers Ferry Floodplain Manager may require the applicant to show through hydrologic and hydraulic engineering techniques that proposed fill would not adversely affect adjacent properties. Hydrologic and hydraulic analyses shall be undertaken only by professional Engineers or others of demonstrated qualifications, who shall certify that the technical 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 Harpers Ferry Floodplain Manager.
 - 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. 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 the 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

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- the Building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential Structure.
- D. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted.
 - E. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling.
 - F. 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.
 - G. Fill slopes exposed to flood waters with expected velocities during the occurrence of the Base Flood of five feet per second or less must be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - H. Fill slopes exposed to flood waters with expected velocities during the occurrence of the Base Flood of greater than five feet per second must be protected from erosion by armoring them with stone or rock slope protection.
 - I. The applicant must 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 must pay any fees or other costs assessed by FEMA for this purpose.
- (8) 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.
- A. Whenever possible, Structures and other Development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - B. 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.
- (9) Anchoring.
- A. 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.
 - B. 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.
- (10) Flood protection setback.
- A. 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.

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- B. Necessary public works and temporary construction may be exempted from this subsection.
 - C. The Planning Commission 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 Rear Setbacks.
- (11) Storage.
- A. 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.
 - B. 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.
 - C. 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.
- (12) Utility and facility requirements.
- A. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
 - B. 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.
 - C. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
 - D. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (13) Drainage. Adequate Drainage shall be provided to reduce exposure to flood hazard.
- (14) Backflow preventers. Backflow prevention valves should be used for all enclosed Structures with sewage or Drainage facilities located in the Floodplain.

1711.07 Administration.

- (a) Designation of Floodplain Administrator. The President of the Planning Commission is hereby appointed as Floodplain Administrator to administer and implement this local law by granting or denying Floodplain Development permits in accordance with its provisions. The Town Council may enter into an agreement with Jefferson County for these functions.
- (b) Project 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 within the Corporation of Harpers Ferry, unless a complete Project Permit application and Site Plan have been submitted and a Certificate has been obtained from the Floodplain Administrator as determined by this Article.

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- (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 Certificate to any applicant who employs a contractor 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 Certificate, shall require the applicant to furnish satisfactory proof that the applicant, or the contractor they employ, is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant, or employed contractor, 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 Certificates to the County Assessor as required by West Virginia State Code 11-3-3A.
 - (7) The Corporation of Harpers Ferry 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 Corporation of Harpers Ferry, and shall include all information stipulated under this ordinance.
- (e) Changes. After the issuance of a Certificate 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.
- (1) The Floodplain Administrator shall issue a Certificate placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the Certificate, the date of its issuance and be signed by the Floodplain Administrator.
 - (2) In areas of flood hazard it shall be unlawful to inspect and approve or install a temporary electrical utility connection to any Building or premises, or both, or part thereof hereafter created, erected or rebuilt until a placard has been issued by the Floodplain Administrator indicating that the Development has applied for a Certificate and agreed to the requirements of this ordinance in the case of Development occurring inside of the identified flood hazard area.
- (g) Stop-work orders, inspections and revocations.
- (1) Stop-work orders.
 - A. The Floodplain Administrator shall issue, or cause to be issued, a "Stop Work Order Notice" for any Development found ongoing in the Floodplain area without having obtained a Certificate. Disregard of a stop work order shall subject the violator to the penalties described in Section 1711.08.

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- B. The Floodplain Administrator shall issue, or cause to be issued, a “Stop Work Order Notice” for any Development found non-compliant with the provisions of this law and / or the conditions of the permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 1711.08.
- (2) Inspections and revocations.
 - A. 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.
 - B. If the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall issue a “Stop Work Order Notice” revoke the permit and request a temporary injunction.
 - 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 ordinance.
- (h) Floodplain 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 Floodplain Certificate of Compliance has been issued by the 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 1711.08.
 - (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 Floodplain Certificate of Compliance issued by the 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 1711.08.
 - (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 Floodplain 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 1711.08.
 - (4) A Floodplain Certificate of Compliance shall be issued by the Floodplain 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 ordinance 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.
- (i) Fees.

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- (1) No fee shall be charged for a Floodplain determination.
- (2) A non-refundable fee will be collected at the time the application for a Project Permit in the Floodplain is submitted. The fee will provide for the cost of plan review, administration, and management of the permitting process and inspection. A fee schedule shall be established by resolution of the Town Council of Harpers Ferry based upon the complexity of the project and may be amended from time to time.
- (3) In addition, the applicant shall be responsible for reimbursing the Corporation of Harpers Ferry 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.

1711.08 Appeals and penalties.

- (a) Appeals. Whenever any person is aggrieved by a decision of the Floodplain Administrator or the Planning Commission with respect to the provision of this ordinance, it is the right of that person to appeal to the Town Council of the Corporation of Harpers Ferry. Such appeal must be filed with the Town Council, in writing, within 30 days after notification of the decision. Upon receipt of such appeal, the Council shall set a time and place not less than ten nor more than 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 Town Council 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 Town Council.
 - (2) All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 - A. Affirmative decisions shall only be issued by the Town Council upon:
 - (i) A showing of good and sufficient cause,
 - (ii) A determination that failure to grant the appeal would result in exceptional hardship to the applicant, and
 - (iii) 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 locals 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 Town Council shall notify the applicant in writing over the signature of a community official that:

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- (i) 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,
 - (ii) 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 Town Council shall:
 - (i) Maintain a record of all decisions including justification for their issuance; and
 - (ii) Report such decisions issued in its biannual report to the Federal Insurance Administration.
 - 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 community, shall be unlawful and shall be referred by the Mayor to the municipal attorney who shall expeditiously arrange to prosecute all such violators. A violator shall, upon conviction, pay a fine to the Corporation of Harpers Ferry of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. 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 Corporation of Harpers Ferry to be a public nuisance and abatable as such.

1711.09 Government actions.

- (a) **Municipal annexation.**
 - (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 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 Floodplain boundaries, Base Flood Elevation and location of the 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 must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce Floodplain management regulations for a particular area. In order that all Flood Insurance

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Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished Floodplain management regulatory authority must be included with the notification.

- (5) NFIP-participating communities must notify the West Virginia Division of Homeland Security and Emergency Management in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce Floodplain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished Floodplain management regulatory authority must 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 must 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.

1711.10 Severability and municipal liability.

- (a) Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance 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 Corporation of Harpers Ferry, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Corporation of Harpers Ferry. All applicants proposing Development in or near a flood hazard area are urged to locate Development as far away from, and as high above, all flooding sources as possible.

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ARTICLE 1713 Stormwater Management

- 1713.01 General provisions.
- 1713.02 Words, terms and phrases.
- 1713.03 Stormwater Management Program procedures and requirements.
- 1713.04 Waivers and modifications of requirements.
- 1713.05 Stormwater Management design criteria.
- 1713.06 Construction inspection.
- 1713.07 Post-construction maintenance, inspection and repair of stormwater facilities.
- 1713.08 Enforcement and penalties.
- 1713.09 Appeals.

CROSS REFERENCES

Combined Waterworks and Sewer Systems—see WV Code 8-20
Subdivision and Land Development Ordinance—see WV Code 8A-4
Sewage Works and Stormwater Works—see WV Code 16-13
Water Pollution Control Act—see WV Code 22-11

1713.01 General provisions.

- (a) Short title. This ordinance, and ordinances supplemental or amendatory thereto, shall be known and may be cited as the "Stormwater Management Ordinance of the Corporation of Harpers Ferry, West Virginia" and hereinafter referred to as the "Ordinance".
- (b) Purpose and objectives. This ordinance has the following purposes:
 - (1) Protect, maintain, and enhance the environment of the Corporation of Harpers Ferry and the public health, safety, and general welfare of the citizens of Harpers Ferry by controlling discharges of pollutants to the stormwater system, and maintain and improve the quality of the receiving waters into which all stormwater flows, including, without limitation, lakes, rivers, Streams, ponds, wetlands, and groundwater of the community.
 - (2) Enable the Corporation of Harpers Ferry to comply with the West Virginia Department of Environmental Protection (DEP)-administered National Pollutant Discharge Elimination System (NPDES) stormwater permit program and applicable regulations (40 CFR, §122.26) for stormwater discharges.
 - (3) Enable the Corporation of Harpers Ferry to comply with the Environmental Protection Agency's (EPA's) Total Maximum Daily Loads (TMDLs) Water Quality Standards established for the Potomac River Basin.
 - (4) Enable the Corporation of Harpers Ferry to comply with the West Virginia Water Pollution Control Act, West Virginia Code, Chapter 22, Article 11.
 - (5) Allow the Corporation of Harpers Ferry to exercise the powers granted in West Virginia Code §8-12-5 and §8-20-1a, which provide, among other powers municipal corporations have with respect to stormwater systems and Stormwater Management programs, the power by ordinance or resolution, as the case may require, and by appropriate action based thereon to do the following:
 - A. Exercise general regulation over the planning, location, construction,

HISTORY:

Ord. 2015-01 (passed 02-02-2015) created Article 1713. Amended by Ord. 2015-07 (passed 07-13-2015).

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operation, and maintenance of stormwater facilities in the Corporation of Harpers Ferry whether or not owned and operated by the Town;

- B. Adopt any rules and regulations deemed necessary to accomplish the purposes of this Ordinance, including the adoption of a system of fees for services and permits;
- C. Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants as may be necessary to protect water quality;
- D. Review and approve plans and Plats for Stormwater Management in proposed residential and nonresidential subdivisions as applicable under Subsection (d) below;
- E. Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities;
- F. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- G. Regulate and prohibit discharges into stormwater facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
- H. Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of stormwater contamination, whether public or private.

(c) Administering entity.

- (1) Pursuant to West Virginia Code §16-13-1, any municipal corporation and / or sanitary district in the State of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate, and maintain within and / or without the corporate limits of such municipal corporation a stormwater system, stormwater works, and Stormwater Management program as defined herein.
- (2) The Corporation of Harpers Ferry is the entity responsible for administering the provisions of this Ordinance.

(d) Applicability.

- (1) This Ordinance shall be applicable to all Land Disturbance Activities as defined herein. These standards apply to any new Development or Redevelopment Parcel that meets one or more of the following criteria:
 - A. New Development that involves the creation of 5,000 square feet or more of disturbance;
 - B. Redevelopment that includes the creation, addition, or replacement of 5,000 square feet or more of disturbance; or
 - C. Land Disturbance Activities that are smaller than the minimum applicability criteria set forth in items A and B above, if such activities are part of a larger Common Plan of Development, even though multiple, separate, and distinct land disturbance activities may take place at different times on different schedules.
- (2) Compatibility with other permits and ordinance requirements.
 - A. Compliance with the requirements herein does not create exclusion to permitting requirements from the West Virginia DEP, the U.S. Army Corps of Engineers, or any other agency or reviewing body that has jurisdiction over the proposed project area.
 - B. Whenever this Ordinance imposes a conflicting restriction regarding stormwater regulation, the provisions of the more restrictive ordinance

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shall control. Where, due to vagueness or lack of clarity in the language of this Ordinance, a reasonable doubt exists regarding the meaning of any restriction, said doubt shall be resolved in favor of the property owner.

- (3) The following activities are exempt from this Ordinance:
 - A. Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
 - B. The construction of one single-family residence, or additions or modifications to existing single-family residential Structures. However:
 - 1. The property owner is responsible for preventing soil accumulation on the road surface as a result of the construction, addition, or modification.
 - 2. The property owner shall prevent sediment and Runoff Drainage from impacting neighboring properties as a result of the construction, addition, or modification.
 - 3. The following agreement shall be submitted to the Corporation of Harpers Ferry: *"In lieu of submission of a Stormwater Management Plan for the construction of this single-family dwelling, I agree to comply with any reasonable requirements determined necessary by employees of the Corporation of Harpers Ferry in accordance with published Harpers Ferry Standards for Project Activities. Such requirements shall be based on the conservation standards contained in the Town's Stormwater Management Ordinance and shall represent the minimum practices necessary to provide adequate control of erosion and sedimentation on or resulting from the project. I further understand that failure to comply with such requirements following notice by the representatives of the Town could result in a citation for violation of the Stormwater Ordinance."*
 - C. Any logging or Agricultural Activity that is consistent with an approved farm conservation plan or a timber management plan prepared or approved by the Eastern Panhandle Conservation District.
 - D. Repairs to any Stormwater Management Facility.
- (e) Severability. If any section, clause, sentence, part, or provision hereof shall be held to be invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this Ordinance.
- (f) Incorporation by reference.
 - (1) For the purposes of this Ordinance, the Corporation of Harpers Ferry has adopted by reference the following published standards:
 - A. *Virginia Stormwater Management Handbook*, volumes 1 and 2, 1st ed. (1999), or latest edition.
 - B. Chesapeake Stormwater Network Technical Bulletin No. 1, "Stormwater Design Guidelines for Karst Terrain in the Chesapeake Bay Watershed", version 2.0 (June 2009).
 - C. Darrin Holmes and Ramesh Chintala, *West Virginia Division of Highways Drainage Manual*, 3rd ed. (Charleston, WV: West Virginia Department of Transportation, Division of Highways, Engineering Division, Hydraulic and Drainage Unit, December 2007), <http://www.transportation.wv.gov/highways/engineering/Pages/publications.aspx>.

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- (2) All Stormwater Management Plans shall be consistent with the regulations and design standards established in the listed published standards.

1713.02 Words, terms and phrases. ^[1713.02]

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.
- (b) The words “includes” or “including” shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.
- (c) The words “shall” and “must” are mandatory; the words “may” and “should” are permissive.
- (d) Words defined herein may be listed in a separate ordinance by a different definition. If this occurs, then the word shall be used and interpreted within each code in accordance with the specific definition contained therein.

Agricultural Activity — The occupation, business, or science of cultivating the land, producing crops, and raising livestock.

Best Management Practice — Structural or nonstructural practice that is designed to minimize the impacts of changes in land use on surface and groundwater systems. Structural BMP refers to basins or facilities engineered for the purpose of reducing the pollutant load in stormwater Runoff, such as Bioretention, Constructed Stormwater Wetlands, etc. Nonstructural BMP refers to land use or development practices that are determined to be effective in minimizing the impact on receiving stream systems, such as preservation of open space and Stream Buffers, disconnection of impervious surfaces, etc. Also known as Integrated Management Practices (IMP).

Bioretention Basin — Water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed (optional), and into the in-situ material; also called rain gardens.

Common Plan of Development — A contiguous construction project where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The “plan” is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions.

Constructed Stormwater Wetlands — Areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

Curve Number (CN) — A numerical representation of a given area's hydrologic soil group, plant cover, Impervious Cover, interception and surface storage derived in accordance with Natural Resource Conservation Service methods. This number is used to convert rainfall depth into Runoff volume. Sometimes referred to as a Runoff CN.

FOOTNOTES:

1713.02 This section was previously codified as 1713.09.

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Design Storm — A selected rainfall Hyetograph of specified amount, intensity, duration, and Frequency that is used as a basis for design.

Detention — The temporary impoundment or holding of stormwater Runoff.

Detention Basin — A Stormwater Management Facility that temporarily impounds Runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via Infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and therefore are not considered in the facility's design. Since an extended Detention Basin impounds Runoff only temporarily, it is normally dry during non-rainfall periods.

Development — See "Land Development".

Diameter at Breast Height (DBH) — The standard method of expressing the diameter of the trunk of a standing tree.

EPA — U.S. Environmental Protection Agency.

Erosion — The wearing away of the land surface by running water, wind, ice, or other geological agents.

Erosion, Accelerated — Erosion in excess of what is presumed or estimated to be naturally occurring levels and is a direct result of human activities.

Erosion, Gully — Erosion process whereby water accumulates in narrow channels and removes the soil to depths ranging from a few inches to 1 or 2 feet to as much as 75 to 100 feet.

Erosion, Rill — Erosion process in which numerous small channels only several inches deep are formed.

Erosion, Sheet — Spattering of small soil particles caused by the impact of raindrops on wet soils. The loosened and spattered particles may subsequently be removed by surface Runoff.

Erosion and Sedimentation Control Plan — A Site-specific plan identifying Best Management Practices or ways in which accelerated Erosion and sediment pollution will be minimized.

Frequency, Design Storm Frequency — The recurrence interval of storm events having the same duration and volume. The Frequency of a specified Design Storm can be expressed either in terms of Exceedance Probability or Return Period.

Exceedance Probability — The probability that an event having a specified volume and duration will be exceeded in one time period, usually assumed to be one year. If a storm has a 1% chance of occurring in any given year, then it has an Exceedance Probability of 0.01.

Homeowners Association — The association of persons formed by the residents of a

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housing locality to address their common problems and issues connected with their residence and their living in that area.

Infiltration — The downward entry of water into soil.

Karst Terrain — Regions that are characterized by formations underlain by carbonate rock and typified by the presence of limestone caverns and sinkholes.

Land Development — The development of one or more lots, tracts, or parcels of land by any means and for any purpose, but does not include easements, rights-of-way, or construction of private roads for extraction, harvesting, or transporting of natural resources. This definition includes projects that are part of a larger common plan of development or sale.

Land Development, Major — The development and / or subdivision of more than five lots, tracts, or parcels or any nonresidential Land Development that disturbs more than 5,000 square feet. Also, any development and / or subdivision that includes a new street shall be considered a major Land Development.

Land Development, Minor — The development and / or subdivision of five or fewer lots, tracts, or parcels; or where land is being transferred to be combined with an existing lot. To qualify as a Minor Land Development, the proposed project must be placed on existing streets and no new streets shall be proposed.

Land Disturbance Activity — Any land change that may result in soil Erosion from water or wind or the movement of sediments into state waters or onto lands in the State of West Virginia, including but not limited to clearing, grading, excavating, transporting, and filling of land.

Landscaping — The placement of vegetation in and around stormwater management BMPs.

Low Impact Development (LID) — Hydrologically functional Site design with pollution prevention measures to reduce impacts and compensate for development impacts on hydrology and water quality.

Managed Turf — Any of various grasses (such as Kentucky bluegrass or perennial ryegrass) grown to form turf.

Municipal Separate Storm Sewer System (MS4) — An MS4 is a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) with the following characteristics:

- (a) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created or pursuant to state law), including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the United States;
- (b) Designed or used for collecting or conveying stormwater;
- (c) Not a combined sewer;
- (d) Not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

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National Pollutant Discharge Elimination System (NPDES) — The national program for issuing, modifying, monitoring, and enforcing permits under Sections 307, 402, 318, and 405 of the Clean Water Act.

Nonpoint Source Pollution — Contaminants such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxins whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater Runoff.

Parcel — A portion of a subdivision or any other lot of land intended as a unit for transfer of ownership or for development or both. The word "Parcel" includes the words "plot" or "Lot".

Peak Discharge — The maximum rate of flow associated with a given rainfall event or channel.

Percolation Rate — The velocity at which water moves through saturated, granular material.

Post-development — Refers to conditions that reasonably may be expected or anticipated to exist after completion of the Land Development activity on a specific Site or tract of land.

Pre-development — Refers to the conditions that exist at the time that plans for the Land Development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted establishes the Pre-development conditions.

Redevelopment — Any construction, alteration, or improvement on existing development.

Retention — Permanent storage of stormwater.

Retention Basin — A Stormwater Management Facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and therefore is normally wet, even during non-rainfall periods. Storm Runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel Erosion.

Return Period — The average length of time between events having the same volume and duration. If a storm has a 1% chance of occurring in any given year, than it has a Return Period of 100 years.

Riparian — Relating to or inhabiting the banks of a natural course of water.

Runoff — The portion of precipitation, snow melt, or irrigation water that runs off the land into surface waters.

Runoff Coefficient — The fraction of total rainfall that appears as Runoff; represented as "C" in the rational method formula.

Runoff Reduction — The runoff reduction approach that seeks to maintain the same predevelopment runoff volume delivered to a body of water after a site is developed.

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Sand Filter — A contained bed of sand that acts to filter the first flush of Runoff. The Runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

Silt Fence — A temporary linear sediment barrier of permeable fabric designed to intercept and slow the flow of sediment-laden sheet flow Runoff.

Stormwater Hotspot — An area where the land use or activities are considered to generate Runoff with concentrations of pollutants in excess of those typically found in stormwater (see Table IV-1).

Stormwater Management Facility — A device that controls stormwater Runoff and changes the characteristics of that Runoff, including but not limited to the quantity and quality, the period of release, or the velocity of flow.

Stormwater Management Plan — A document containing material for describing how existing Runoff characteristics will be affected by a Land Development project and methods for complying with the requirements of the local program or chapter.

Stormwater Pollution Prevention Plan (SWPPP) — The erosion and sediment control plan and the post development plan submitted as part of the Site Registration Application form required in the NPDES General Permit.

Stream Buffers — The zones of variable width that are located along both sides of a stream and are designed to provide a protective natural area along a stream corridor.

Total Maximum Daily Load (TMDL) — A calculation of the maximum amount of a pollutant that a body of water can receive and still meet Water Quality Standards, and an allocation of that amount to the pollutant's sources.

Town — The municipal Corporation of Harpers Ferry, West Virginia.

Water Quality Standards — State-adopted and EPA-approved ambient standards for water bodies. The standards prescribe the use of the water body and establish the water quality criteria that must be met to protect designated uses.

1713.03 Stormwater Management Program procedures and requirements.

(a) Land Disturbance Permit.

(1) Requirements.

- A. Any entity proposing to perform any Land Disturbance Activity pursuant to the applicability standards outlined under Section 1713.01(d) of this Ordinance shall obtain from the Planning Commission a Land Disturbance Permit for that purpose.
- B. Unless specified otherwise by this Ordinance, the Land Disturbance Permit Package shall include the following:
 1. Stormwater Management Concept Plan, when applicable;
 2. Land Disturbance Permit application;
 3. Review fees;
 4. Stormwater Management Plan, in accordance with Section 1713.03(c) of this Ordinance; and

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- 5. Maintenance requirements in accordance with Section 1713.03(d)(2)Q and the Inspection and Maintenance Agreement (Attachment B).
 - C. No Land Disturbance Permit application will be approved unless it includes a Stormwater Management Plan, as required by this Ordinance, detailing how Runoff and associated water quality impacts resulting from the activity will be controlled or managed.
 - D. No Land Disturbance Permit shall be issued until a satisfactory final Stormwater Management Plan, or a waiver thereof, shall have undergone a review and been approved by the Planning Commission or its authorized representative after determining that the plan or waiver is consistent with the requirements of this Ordinance.
 - E. No applicant shall receive a Land Disturbance Permit without first meeting the requirements of this Ordinance prior to commencing the proposed activity.
- (2) Land Disturbance Permit application procedure.
- A. The applicant must submit a Land Disturbance Permit Package, as specified in Section 1713.03(a)(1)B of this Ordinance.
 - B. Within 45 days of the receipt of a complete Land Disturbance Permit Package, including all documents as required by this Ordinance, the Planning Commission shall inform the applicant whether the application, plan, and maintenance agreement are approved or disapproved.
 - C. If the Land Disturbance Permit is denied, the Planning Commission shall communicate the decision to the applicant in writing. The applicant may then revise the Stormwater Management Plan or appeal the decision to the Town Council within 30 business days and receive a Council decision within the next 30 business days. If additional information is submitted, the Planning Commission shall have 30 business days from the date the additional information is received to inform the applicant that the plan is either approved or denied.
- (3) If the Land Disturbance Permit application is approved by the Planning Commission or its authorized representative, the following conditions apply:
- A. The applicant shall comply with all applicable requirements of the approved plan and this Ordinance and shall certify that all land clearing, construction, land disturbance, and / or Drainage will be done according to the approved plan.
 - B. The Land Disturbance Activity shall be conducted only within the area specified in the approved plan.
 - C. The Corporation of Harpers Ferry shall be allowed, after giving notice to the owner, occupier, or operator of the Land Disturbance Activity, to conduct periodic inspections of the project.
 - D. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the Town may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.
 - E. No changes may be made to an approved plan without review and written approval by the Corporation of Harpers Ferry.
 - F. A certified inspection of all aspects of the Best Management Practices, including surface As-Built Surveys, and geotechnical inspections during subsurface or backfilling and compaction activities shall be required.

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- (b) Stormwater Management concept plans.
 - (1) Prior to submission of any Stormwater Management Plan or Land Disturbance Permit application, the applicant may be required to submit a Stormwater Management Concept Plan based on the following options:
 - A. The Stormwater Management Concept Plan is *required* for all Major Land Development plans.
 - B. The Stormwater Management Concept Plan is *recommended*, but not required, for Minor Land Development plans.
 - (2) Prior to submitting the Stormwater Management Concept Plan, the applicant may request a consultation meeting with the Planning Commission or its authorized representative to discuss Best Management Practices and post-construction Stormwater Management. The Planning Commission or its authorized representative shall review the Stormwater Management Concept Plan at the next regularly scheduled Planning Commission meeting. The Stormwater Management Concept Plan must be submitted two weeks prior to the scheduled Planning Commission meeting.
 - (3) Discussions, opinions, and / or representations made during the review of a Stormwater Management Concept Plan shall not be a basis for noncompliance with the applicable requirements for plan approval, and shall not be binding upon the Town when acting upon subsequently submitted Stormwater Management Plans.
 - (4) The Stormwater Management Concept Plan shall include at a minimum the following information:
 - A. Existing Conditions Plan and a Proposed Site Plan containing:
 - 1. Contour lines at 2-foot or 10-foot intervals and any Streams found on U.S. Geological Survey (USGS) topographic mapping;
 - 2. Soils, Riparian buffer zones, Managed Turf and vegetative boundaries; and
 - 3. Roads, Buildings, parking areas, and other Impervious Surfaces.
 - B. Natural Features Plan(s), with existing and proposed features, including:
 - 1. Floodplains, rock outcrops, Karst features, large trees (diameter at 4.5 feet greater than 18");
 - 2. Natural Drainage areas and wetlands;
 - 3. Threatened and / or endangered species;
 - 4. Any required setbacks (including existing septic areas, wells); and
 - 5. Proposed Landscaping features.
 - C. Stormwater Management System Plan, containing:
 - 1. Graphic illustration of the proposed Post-Development stormwater facilities and / or nonstructural practices;
 - 2. Conveyance system and flow paths;
 - 3. Relationship to upstream and downstream properties and Drainage;
 - 4. Bridge and / or culvert crossings; and
 - 5. Approximate location of stormwater inlets and outlets.
- (c) Review and approval of Stormwater Management Plans.
 - (1) All applicants as noted in Section 1713.01(d) of this Ordinance shall submit a complete Stormwater Management Plan to the Planning Commission or its authorized representative for review and approval. Each plan submittal shall include the minimum content specified in Section 1713.03(d) and meet the minimum stormwater design requirements contained in 1713.05 of this

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- Ordinance.
- (2) The Planning Commission shall perform a comprehensive review of the applicant's Stormwater Management Plan. Coordinated comments will be provided for each plan phase that reflects input from all appropriate agencies including, but not limited to, the Eastern Panhandle Conservation District.
- (d) Stormwater Management Plan requirements.
- (1) All Stormwater Management Plans shall be appropriately sealed and signed by a Professional Engineer in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with West Virginia Code Chapter 30, Professions and Occupations, and attendant regulations certifying that the plan meets all submittal requirements outlined in this Ordinance and is consistent with good engineering practice. A Registered Landscape Architect's signature shall be required when plans require landscaping as required in Subsection 1713.05(f) of this ordinance.
 - (2) The Stormwater Management Plan shall include the following:
 - A. Name, address, and telephone number of all persons having a legal interest in the property;
 - B. Tax reference number and Parcel number of the property or properties affected;
 - C. Existing and proposed Buildings, roads, and parking areas within project boundary;
 - D. Existing and proposed Drainage areas, including areas necessary to determine downstream analysis for proposed Stormwater Management facilities;
 - E. Existing and proposed utilities, Easements, and structural Stormwater Management and sediment control facilities;
 - F. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses;
 - G. Clearing and grading limit boundaries;
 - H. A 1" = 200' vicinity map of the Site, which extends a minimum of 200 feet beyond the limits of the proposed Development;
 - I. Existing surface water Drainage including Streams, ponds, culverts, ditches, Drainage patterns, and wetlands;
 - J. Current land use including all existing Structures and significant natural and man-made features not otherwise shown;
 - K. A written or graphic inventory of the natural resources at the Site and surrounding area as it exists prior to the commencement of the project, and a description of the Watershed (Hydrologic Unit Code – 12) and its relation to the project Site;
 - L. Forest cover, wetlands, and other native vegetative areas on the Site;
 - M. Environmentally sensitive features (e.g., wetlands, 100-year Floodplains, steep slopes, Karst Terrain, threatened and / or endangered species, etc.) that provide particular opportunities or constraints for Development. (Note: All projects located within a Floodplain as defined in the Harpers Ferry Floodplain Ordinance or latest version thereof shall meet the requirements therein. Compliance with this Stormwater Management Ordinance does not preclude compliance with the latest version of the Floodplain Ordinance.);
 - N. Hydrologic and hydraulic design calculations for the Pre-Development and Post-Development conditions for the Design Storms specified in this

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Ordinance. Such calculations shall include the following:

1. Description of the Design Storm Frequency, intensity, and duration;
 2. Time of concentration;
 3. Soil Curve Numbers (CNs) or Runoff Coefficients;
 4. Peak Runoff rates and total Runoff volumes for each Watershed;
 5. Infiltration rates, where applicable;
 6. Culvert and / or channel capacities;
 7. Flow velocities;
 8. Data on the increase in rate and volume of Runoff for the specified Design Storms; and
 9. Documentation of sources for all computation methods and field test results;
- O. Sufficient engineering analysis to show that the proposed Stormwater Management measures are capable of controlling Runoff from the Site in compliance with this Ordinance (see Section 1713.05) and the specifications of the *Virginia Stormwater Management Handbook*;
- P. Geotechnical properties for the hydrologic and structural properties of soils, especially for dam embankments, shall be described in a soils report. The submitted report shall include boring depth, sampling Frequency and types, and associated laboratory testing with results and conclusions, and follow the criteria in the *Virginia Stormwater Management Handbook*. Soil properties for Infiltration facilities shall also conform to the guidance and specification outlined in the *Virginia Stormwater Management Handbook*;
- Q. Maintenance requirements:
1. The design and planning of all Stormwater Management Facilities shall include detailed maintenance procedures to ensure their continued function. These maintenance plans will identify the parts or components of a Stormwater Management Facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.
 2. The applicant must ensure access to all Stormwater Management Facilities at the Site for the purpose of inspection and repair by securing all the maintenance Easements needed on a permanent basis. These Easements will be recorded with the plan and will remain in effect even with the transfer of title to the property.
 3. Prior to the issuance of any Land Disturbance Permit that has a Stormwater Management Facility as one of the requirements of the permit, the applicant or owner of the Site must execute a maintenance Easement agreement that shall be binding on all subsequent owners of land served by the Stormwater Management Facility.
 4. All maintenance, inspections, and cleaning shall be the responsibility of the property owner. This shall be specified in the recorded maintenance agreement.
 5. The Corporation of Harpers Ferry shall ensure that preventative

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maintenance is performed by requiring property owners to produce inspection reports on all Stormwater Management systems upon request. Inspections shall occur during the timeframes noted in Section 1713.07 of this Ordinance.

6. The Corporation of Harpers Ferry shall provide inspection report forms. (See Attachment D.);
 - R. The applicant must present a detailed Landscaping plan, as described in 1713.05(f);
 - S. All Land Disturbance Activities that adjoin a watercourse or portion thereof shall clearly depict upon a Site Plan the proposed Stream buffer or methods of preserving an existing natural Stream buffer pursuant to Section 1713.05(g) of this Ordinance;
 - T. Any applicant engaged in clearing, grading, and excavating activities that disturb one acre or more, including smaller Sites in a larger Common Plan of Development or sale, are required to obtain a West Virginia NPDES General Water Pollution Control Permit for their stormwater discharges. Construction Sites that result in land disturbance of one acre or greater will require the preparation and implementation of a Stormwater Pollution Prevention Plan (SWPPP) meeting the requirements of the General Permit;
 - U. The applicant shall provide verification to the Planning Commission or its authorized representative that all other applicable environmental permits have been acquired for the Site prior to approval of the stormwater design plan; and
 - V. The applicant shall specify a sequence of construction and proposed inspection schedule.
- (3) A non-refundable permit fee will be collected at the time the Land Disturbance Permit package (Section 1713.03[a][1]B) is submitted. The permit fee will provide for the cost of plan review, administration, and management of the permitting process and inspection. A permit fee schedule shall be established by the Town based upon the complexity of the inspection and may be amended from time to time.

1713.04 Waivers and modifications of requirements.

- (a) General.
 - (1) This Section is intended to provide a procedure to achieve the water quality and quantity objectives of this Ordinance while providing reasonable flexibility for difficult Site conditions and innovative Site design approaches.
 - (2) The provisions of this Ordinance are the minimum requirements for the protection of the public's health, safety, and welfare, and should be strictly adhered to. Written requests for waivers to or modifications of these requirements should be granted only where the requirement of strict adherence would be unreasonable, cause undue hardship, or an alternative standard can be demonstrated to provide equal or better results.
- (b) Request for waiver or modification.
 - (1) Every applicant defined under Section 1713.01(d) of this Ordinance shall submit a Stormwater Management Plan unless a written request for a waiver seeking relief from the Stormwater Management standards of this Ordinance is filed with the Corporation of Harpers Ferry and such request is granted.
 - (2) If the applicant demonstrates to the satisfaction of the Planning Commission or

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its authorized representative that any Stormwater Management requirements of this Ordinance are unreasonable or cause undue hardship as it applies to the proposed Land Disturbance Activity / Activities, the Planning Commission may grant relief to such standards provided that such relief meets the findings specified under Section 1713.04(b)(4).

- (3) The applicant shall submit all requests for waivers in writing to the Planning Commission or its authorized representative and shall include such requests as a part of the Stormwater Management Plan review and approval process as defined under Section 1713.03(c) of this Ordinance. The applicant shall state in full the facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance that are involved, and the minimum waiver or relief that is necessary. The applicant shall state how the requested waiver and how the applicant's proposal shall result in an equal or better means of complying with the water quality and quantity objectives and requirements of this Ordinance.

- (4) The Planning Commission may grant waivers or a modification of requirements when the following findings are made, as relevant:

- A. The waiver will not create an adverse impact to water quality and water quantity.
- B. The waiver is the minimum necessary to provide relief.
- C. The applicant is *not* requesting a waiver based on cost considerations.
- D. Existing off-site stormwater problems will not be exacerbated.
- E. Runoff is not being diverted to a different Drainage area.
- F. Increased flooding or ponding on off-site properties or roadways will not occur.
- G. Potential icing conditions will not occur.
- H. Increase of peak flow or volume from the Site will not occur.
- I. Erosive conditions due to increased peak flows or volume will not occur.
- J. Increased 100-year Floodplain levels will not result.
- K. Increased or unusual municipal maintenance expenses will not result from the waiver.
- L. The amount of stormwater generated has been minimized to the greatest extent allowed.
- M. Infiltration of Runoff throughout the proposed Site has been provided where practicable, and Pre-Development groundwater recharge protected at a minimum.
- N. Peak flow attenuation of Runoff has been provided.
- O. Long-term operation and maintenance activities are established.
- P. The immediate downstream waterways will not be subject to each of the following criterion:
 - 1. Deterioration of existing culverts, bridges, dams, and other Structures;
 - 2. Deterioration of biological functions or habitat;
 - 3. Accelerated streambank or streambed Erosion or siltation;
 - 4. Increased threat of flood damage to public health, life, and property.

- (c) Process for waiver or modification.

- (1) An application for a waiver shall be filed with the Planning Commission. An application for the waiver shall be submitted, along with the required fee, on the appropriate form. In addition to that basic information, the following information

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shall be submitted to support the application:

- A. Plat or plan of the property depicting Parcel information, proposed layout, and, where applicable, all proposed modifications;
 - B. A description of the physical features of the property, total acreage, present use, the use of the property at the time of the adoption of these Regulations, and any known prior uses;
 - C. A description of the specific portions of these Regulations for which relief is being sought;
 - D. A narrative describing how the proposed waiver will improve the public benefits; and
 - E. An accurate list of all properties and owners' addresses adjoining the subject property.
- (2) The applicant shall post an announcement at the property fourteen days prior to the scheduled meeting.
 - (3) The Planning Commission shall make a decision within 30 days of the receipt of the request for waiver.
 - (4) In granting a waiver, the Planning Commission or its authorized representative may prescribe any conditions and safeguards that it finds are appropriate and in conformity with these Regulations.
 - (5) All waivers and / or conditions of approval associated with the waiver shall be documented on all subsequent Plats or plans.

1713.05 Stormwater Management design criteria.

(a) Reference to the Design Manual.

- (1) The Corporation of Harpers Ferry shall use the technical specifications and standards in the *Virginia Stormwater Management Handbook* as the tool for making decisions about stormwater permits and about the design, implementation, and performance of structural and nonstructural stormwater Best Management Practices.
- (2) The *Virginia Stormwater Management Handbook* includes a list of stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards. If the specifications or guidelines found therein are more restrictive than other requirements, that shall not prevent application of the specifications or guidelines in the *Virginia Stormwater Management Handbook*.

(b) General performance criteria.

- (1) Low-Impact Development (LID) is a Stormwater Management method that is modeled after nature. LID is unique to each site and uses both structural and nonstructural practices to control Runoff close to where it falls. LID is recommended as the standard Stormwater Management practice.
 - A. The use of LID and Best Management Practices in conjunction with traditional Stormwater Management shall control stormwater Runoff at the source and more closely approximate Pre-Development Runoff conditions.
 - B. Karst Terrain considerations.
 - 1. Developers and designers shall minimize the amount of Impervious Surface created at the Site to reduce the volume and velocity of increased stormwater Runoff.

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2. Developers and designers shall place a high priority on preserving as much of the length of natural Karst swales present on the Site to increase Infiltration and accommodate flows from major storm events.
 3. Developers and designers should consider small-scale LID practices as prescribed in the latest version of the Chesapeake Stormwater Network Technical Bulletin No. 1, "Stormwater Design Guidelines for Karst Terrain in the Chesapeake Bay Watershed".
 4. If a sinkhole exists in the pond or if stormwater from the pond discharges into a sinkhole, an Underground Injection Control Permit may be required from DEP. The Planning Commission requires copies of the Preliminary Site Investigation (as required in Section 1713.05[e] of this Ordinance) and any correspondence with DEP.
- C. LID Stormwater Management design Plans developed consistent with the requirements of this subsection shall satisfy the water quality and quantity performance criteria of this Ordinance.
- D. The design criteria, hydrologic analysis, and computational procedures for Best Management Practices noted in LID Stormwater Management design plans shall be those of the latest edition of the *Virginia Stormwater Management Handbook*.
- E. LID Stormwater Management design plans shall not conflict with existing State or Town laws, ordinances, regulations, or policies.
- F. Storm Drainage Easements shall be recorded to identify the locations of Best Management Practices on proposed project site. The property owner shall not remove or structurally alter integrated management practices without prior written approval from the Planning Commission or its authorized representative.
- G. Stormwater Runoff from parking lots shall utilize Stormwater Management Infiltration facilities and / or Stormwater Management filtering systems. These shall be placed within or near the parking lot islands.
1. Stormwater from parking lots may be infiltrated into the groundwater, provided that they are not considered a Class V well according to the Environmental Protection Agency, Office of Water "Class V Well Identification Guide" found at the Department of Environmental Protection's website.
 2. If the Best Management Practice is considered a Class V well, the appropriate DEP Permits shall be required.
 3. Documentation of the necessary permits shall be provided to the Planning Commission or its authorized representative.
- (2) All applicants shall design stormwater control facilities to achieve Post-Development hydrologic conditions that are consistent with Pre-Development conditions. The applicant shall improve Runoff conditions for Redevelopment projects.
- (3) The Site shall maintain, as closely as possible, the Pre-Development Infiltration processes and rates by implementing Infiltration close to the source of Runoff.
- (4) Stormwater shall be treated to reduce pollutants during conveyance and collection.
- (5) Peak Discharges from project shall be attenuated to prevent high Runoff rates

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- and subsequent flooding of the receiving Stream.
- (6) Site design should implement Runoff Reduction techniques to reduce the amount of stormwater that must be collected, conveyed, and treated by Stormwater Management Facilities.
- (c) Stormwater quality criteria.
- (1) Stormwater quality treatment is required for all discharges. If stormwater quantity control does not provide for stormwater quality control, then a Best Management Practice shall be utilized prior to the Runoff entering the stormwater quantity control facility.
- (2) Stormwater quality control facilities shall reduce solids, sediment, nutrients, and other pollutants from the stormwater. This shall be presumed to occur when each of the following criteria is met:
- A. The facility is sized to capture the prescribed volume of water;
 - B. The facility is designed per the requirements and engineering calculations in the latest edition of the *Virginia Stormwater Management Handbook*;
 - C. The facility is constructed in accordance with all applicable plans and permits;
 - D. The facility is maintained per an approved Operations and Maintenance Agreement; and
 - E. A formula established by the West Virginia DEP shall be utilized to determine if Water Quality Standards are satisfied. The formula can be found at the West Virginia DEP website.
- (3) Infiltration of Runoff shall be as close to the source of Runoff as possible via Infiltration testing and analysis of Infiltration rates. Preference shall be given to a combination of surface and subsurface Infiltration measures.
- (4) Site design shall minimize disturbance. All grading should be designed to distribute Runoff evenly. Areas of depression should be designed for subsurface Infiltration techniques.
- (5) Stormwater discharges from land uses or activities with a high potential for pollutant loadings (Stormwater Hotspots) require the use of specific filtering or Bioretention Best Management Practices prior to Infiltration. Stormwater control from these hotspots shall be controlled by the following:
- A. Stormwater Pollution and Prevention Plan (SWPPP) required. In addition to a Stormwater Management Plan as required in Section 1713.03(a)(2), a SWPPP shall also be required. The SWPPP outlines pollution prevention and treatment practices that will be implemented to minimize polluted discharges from the Site. All SWPPPs shall be prepared following the guidelines in the West Virginia National Pollution Discharge Elimination System (NPDES) General Permit regulations even if an NPDES permit is not required.
 - B. Restricted Infiltration. A minimum of 50% of the total water Runoff generated must be treated by a filtering or Bioretention practice prior to any Infiltration. Portions of the Site that are not associated with the hotspot generating area should be diverted away and treated by an acceptable stormwater Best Management Practices.
 - C. Infiltration Prohibited. In these cases, an alternative stormwater practice such as closed Bioretention, Sand Filters, or constructed wetland must be used to filter the entire water volume before it reaches surface or groundwater.

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- (6) Natural wetlands shall not be used to meet minimum requirements. When used as the end of an outfall pipe, the velocity shall not create Erosion.
 - (7) For all new Development activities, each of the following regulations shall apply:
 - A. Stormwater Management practices that provide or encourage Infiltration shall be considered first and foremost in all Site designs.
 - B. Stormwater quality management practices shall be designed to capture and treat the first one inch of stormwater Runoff from the Impervious Surface and Managed Turf of Development.
 - C. Stormwater quality may be achieved with or as part of Infiltration practices.
 - D. Stormwater quality Improvement shall be provided for on-site Drainage areas not otherwise addressed by Infiltration practices.
 - E. Stormwater shall be infiltrated and / or discharged within the same Drainage area of the Stream receiving the Runoff prior to Development.
 - (8) Infiltration methods should be designed to infiltrate all of the stored volume within 48 hours of the storm event.
 - (9) All inflows to an Infiltration area shall be treated to prevent the discharge of sediment into the infiltration practice.
 - (10) During Site construction, the Infiltration area shall be protected from compaction, storage of fill, or construction materials.
 - (11) For Redevelopment activities, water quality improvements shall be provided for Drainage areas not otherwise addressed by Infiltration practices either at the source of Runoff and / or during conveyance away from the source of Runoff. Stormwater quality management shall be designed to capture and treat the first one inch of stormwater Runoff from the Impervious Surface and Managed Turf of Development.
 - (12) When a porous pavement surface is installed on private Lots, property owners shall be educated on their routine maintenance needs and understand the long-term maintenance plan. This shall be accomplished by a deed restriction or other mechanism enforceable by the Town to help ensure that the pervious paver system is maintained and functioning. The deed restriction or mechanism shall contain maintenance responsibilities and needs. It shall grant authority for the Town to access the property for inspection or corrective action. A note with regard to the deed restriction shall also be placed on the approved plans and in the required maintenance agreement.
- (d) Stormwater quantity criteria.
- (1) Figures for determining the rainfall amounts for Design Storms shall be obtained from the latest edition of the *West Virginia Division of Highways Drainage Manual* available from the West Virginia Department of Transportation website.
 - (2) Wooded sites shall use a ground cover of woodland in good condition. Portions of a Site having more than one viable tree of a Diameter at Breast Height (DBH) of six inches per 1,500 square feet shall be considered wooded where such trees existed within three years of application.
 - (3) The applicant must demonstrate that adequate downstream conveyance facilities are present.
 - (4) The applicant shall grant access, via a Stormwater Management Easement, for on-site inspection, operation, and maintenance.
 - (5) Runoff calculations should be determined using one of the methods outlined in the latest version of the *Virginia Stormwater Management Handbook*. The applicant should include justification of the method selected.

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- (6) For all new Land Development projects, the Post-Development Peak Discharge rate shall not exceed the Pre-Development peak rate for the 1-year, 2-year, 10-year, 25-year, 50-year, and 100-year storm events.
 - A. Where these Runoff volume requirements cannot be met, the applicant may file for a modification of stormwater requirements, provided that the following can be obtained:
 - 1. The applicant must prove to the Planning Commission or its authorized representative that the requirements in Section 1713.05(d)(6) cannot be met.
 - 2. The Post-Development Peak Discharge rate shall not exceed the Pre-Development peak rate for the 2-year and 10-year storm events.
 - 3. For events greater than the 10-year event, the Post-Development rate shall not exceed 110% of the Peak Discharge rate given Pre-Development cover.
 - B. Facilities capable of attenuating the required Runoff shall be designed to attenuate the 1-year, 24-hour storm event and release it over a minimum period of 24 hours. The release rate will be based on the minimum period of 24 hours. The release rate will be based on the receiving Stream's ability to contain the discharge within the existing Stream banks.
- (7) Infiltration areas shall be designed to achieve broad and even Infiltration patterns similar to what existed in Pre-Development conditions.
- (8) Above-ground Infiltration facilities shall be as shallow as possible while still complying with this Ordinance.
- (9) Water quality improvements shall be achieved in conjunction with or as part of Infiltration design.
- (10) If a stormwater basin is being utilized to achieve stormwater attenuation, Best Management Practices for stormwater quality shall be considered in the design of the basin.
- (11) Site hydrology and natural Infiltration patterns shall guide Site design, construction, and vegetation decisions.
- (12) Structural and nonstructural Stormwater Management practices that promote or otherwise make best possible use of on-site Infiltration shall be considered first.
- (13) Infiltration into Karst Terrain is encouraged only when it is determined that the possibility for subsidence and sinkholes is minimal. Concentrated flows or points of discharge are discouraged in these areas (refer to Section 1713.05[e]).
- (14) For Redevelopment activities, one of the following standards shall be accomplished. Selection of these performance standards shall be determined by the Planning Commission or its authorized representative, based on suitability as determined and documented by the Planning Commission or its authorized representative:
 - A. Reduce Impervious Surface by at least 20% based on a comparison of existing Impervious Surface to proposed Impervious Surface.
 - B. Achieve a 10% reduction in volume of Runoff discharged by a 2-year storm event. Runoff calculations shall be based on a comparison of existing to proposed Site conditions.
 - C. Reduce Post-development Peak Discharge rates to 90% of the Pre-development rates for the 1-year, 2-year, 5-year, 10-year, 25-year, 50-year, and 100-year, 24-hour storm events based on a comparison of existing ground cover to Post-development Site conditions.

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- (15) Land Disturbance Activities that can discharge directly to a main channel, major tributary or tributaries, or indirectly to the main channel through an existing stormwater Drainage system (i.e., storm sewer, or tributary or Stream valley) may do so without controlling the Post-Development peak rate of Runoff, provided that:

- A. The site shall comply with the Infiltration criteria and the water quality criteria established in this Ordinance, and one of the following:
 - 1. If the Post-Development Runoff is intended to be conveyed by an existing stormwater drainage system to the main channel, assurance must be provided that such system has adequate capacity to convey the flows created by the 100-year storm event during Post-Development conditions within its banks.
 - 2. The conveyance facility will be provided with improvements to furnish the required capacity to convey the flows created by the 100-year storm event during Post-Development conditions within its banks.
- B. An evaluation of the impact to the Stream shall be completed. The following information shall be included in the evaluation:
 - 1. Hydrologic and hydraulic calculations for Pre-Development and Post-Development conditions that are necessary to determine the impact of hydrograph timing modifications due to the proposed Development upon any dam, highway, Structure, natural point of restricted flow, or any Stream channel section shall be established with the concurrence of the Planning Commission or its authorized representative.
 - 2. The evaluation shall continue downstream until the increase in flow diminishes due to additional flow from tributaries and / or Stream attenuation.
- C. Any natural or man-made channel or swale must be able to convey the increased Runoff associated with the 100-year storm event within the banks.
- D. Any natural or man-made channels or swale must be able to convey the increased 25-year storm event without creating any hazards to persons or property.
- E. Any culvert, bridge, storm sewer, or any other facility that is designed to pass or convey flows from the tributary area must demonstrate the ability to pass the Post-Development 25-year storm event.

(e) Soil studies and Karst Terrain requirements.

- (1) Soil Infiltration testing shall be performed to determine the rate at which stormwater will permeate into the ground, thus preventing increased stormwater Runoff.
- (2) Prior to soil Infiltration testing, a soil evaluation shall be completed to determine where the Infiltration testing should take place. Soil evaluations should be performed by a professional Engineer.
- (3) At a minimum, the soil evaluation shall address soil types, soil permeability, depth to bedrock, limitations of soils, presence / absence of Karst Terrain susceptibility to subsidence and / or sinkhole formation, and subgrade stability. This testing should be completed during the preliminary design stage.
- (4) Soil Infiltration testing shall be completed for all Developments or Redevelopments that are proposing to utilize Infiltration methods for Stormwater

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Management.

- A. Soil Infiltration testing shall be performed at the same depth as the bottom of the proposed Infiltration area.
- B. The location and method of soil Infiltration testing should be determined using percolation test techniques described in West Virginia Title 64, Bureau for Public Health Series 47, Sewage Treatment and Collection System Design Standards.

(5) In regions underlain by Karst Terrain, a preliminary Site investigation regarding Site-specific conditions shall be completed. If necessary, the investigation shall be followed by a detailed Site investigation.

- A. The preliminary Site investigation(s) shall be completed as noted in the latest version of the Chesapeake Stormwater Network Technical Bulletin No. 1, "Stormwater Design Guidelines for Karst Terrain in the Chesapeake Bay Watershed".
- B. All necessary investigations as noted in the above-referenced bulletin shall be completed by a qualified Professional Engineer, licensed by the State of West Virginia and experienced in working in Karst Terrain.

(f) Landscaping.

- (1) The applicant must present a detailed Landscaping plan describing the woody and herbaceous vegetative stabilization and management techniques to be used within and adjacent to the stormwater facilities. The Landscaping plan must also describe who will be responsible for the maintenance of vegetation at the Site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a Landscape Architect or other qualified individual familiar with the selection of emergent and upland vegetation appropriate for the selected BMP.
- (2) Landscaping shall be required in and around all constructed Stormwater Management practices with a minimum surface area of 1,000 square feet.
- (3) No woody plants shall be planted within the saturated zone or on a berm constructed for impounded water.

(g) Riparian buffers. Any property that adjoins a watercourse or portion thereof shall provide a Stream buffer with the following standards. The Stream buffer requirements shall include two zones. These Stream buffer requirements are to be established and protected, as defined below:

- (1) Zone 1: A 30-foot setback zone, measured from the top of the bank of the watercourse, where no disturbance of vegetation and soil except for restoration shall occur.
- (2) Zone 2: A managed buffer zone, extending a distance equal to 40 feet outward from Zone 1 or to the 100-year Floodplain boundary, whichever is larger, where disturbance of natural vegetative cover shall be limited to any of the following activities:
 - A. Corridor crossings for farm vehicles and livestock;
 - B. Public roads and improvements;
 - C. Corridor crossings for roads and railroads;
 - D. Public utility crossings, including, but not limited to, sewer, water, and electric;
 - E. Passive recreation uses;
 - F. Stream bank improvement projects; or
 - G. Any activity, as approved by the Planning Commission or its authorized representative, which will minimally disrupt existing tree cover and soil

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mantle in order to maximize filtering and overall physical removal of particulate-form pollutants from stormwater Runoff.

1713.06 Construction inspection.

(a) Performance bond.

- (1) The Corporation of Harpers Ferry shall require from the developer a surety, irrevocable letter of credit, or other means of security acceptable to the Town prior to the issuance of any permits for the construction of a Development requiring a Stormwater Management and / or Erosion and Sediment Control Plan.
- (2) The amount of the security shall not be less than the total estimated construction cost of the required items covered in this Ordinance, plus a 15% contingency factor to cover administrative and engineering costs in the event of default and potential damage to existing roads or utilities.
 - A. The amount of security shall be based upon the current market rates plus labor rates for installation. The total estimated construction cost should be reviewed, signed, and sealed by a Licensed Professional Engineer prior to submission to the Planning Commission or its authorized representative.
 - B. The amount of security based on the current market rates plus labor rates for installation shall be reviewed and approved by the Planning Commission or agents thereof prior to approval of the performance bond.
- (3) The bond required in this section shall include provisions relative to the forfeiture for failure to complete work specified in the approved plans, permits, compliance with the provisions of this Ordinance, and other applicable laws and regulations, and any time limitations.
- (4) The bond shall not be fully released without each of the following:
 - A. A final inspection of the completed work by the Planning Commission or agents thereof; and
 - B. Submission of "As-Built" plans and certification of completion by the Planning Commission that the Stormwater Management Plan and facilities comply with the requirements of the approved plan and the provisions of this Ordinance.

(b) Inspections during construction.

- (1) Periodic inspections of the Stormwater Management facilities during construction shall be conducted by the Planning Commission or agents thereof. Construction inspections shall utilize the approved Stormwater Management Plan to establish whether the applicant is in compliance.
- (2) All inspections shall be documented by a written report prepared by the Planning Commission or agents thereof and include each of the following:
 - A. The date of the inspection;
 - B. The project location;
 - C. A statement regarding compliance with the approved Stormwater Management Plan;
 - D. Documentation of any variations from the approved Stormwater Management Plan; and
 - E. Any other variations or violations regarding the on-site conditions as compared to the approved Stormwater Management Plan.
- (3) The applicant shall be notified in writing of any violations and the required corrective actions.

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- (4) Additional work shall not proceed until the Planning Commission or agents thereof inspect and approve all the facilities in violation. The applicant shall be notified in writing of the inspection and any outstanding violations.
- (5) For enforcement purposes, the Corporation of Harpers Ferry may utilize any combination of the following:
 - A. A notice of violation that specifies the need for correction may be used.
 - B. A stop-work order may be issued by the Town.
 - C. The bonds or securities may be held or the case can be referred for legal action if reasonable efforts to correct the violation have not been attempted.
 - D. A civil action or criminal prosecution may be brought against any person in violation of this Ordinance.
- (c) Post-construction final inspection and As-Built plans.
 - (1) Upon completion of a project, and before a final inspection certificate is issued, the applicant is required to certify that the completed project is in accordance with the approved Stormwater Management Plan.
 - (2) All applicants shall submit actual As-Built plans. The plans shall include final design specifications for all Stormwater Management Facilities and must be certified by a professional Engineer or a Professional Land Surveyor, and a certification letter from a design professional Engineer for all Stormwater Management Facilities or practices after final construction is completed.
 - A. The applicant shall submit two copies of the As-Built plans and the certification letter to the Planning Commission. The plans shall be prepared and signed by a Professional Engineer or a Professional Land Surveyor.
 - B. The As-Built plans and certification letter shall accompany the request for bond release in accordance with Section 1713.06(a) of this Ordinance.
 - C. The required certification letter must state that the conditions on the Site and the As-Built plan are identical to the facilities shown on the final approved Stormwater Management Plan. The certification letter should be completed, signed, and stamped by the design Professional Engineer.
 - 1. Changes made during the construction process will not be permitted without prior written approval from the Planning Commission or its authorized representative.
 - 2. At a minimum, all As-Built plans and certification letters shall include a red-lined set of drawings that compare the approved Stormwater Management Plan with what was constructed. Final acceptance and approval will not be given until all final inspections and As-Built plans have been approved.
 - D. The following items shall be surveyed to determine actual field conditions, and the approved Stormwater Management Plans as annotated to reflect such actual field conditions shall constitute the As-Built plans.
 - 1. The location, material, and size of all piping and all manholes, inlets, cleanouts, and points of connection to the existing system shall be referenced in two perpendicular directions.
 - 2. The location of mains located within the public right-of-way shall be surveyed.
 - 3. Horizontal dimensions shall be to the nearest tenth of a foot, and vertical dimensions shall be to the nearest hundredth of a foot.

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4. Runs of storm sewers shall be identified.
 5. Elevations shall be given for the rim of the top of all manhole covers, inlets, and catch basins, and all manhole, inlet, and catch basin inverts.
 6. Elevations shall be given for all outlet Structures.
 7. Storm drain, manhole, inlet, and catch basin types shall be identified.
 8. All infiltration and Runoff reduction facilities including nonstructural practices.
 9. Volume of all facilities.
 10. LID details and Structures.
- (3) The Town shall perform a final inspection prior to the release of any performance bonds or securities.

1713.07 Post-construction maintenance, inspection and repair of stormwater facilities.

(a) Inspection and Maintenance Agreement.

- (1) Prior to the approval of any Land Disturbance Activity for which Stormwater Management is required, the Corporation of Harpers Ferry shall require the applicant or owner to execute an Inspection and Maintenance Agreement (see Attachment B) binding on all subsequent owners of land served by a private Stormwater Management Facility. Such agreement shall provide for access to the facility at reasonable times for regularly-scheduled inspections by the Planning Commission or the authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.
- (2) The agreement shall be recorded by the applicant and / or owner in the land records of the Office of the Clerk of Jefferson County and the Office of the Recorder of the Corporation of Harpers Ferry as required.
- (3) The agreement shall also provide that, if after notice by the Planning Commission or its authorized representative to correct a violation found during inspection or requiring maintenance work, satisfactory corrections are not made by the owner(s) within a period of 90 days or as agreed to by the Planning Commission, the Town may perform all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the cost of the work and any penalties. This may be accomplished by placing a lien on the property.
- (4) The Inspection and Maintenance Agreement shall be reviewed and approved by the Planning Commission or its authorized representative prior to approval of the Land Development Plan.

(b) Inspection and maintenance of Stormwater Management Facilities.

- (1) The party responsible for the maintenance of Stormwater Management Facilities constructed pursuant to this Ordinance shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and Structures, vegetation, Erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
- (2) A maintenance schedule shall be developed for the life of any Stormwater Management Facility. This maintenance schedule shall be printed on the approved Stormwater Management Plan. All stormwater maintenance schedules must be incorporated by the applicant and / or owner and included on

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- the deed, Inspection and Maintenance Agreement, plans, offer of sale of real property, and purchase agreement.
- (3) The party responsible for the maintenance of the Stormwater Management system shall provide written records of all maintenance and repairs to the Planning Commission.
 - (4) The Planning Commission or its authorized representative shall ensure that preventative maintenance is performed by requiring property owners to produce inspection reports on all Stormwater Management systems upon request. Inspection shall occur at the following times:
 - A. The first year of operation;
 - B. A minimum of at least one time every three years after the first year of operation;
 - C. After a 2-year, 24-hour storm event; and
 - D. Based upon complaints or other notice of possible violations.
 - (5) Inspection Report requirements.
 - A. Inspection Reports shall be written and maintained by the Planning Commission for all Stormwater Management systems.
 - B. A copy of the Inspection Report shall be provided to the party responsible for the maintenance of the Stormwater Management.
 - C. Inspection Reports for Stormwater Management systems shall include the following:
 - 1. Date of inspection;
 - 2. Location and address of facility;
 - 3. Name of inspector;
 - 4. Condition of the following:
 - i. Vegetation or filter media;
 - ii. Fences or other safety devices;
 - iii. Spillways, valves, or other control Structures;
 - iv. Embankments, slopes, and safety benches;
 - v. Reservoir or treatment areas;
 - vi. Inlet and outlet channels or Structures;
 - vii. Underground drainage;
 - viii. Sediment and debris accumulation in storage and forebay areas;
 - ix. Any nonstructural practices to the extent practicable;
 - x. Any other item that could affect the proper function of the Stormwater Management system.

1713.08 Enforcement and penalties.

- (a) General procedures. Any failure to comply with the requirements of this Ordinance or the requirements of an approved Stormwater Management Plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction that is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.
- (b) Violations.
 - (1) When a person or persons has failed to comply with the terms and conditions of a permit, an approved Stormwater Management Plan, or the provisions of this Ordinance, the Corporation of Harpers Ferry shall issue a written notice of violation to the applicant or responsible party.

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- (2) When a person or persons is engaged in an activity covered by this Ordinance without having a secured permit for such, a notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the Site.
- (3) A Notice of Violation shall contain the following information:
 - A. The name and address of the landowner or the person responsible for the activity;
 - B. The physical address and location of the activity and a description of the activity;
 - C. A statement that explains the violation;
 - D. A written statement explaining how to bring the action or inaction into compliance with the permit, Stormwater Management Plan, or the Ordinance, and the deadline for compliance;
 - E. Penalty or penalties that may be assessed; and
 - F. A statement that the determination of violation may be appealed to the Corporation of Harpers Ferry within 30 days of the Notice of Violation.
- (c) Stop-work orders.
 - (1) The Town may issue a stop-work order that shall be served on the applicant or other responsible person.
 - (2) The stop-work order shall remain in effect until one of the following occurs:
 - A. The applicant or other responsible person has taken the remedial measures set forth in the notice of violation.
 - B. The applicant has otherwise cured the violation or violations described therein.
 - (3) The stop-work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.
- (d) Disapproval of subsequent permits. As long as a violation of this Ordinance continues and remains uncorrected, the Corporation of Harpers Ferry may withhold or disapprove any request for permit or Development approval or authorization required by this Ordinance, the Zoning Ordinance, the Subdivision and Land Development Ordinance, or a Building regulation for the land on which the violation occurs.
- (e) Holds on final inspection certificates. The Corporation of Harpers Ferry may refuse to issue a final inspection for the Building or other improvements constructed or being constructed on the Site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- (f) Suspension, revocation, or modification of permit. The Corporation of Harpers Ferry may suspend, revoke, or modify the permit authorizing the Land Development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (g) Civil and criminal penalties.
 - (1) In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within 10 days, or such greater period as the Corporation of Harpers Ferry shall deem appropriate after the Town has taken one or more of the actions described in Article 1713.08(d)-(f), the Mayor, the

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Town Council or the Ordinance Compliance Officer may impose a penalty not to exceed \$500.00 (depending on the severity of the violation) for each day the violation remains after receipt of the notice of violation.

- (2) For intentional and flagrant violations of this Ordinance, the Mayor, or his or her designee, may issue a citation to the applicant or other responsible person, requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$500.00. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(h) Procedures.

- (1) When a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Planning Commission, which shall record the complaint. The Planning Commission or its authorized representative shall investigate the complaint.
- (2) The Corporation of Harpers Ferry shall have the authority, upon presentation of proper credentials, to enter and inspect any land, Building, Structure, or premises to ensure compliance with this Ordinance.

1713.09 Appeals.

An appeal of a decision of the Corporation of Harpers Ferry regarding Subdivision or site Development decisions shall be taken directly to the Circuit Court of Jefferson County pursuant to West Virginia Code §8A-5-10 and §8A-9-1, *et seq.*

CHAPTER TWO – Subdivision Regulations.

Article 1722. General Provisions.

Article 1723. Procedures and Administration.

Article 1724. Design Principles.

Article 1725. Improvements.

Article 1726. Plat Preparation and Approval Procedure.

Article 1727. Variations and Exceptions.

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ARTICLE 1722 General Provisions

- 1722.01 Title.**
1722.02 Policy and Purpose.
1722.03 Authority.
1722.04 Jurisdiction.

CROSS REFERENCES

Comprehensive plan—see WV Code 8A-3-1 *et seq.*
Jurisdiction and control—see WV Code 8A-4-1

1722.01 Title.

These regulations shall officially be known, cited and referred to as the Subdivision Regulations of the Corporation of Harpers Ferry, West Virginia, (hereinafter "these Regulations"). For the purposes of this article and the Planning and Zoning Ordinance, the term Subdivision shall conform to Chapter 8A of the Code of West Virginia where a major Subdivision requires Development and Improvement of infrastructure and a minor Subdivision (See Section 1727.02) generally entails only changes in Lot and / or boundary lines. The initial subdivision of the Town is shown on the 1869 S. Howell Brown sale map, posted in the Town Hall and in the office of the County Clerk of Jefferson County. Adjustments between or among those original Lots are regulated via Article 1727.

1722.02 Policy and Purpose.

- (a) It is declared to be the policy of the Corporation of Harpers Ferry to consider the Subdivision of land and the subsequent Development of the subdivided Plat as subject to control of the Corporation of Harpers Ferry pursuant to the Comprehensive Plan for the orderly, planned, efficient and economical development of the Town.
- (b) In accordance with the Comprehensive Plan adopted in June 2007 and amended by Council from time to time, the overall residential density for the Town shall not exceed a housing density greater than one residential Structure per original Lot as shown on the S. Howell Brown sale map of 1869.
- (c) Land to be subdivided shall be of a character that it can be used safely for Building purposes without danger to health or peril from fire, flood or other menace, and land shall not be subdivided until adequate public facilities and improvements exist and proper provision has been made for drainage, water, sewerage, and other public improvements such as parks, recreational facilities and transportation facilities as provided for in these Regulations.
- (d) These Regulations are adopted for the following purposes:
 - (1) To protect and provide for the public health, safety and welfare of the Town.
 - (2) To guide the future growth and Development of the Town in accordance with the official community plan.
 - (3) To provide for adequate light, air and privacy, and to secure from fire, flood and other danger, and to prevent overcrowding of the land and undue congestion of population.
 - (4) To protect and conserve the value of land throughout the Town and the value of Buildings and improvements upon the land, and to minimize the conflicts among

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015).

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- the uses of land and Buildings.
- (5) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, parks, recreation and other public requirements and facilities.
 - (6) To ensure that public facilities and services are available concurrent with Development and will have a sufficient capacity to serve the proposed Subdivision and that the cost of Improvements that benefit the Tract of land being developed will be borne by the owners or developers of the Tract as provided in these Regulations.
 - (7) To preserve the natural beauty and topography of the Town and to ensure appropriate Development with regard to these natural features.
- (e) These Regulations require that all lands located within the Town be platted in conformance with these provisions except as provided in Article 1727: Variations and Exceptions.

1722.03 Authority.

The Subdivision Regulations have been adopted pursuant to Chapter 8A, Article 5, Planning and Zoning, of the West Virginia Code.

1722.04 Jurisdiction.

These Regulations shall apply to the following forms of Subdivision and/or the Development of land within the corporate limits of the Town:

- (a) The dividing of land into two or more tracts, Lots, sites or Parcels, any part of which, when subdivided, shall contain less than five acres in area.
- (b) The redividing of previously platted land into tracts, Lots, sites, or Parcels, any part of which, when subdivided, shall contain less than five acres in area.
- (c) The Development of land in a manner not in strict compliance with the Plat filed of record.
- (d) The dedicating, vacating, or reserving of any public or private Easement, public or private Street or alley regardless of the area involved, including those for use by public and private utility companies.

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ARTICLE 1723 Procedures and Administration

- 1723.01 Plat approval; preliminary and final.**
- 1723.02 Relation to zoning.**
- 1723.03 Filing fee.**
- 1723.04 Sale of property not Abutting a public Street.**
- 1723.05 Official recording.**
- 1723.06 Issuance of permits.**

CROSS REFERENCES

Approval required—see WV Code 8A-5-6
Application—see WV Code 8A-5-7
Approval—see WV Code 8A-5-8 *et seq.*

1723.01 Plat approval; preliminary and final.

In all cases of subdividing and Development within the scope of these Regulations, a preliminary and a Final Plat for the land in question shall be drawn and submitted to the Planning Commission and the Town Council for their approval or disapproval as provided for herein.

1723.02 Relation to zoning.

No Final Plat may be considered for acceptance by the Planning Commission or Town Council until the proper zoning in terms of density, Lot size and land use is in enacted and in effect regarding the subject property. Furthermore, no Plats may be approved by the Planning Commission and Town Council that are not in conformance with density and Lot size requirements of the applicable zoning classification, except as specifically provided for in these Regulations.

1723.03 Filing fee.

- (a) To defray partially the costs of field and special studies, filing fees shall be paid to the Town Recorder at the time of submission in accordance with the following schedule:
 - (1) Preliminary Plat: \$50.00, plus \$5.00 per acre or portion thereof contained in the Plat.
 - (2) Final Plat: \$100.00, plus \$2.00 per acre or portion thereof contained in the Plat.
- (b) The filing fee shall be calculated upon the basis of the total acreage included within the property proposed to be platted.

1723.04 Sale of property not Abutting a public Street.

It shall be unlawful for any person, firm or corporation to sell to any other person, firm or corporation any Lot, Tract, Parcel or block of land regardless of size or shape, unless such Lot, Tract, Parcel or block of land abuts a public Street or road for the distance required by the Planning and Zoning Ordinance in which Lot, Tract, Parcel or block of land is situated, provided however for all deeds filed of record before the date of adoption of these Regulations it shall be lawful to convey title for the total area described in each said deed.

1723.05 Official recording.

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015).

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No Plat or description of land Subdivision shall be filed in the office of the Jefferson County Clerk until it has received written preliminary approval of the Planning Commission and the Town Council and final approval of the Planning Commission and the Town Council as required by these Regulations. All Final Plats shall be filed, if approved by the Town Council, within one year of date of consideration by the Planning Commission: and no Lots shall be sold from any Plat until it has been recorded as herein provided. Failure to record such an approved Plat within one year of consideration by the Planning Commission shall void all approvals thereto.

1723.06 Issuance of permits.

No project permit shall be issued for any purpose with respect to any Tract until a final Plat has been duly processed as required by these Regulations and filed of record, except as provided in Article 1726.

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ARTICLE 1724 Design Principles

- 1724.01 Urban design principles.**
- 1724.02 Lots and Build-To Lines.**
- 1724.03 Easements.**
- 1724.04 Subdivision design standards: Streets.**

CROSS REFERENCES

1724.01 Urban design principles.

The design of each Subdivision shall be prepared in accordance with the land use, community facilities, transportation, utility and related principles contained in these Regulations as follows:

- (a) The size of Lots and blocks and other areas for residential and other developed land uses should be designed to provide adequate light, air, open space, landscaping with living plants and off Street parking.
- (b) The arrangement of Lots and blocks and the Street system should be designed to make the most advantageous use of existing topography, natural views and scenic vistas and natural physical features. Tree masses and large individual trees should be preserved.
- (c) Circulation in Subdivisions within the Town should be provided in accordance with the following design principles.
 - (1) Major Streets should follow the historical Street pattern of the 1869 Sale Map, insofar as practical.
 - (2) Minor Streets should be designed to provide access to each Parcel under separate ownership.

1724.02 Lots and Build-To Lines.

- (a) All setbacks shall be provided in accordance with those limits established for the various districts in the Planning and Zoning Ordinance.
- (b) Restrictions on Buildings to be located within the setback lines shall be set forth on the Plat.
- (c) Residential Lots for Single Family Dwellings shall conform to the General Zoning Regulations and Development Standards of the Planning and Zoning Ordinance.
- (d) Side Lot lines shall be approximately at right angles to straight Street lines or radial to curved Street lines.
- (e) The area of residential Lots shall not be less than that which is required by the Planning and Zoning Ordinance for a conforming Lot.
- (f) Double Frontage and reverse Frontage Lots should be avoided, except where they may be needed to provide separation of residential developments from major Streets or to overcome specific disadvantages of topography or orientation including corner Lots.

1724.03 Easements.

- (a) The Subdivider shall dedicate to the public appropriate Easements to the end that

HISTORY:

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each and every Lot, piece, or Parcel of land within Subdivision shall have access to all available essential public facilities.

- (b) Where a Subdivision is traversed by a watercourse, natural spring, Drainage channel or Stream, there shall be provided a Right-of-Way and access thereto for Drainage and Public Utility purposes.
- (c) Reserve Strips shall be prohibited.

1724.04 Subdivision design standards: Streets.

Subdivision and resubdivision shall use the existing Rights-of-Way shown on the S. Howell Brown Plat of 1869 insofar as possible. If variations to the existing Rights-of-Way are proposed, the Subdivider must provide justification that the result would provide better access to the properties or improve the overall environmental conditions such as Stormwater Management or other developmental considerations regarding the environment.

- (a) A tentative plan of the proposed future Street system shall be shown on the Preliminary Plat.
- (b) When a Tract is subdivided into larger than normal building Lots or Parcels, such Lots or Parcels shall be so arranged as to permit the logical extension of future Streets and appropriate resubdivision, with provision for adequate utility Easements and connections for such resubdivision.
- (c) Street Right-of-Way widths, pavement and sidewalk construction specifications and construction standards shall be in accordance with requirements of the Harpers Ferry Planning Commission.
- (d) Half Streets shall be prohibited.
- (e) No Street names shall be used which will duplicate or be confused with existing Streets. Street names and house numbers shall be subject to approval of the Planning Commission.

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ARTICLE 1725 Improvements

- 1725.01 Purpose.**
- 1725.02 Improvements to be logical extension or expansion.**
- 1725.03 Required plans and their approval.**
- 1725.04 Accomplishment of Improvements; general procedure.**
- 1725.05 Improvements constructed before filing; procedure.**
- 1725.06 Completion and Town acceptance of public Improvements.**
- 1725.07 Project Permits.**
- 1725.08 Permanent markers.**
- 1725.09 Sanitary sewers.**
- 1725.10 Streets.**
- 1725.11 Water lines and fire hydrants.**
- 1725.12 Storm Drainage.**

CROSS REFERENCES

Location Improvement Permit—see WV Code 8A-4-2(a)(14)

Design Standards—see Part 13 Appendix A - Historic Standards & Guidelines

1725.01 Purpose.

- (a) It is the purpose of this section to specify the nature of Improvements which shall be required in conjunction with the subdividing and Development of land; to identify the methods which will assure the Corporation of Harpers Ferry and the public that said required Improvements will be constructed; and further to prohibit the issuance of a Project Permit for construction within a recorded, platted Subdivision before the completion and Town acceptance of all required Off-site Improvements within the Subdivision.
- (b) Unless specifically excluded or excepted elsewhere in these Regulations, a Subdivider shall install and construct the following specified Off-site Improvements in conformance with the standards and specifications of these Regulations:
 - (1) Streets;
 - (2) Sanitary sewers, including manhole covers (in association with or on behalf of the applicable Public Service District or other approved sanitary sewer provider);
 - (3) Water mains;
 - (4) Fire hydrants;
 - (5) Storm sewers;
 - (6) Sidewalks; and
 - (7) Permanent markers. (See Section 1725.08)
- (c) Hereinafter in these Regulations, the phrase "required Off-site Improvements" shall refer to and mean these seven enumerated required Improvements.

1725.02 Improvements to be logical extension or expansion.

The development plan for required Off-site Improvements shall be approved by the Town only after it has been found that a proposed Development, when considered in conjunction with the entire Subdivision and the areas surrounding to or Abutting to it, will contain Public Improvements and utilities which will be consistent and compatible in Structure, quality,

HISTORY:

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construction, performance and appearance and will constitute logical and orderly expansions of existing Public Improvements, as well as future Improvements to be installed within and without the boundaries of the Subdivision.

1725.03 Required plans and their approval.

- (a) At the time of submission of the Final Plat to the Planning Commission and before the installation and construction of required Off-site Improvements within any Subdivision, plans and specifications therefore shall be prepared by a registered Professional Engineer and submitted to the Planning Commission or its designee. The Commission shall, if warranted after the inspection and review of submitted plans and specifications, submit to the Town Council a report that, in its opinion, the plans and specifications comply with all current standards and requirements applicable thereto. No installation or construction of any Public Utility or required Off-site Improvement shall be commenced without approved plans and specifications and approval of the Town Council.
- (b) Plans for Off-site Improvements shall be submitted as follows:
 - (1) Before the submission of the Final Plat to the Planning Commission, two sets of "check" prints of the plans and specifications for all proposed and required Off-site Improvements shall be filed with the Town through the Ordinance Compliance Officer or the Mayor's designee.
 - (2) Five sets of plans and specifications for all required Off-site Improvements shall be filed with the Town through the Ordinance Compliance Officer or the Mayor's designee for final approval at the time of request for consideration of the Final Plat by the Planning Commission.
- (c) Town approval of Off-site Improvement plans for any required Off-site Improvements or any part thereof shall be null and void two years from the date of approval unless said Off-site Improvements are under construction and will be completed within ninety days.
- (d) Plans for which approval has expired shall be resubmitted for review and current approval before any work is undertaken on the project.

1725.04 Accomplishment of Improvements; general procedure.

- (a) The accomplishment of Improvements required herein shall be by developer construction and approval by the Town.
- (b) No Subdivider shall consummate the sale of property within the Subdivision by Lot and block reference to the Plat until such time as the Final Plat shall be accepted.
- (c) No Building permit shall be issued for any Lot before the construction of off-site improvements as are required by these Regulations and which have been accepted by the Town.

1725.05 Improvements constructed before filing; procedure.

The procedure for approval of Off-site Improvements required herein before the filing of a Final Plat approved by the Town Council shall be as follows:

- (a) At the time of consideration of approval of the Final Plat by the Town Council, the Subdivider shall submit a written application to the Ordinance Compliance Officer or the Mayor's designee indicating in specific detail the required Off-site Improvements intended to be installed and constructed before filing of the Final Plat.
- (b) The Ordinance Compliance Officer or the Mayor's designee shall review the request and submit a written report to the Mayor noting specific problems, if any.
- (c) Subsequent to the decision of the Town Council that the Final Plat is in order and that

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the program for accomplishing the required Off-site Improvements is feasible and not contrary to the public interest, the Town Council may approve the installation and construction of any or all required Off-site Improvements by the Subdivider before the filing of the Final Plat and as a condition for approving the Final Plat.

- (d) In all cases where the Town Council approves a program of construction that requires construction of required Off-site Improvements before the filing of the Final Plat, the Final Plat, without benefit of required signatures of Town officials, shall be held in escrow for the Town by the Town Recorder. It shall not be released for any purpose until the approved program of construction is completed and all Off-site Improvements are accepted by action of the Town Council. Following acceptance of all required Improvements included in the construction program and the completion of all other commitments, if any, by the Subdivider, the Final Plat shall be executed by the Town and recorded at the Jefferson County Courthouse.
- (e) An approved program of construction under this method shall be completed within a period of one year. One year from the date of approval, the approval of any construction program which has not yet begun shall become null and void. One year from the date of approval, the approval of any construction program which is still in process shall be reviewed by the Town Council and they shall take action as deemed necessary.
- (f) Any approved program of construction may be amended; however, such amendment shall require approval of the Town Council.

1725.06 Completion and Town acceptance of public Improvements.

- (a) At such time as the Subdivider has completed the installation and construction of all Public Utilities and Improvements required within the Subdivision, the Subdivider may seek acceptance for all such Improvements by the Town.
- (b) The procedure for consideration of acceptance of Public Improvements shall be as follows:
 - (1) The individual or legal entity responsible for causing a Public Improvement to be constructed shall make a written request through the Ordinance Compliance Officer or the Mayor's designee that such Public Improvements be accepted by the Town.
 - (2) One set of reproducible As-Built plans shall be submitted in conjunction with said written request.
 - (3) The registered professional Engineer of the project shall submit a written statement indicating that the Off-site Improvements have been constructed in accordance with the approved plans, that the As-Built plans are a true and accurate representation of said Off-site Improvements, and that the Engineer is satisfied with off-site improvements and the engineer recommends acceptance by the Town.
 - (4) The Ordinance Compliance Officer or the Mayor's designee shall submit a written report to the Mayor indicating the following:
 - A. That said Improvements either have or have not been constructed in compliance with approved plans and specifications and all requirements of the Town of Harpers Ferry.
 - B. That the As-Built plans either provide or do not provide a true and accurate representation of the Public Improvements.
 - (5) Upon the Mayor's receipt of the report, such report shall be submitted to the Town Council for their acceptance of the Improvements.
 - (6) If the Town Council finds the Public Improvements and all associated

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requirements to be in compliance with these Regulations, the Improvements shall be accepted for maintenance.

1725.07 Project Permits.

No Project Permit shall be issued for any Lot before the construction of Off-site Improvements as required by these Regulations, nor shall a Project Permit be issued for any Structure on any Tract of land which has not been, when required, subdivided or platted in accordance with these Regulations.

1725.08 Permanent markers.

Subdivision and specific points therein shall be marked as follows:

- (a) Concrete monuments as approved by the Town shall be placed at all corners and changes in direction of the boundary of the Subdivision. Where boundaries are comprised of curves, the point of curvature (P.C.), point of intersection (P.I.), and point of tangency (P.T.) shall be monuments. All monuments shall be placed flush with the ground and have at least two reference points established with tie distances.
- (b) Iron pins at least three quarters inch in diameter and at least eighteen inches in length shall be placed on all block corners, P.C.'s, P.I.'s and P.T.'s along the dedicated Street Right-of-Way.
- (c) Iron pins at least one half inch in diameter and at least twelve inches in length shall be placed at all Lot corners.
- (d) All required monuments and iron pins shall be in place before acceptance of Street Improvements.

1725.09 Sanitary sewers.

- (a) All Subdivisions shall install or cause to be installed sanitary sewer lines in accord with these Regulations and the Public Service District rules and requirements for new sanitary sewer lines and shall submit an approved certificate from the State Health Department.
- (b) No Project Permit shall be issued for any Structure to be located on a Lot within a platted Subdivision filed of record until the required sanitary sewer Improvements for that Lot have been installed in accordance with these Regulations and the Subdivider shall submit evidence of approval at the time of Project Permit application.

1725.10 Streets.

The Subdivider of any Subdivision shall lay out, grade, and otherwise improve all Streets that are designated on the approved Plat in compliance with the following provisions:

- (a) Streets shall be laid out, graded and otherwise improved according to standard specifications prepared by the Ordinance Compliance Officer or the Mayor's designee and approved by the Town Council, and shall be subject to inspection and approval requirements as contained in said standard specifications.
- (b) Street Right-of-Way and pavement widths and required cross sections shall comply with said standard specifications prepared by the Ordinance Compliance Officer or the Mayor's designee.

1725.11 Water lines and fire hydrants.

In all Subdivisions, the Subdivider shall install water lines and fire hydrants in compliance with standard specifications prepared by the Ordinance Compliance Officer or the Mayor's designee in consultation with the Harpers Ferry Water Department and approved by the Town Council, and they shall be subject to inspection and approval requirements as

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contained in said standard specifications.

1725.12 Storm Drainage.

Storm Drainage facilities shall be provided and constructed as determined necessary by the Ordinance Compliance Officer or the Mayor's designee and approved by the Town Council.

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ARTICLE 1726 Plat Preparation and Approval Procedure

- 1726.01 Preliminary Plat; general.**
- 1726.02 Preliminary Plat; procedures to file applications.**
- 1726.03 Preliminary Plat; contents.**
- 1726.04 Preliminary Plat; Planning Commission action.**
- 1726.05 Preliminary Plat; Town Council action.**
- 1726.06 Preliminary Plat; duration of approval.**
- 1726.07 Preliminary Plat; changes from approved Plat.**
- 1726.08 The Final Plat; general.**
- 1726.09 Final Plat; procedures for filing application.**
- 1726.10 Final Plat; contents.**
- 1726.11 Final Plat; Planning Commission action, appeals.**
- 1726.12 Final Plat; Town Council action.**
- 1726.13 Final Plat; recording.**

CROSS REFERENCES

Approval required—see WV Code 8A-5-6

Application—see WV Code 8A-5-7

Approval—see WV Code 8A-5-8 *et seq.*

1726.01 Preliminary Plat; general.

The Subdivider shall prepare a Preliminary Plat for presentation to the Planning Commission. It shall conform to the minimum requirements of these Regulations and shall include the land in question and any other Abutting land partially or fully owned or under option to the applicant, notwithstanding that all of said land may never be platted.

1726.02 Preliminary Plat; procedures to file applications.

In order to be included on the agenda for the Planning Commission, an application shall be in compliance with all the following:

- (a) Five copies of the Preliminary Plat shall be submitted to the office of the Mayor not less than twenty-one calendar days before the next Planning Commission meeting.
- (b) When submitted, material must be in complete and final form as required by these Regulations. Plats failing to meet these requirements by the filing deadline shall not be placed on the Planning Commission agenda.

1726.03 Preliminary Plat; contents.

- (a) The Preliminary Plat shall be drawn at a scale of not more than fifty feet to the inch, except where impractical, and shall show:
 - (1) The scale, north arrow and date.
 - (2) The proposed name of the Subdivision.
 - (3) The name and address of the owner of record, the Subdivider, and the registered Land surveyor preparing the Plat.
 - (4) A key map showing the location of the proposed Subdivision referencing existing or proposed major Streets and governmental boundaries, if any.
 - (5) The name and location of adjoining Subdivisions and owners of record of

HISTORY:

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- adjoining properties where unplatted.
- (6) The land contours with vertical intervals of two feet referenced to a United States Geological Survey or Coast and Geodetic Survey bench mark or monument.
- (7) The location of dedicated and private Streets at the point where they adjoin or are Abutting the proposed Subdivision.
- (8) The location of all existing Easements of record, sanitary and storm sewers, water mains, culverts, power lines and other surface or subsurface structures within the Tract or Abutting thereto, and the proposed location, layout, type and approximate size of the following structures and utilities:
 - A. Water mains,
 - B. Sanitary sewer mains and sub mains,
 - C. Storm Drainage facilities,
 - D. Street and sidewalk improvements,
 - E. Electric lines, and
 - F. Cable television and telephone lines.
- (9) The location of all Drainage channels, if any, and the proposed method of disposing of all Runoff from the proposed Subdivision, as approved by the Department of Natural Resources.
- (10) The length of the boundaries of the Tract, measured to the nearest foot, and the proposed location and width of Streets, easements and outer limits of Street Rights-of-Way, and approximate Lot dimensions.
- (11) The existing zoning of the Tract and of the property Abutting thereto.
- (b) Any Voluntary Proffers, as described in Article 1709 of these Ordinances, that are to be offered by the Subdivider must be included within the contents of the Preliminary Plat. (Ord. 2017-08, passed 12-11-2017.)

1726.04 Preliminary Plat; Planning Commission action.

- (a) The Planning Commission shall approve or disapprove of the Preliminary Plat.
- (b) If the Preliminary Plat is disapproved, the reasons for such action shall be stated in the official minutes of the Planning Commission meetings, and a copy transmitted to the applicant, and such disapproval shall reference those portions of these Regulations, the Planning and Zoning Ordinance, or policies of the Corporation of Harpers Ferry with which the Plat does not conform.

1726.05 Preliminary Plat; Town Council action.

- (a) After its consideration, the Planning Commission shall forward a copy of the Preliminary Plat to the Town Council together with a report of any conditions of approval or reasons for disapproval.
- (b) The Town Council within 30 days of receipt of the report and Plat from the Planning Commission shall concur with the actions of the Planning Commission or shall return the Preliminary Plat to the Planning Commission for reconsideration stating the reasons for such request for reconsideration.
- (c) Approval of the Preliminary Plat shall not in all cases entitle the Subdivider to approval of the Final Plat. After Preliminary Plat approval, if any conditions arise which would cause the Preliminary Plat to become unsatisfactory relative to the health, safety and welfare of the community, the Planning Commission shall recommend that the Final Plat be disapproved.

1726.06 Preliminary Plat; duration of approval.

- (a) Approval of a Preliminary Plat by the Town Council shall be valid for a period of two

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years from the date of approval provided that the Final Plat is substantially in compliance with the Preliminary Plat and provided that no change in land use or Street configuration is proposed.

- (b) After a period of two years from the date of approval of the Preliminary Plat, the Planning Commission may review the approved Preliminary Plat to consider changed conditions or circumstances.

1726.07 Preliminary Plat; changes from approved Plat.

If any instance where a Final Plat includes a change in relationship between the uses of land, a rerouting of a collector Street or a request for a change in a specific element of the Preliminary Plat, then the Preliminary Plat shall be reevaluated by the Planning Commission and Town Council.

1726.08 The final Plat; general.

The Subdivider shall prepare a Final Plat for presentation to the Planning Commission. It shall conform with the minimum requirements of these Regulations and with the Preliminary Plat approved by the Town Council.

1726.09 Final Plat; procedures for filing application.

In order to be included on the agenda of the Planning Commission, an application shall be in compliance with all of the following:

- (a) A Final Plat, neatly drawn on mylar and ten dark line copies shall be submitted to the office of the Mayor not less than twenty-one days before the next Planning Commission meeting.
- (b) At the same time, there shall be submitted five sets of the proposed plans and specifications in final form for all required Off-site Improvements.
- (c) In the case of a Plat proposing the reserving or dedication of land to be used in common by owners of the Lots within the Subdivision, there shall be submitted by the Subdivider evidence acceptable to the Town Council that all necessary steps have been taken for:
 - (1) The establishment of a property owner association for adequately maintaining the common property; and
 - (2) Disposition of the common property in the event of dissolution of the association.
- (d) The Final Plat shall conform to the Preliminary Plat as approved by the Planning Commission, and shall not include the rerouting of a collector Street, change in the relationship between uses of land or a change of specific elements of the Preliminary Plat. Plats failing to meet these requirements or other requirements of these Regulations shall not be placed on the Planning Commission agenda.

1726.10 Final Plat; contents.

- (a) The Final Plat shall be drawn on a scale of 100 feet to the inch from an accurate survey and on sheets whose dimension do not exceed 22 inches by 32 inches on a standard 24 by 36 inch sheet. However, in the instance of platting a small area, the scale of the drawing may be changed such that one inch will equal less than 100 feet in order to allow larger representation of the Tract. On the first sheet of every Plat there shall be a key map showing the location of the Subdivision referenced to established survey points.
- (b) The Final Plat shall show:
 - (1) The location and description of all permanent survey monuments in or near the

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- Tract, to at least one of which the Subdivision shall be referenced.
- (2) The length of all required lines dimensioned in feet and fractions thereof, and the values of all required true angles and bearings dimensioned in degrees and minutes.
 - (3) The boundary lines of the lands being subdivided fully dimensioned by length and bearings, and the location of boundary lines of adjoining lands, with adjacent Subdivisions fully identified by official names and the legal description of the land being platted.
 - (4) The lines of all proposed Streets fully dimensioned by lengths and bearings or angles.
 - (5) The widths, and names where appropriate, of all proposed Streets, and all proposed Easements and all Easements of record, which shall be properly located and identified.
 - (6) The lines of all proposed Lots fully dimensioned by lengths and bearings or angles, except that where a Lot line meets a Street line at right angles, the angle or bearing value may be omitted.
 - (7) The outline of any property which is offered for dedication by the public, or private use fully dimensioned by lengths and bearings, with the area marked "public" or "private" as the case may be.
 - (8) The location of all Build-To Lines, outer limits of Street Rights-of-Way, Easements and Easements of record being dedicated for public services or utilities.
 - (9) The location of any land that has been determined to be prone to flooding or periodic inundation.
 - (10) The radii, arcs, points of tangency, points of intersections, and central angles for all curvilinear Streets.
 - (11) The following shall be made and shown on the submitted original mylar:
 - A. Owner's certificate and dedications, executed and acknowledged.
 - B. Certificate of survey, executed, and with Land surveyor's seal.
 - C. Certificate of bonded abstractor, executed.
 - D. Certificate for release of mortgage for any portion dedicated to the public, executed and acknowledged.
 - E. County Treasurer's certificate, executed, certifying that all outstanding taxes on property proposed for sale have been paid.
 - F. Reference to any separate instruments, including restrictive covenants or Easements filed in the Office of the County Clerk which directly affect the land being subdivided.
 - G. Certificate of Planning Commission approval.
 - H. Certificate of Town Council acceptance of public Streets, Easements and public lands dedications.
 - I. All signatures affixed in black ink.
 - (12) A title which shall include:
 - A. Name of the Subdivision;
 - B. Name of the Town, County and State.

1726.11 Final Plat; Planning Commission action, appeals.

- (a) The Planning Commission shall approve or disapprove the Final Plat. Approval shall be shown on the Plat with the date of approval and over the signature of the Commission President.
- (b) If the Final Plat be disapproved, the reasons for such action shall be stated in writing

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and made a part of the official Planning Commission minutes.

- (c) If the plan be disapproved by the Planning Commission, the applicant may request reconsideration or take the Plat to the Town Council for consideration, where by a majority vote it may be approved for filing. However, no Plat shall be approved that does not comply with these Regulations for land Subdivision.

1726.12 Final Plat; Town Council action.

- (a) Before recording the Final Plat, it shall be submitted to the Town Council for approval or disapproval.
- (b) Approval of the Town Council shall be shown over the signature of the Mayor and attested by the Town Recorder.
- (c) The disapproval of any such Plat shall be deemed a refusal of the proposed dedications shown thereon, and the reasons for any disapproval shall be submitted in writing to the Subdivider.

1726.13 Final Plat; recording.

The owner or the owner's Engineer shall submit the original mylar of any Plat and the recording fee for filing of the Plat to the Ordinance Compliance Officer or the Mayor's designee at the time approval of the Town Council is requested. All required signatures shall be properly affixed. The Town will retain possession of the original mylar, securing Planning Commission and Town Council signatures upon approval. The Ordinance Compliance Officer or the Mayor's designee will make sepias and prints for record keeping purposes, and will record the Plat at the owner's expense within ten days after approval of the Final Plat, or in the instance where Off-site Improvements are constructed before the official filing of the Final Plat, within ten days after acceptance of the said Improvements by the Town Council.

On approval of the final plat, the developer shall file the signed plat with Clerk of Jefferson County within 90 days of such approval, or within the mutually agreed upon extension of time, but no more than 180 days from the date of approval. In the event that confirmation of filing is not received by the Town Clerk of Harpers Ferry within the appropriate time, the application shall be considered withdrawn and any previous approval or modification shall be considered lapsed.

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ARTICLE 1727 Variations and Exceptions

- 1727.01 Variations and exceptions.**
- 1727.02 Partial exception for Minor Subdivision.**
- 1727.03 Final Plat; Town Council action.**
- 1727.04 Final Plat; recording.**

CROSS REFERENCES

1727.01 Variations and exceptions.

Whenever the Tract to be subdivided is of such unusual size, or shape or it is surrounded by such development or unusual conditions that the strict application of the requirements contained in this article would result in Unnecessary Hardship or inequity, the Planning Commission with the approval of the Town Council may modify or vary requirements of design, but not procedure or Off-site Improvements, so that the Subdivider may develop the property in a reasonable manner, provided that the public welfare and interests of the Town are protected and the purpose and intent of these Regulations are preserved. Provided, however, that no Variance shall be allowed for prohibited land uses and a variation based upon unique conditions shall not be granted when any unique condition was created or contributed to by the Subdivider.

1727.02 Partial exception for Minor Subdivision.

Whenever a Tract or Parcel of land under a single ownership is to be subdivided into three or fewer Lots, where all required Off-site Improvements are in place and accepted by the Town, the proposed Subdivision may be exempted from the procedural requirements of this article, but this shall not constitute an exemption from any of the design or Off-site Improvements requirements contained herein. Exemptions may be permitted for minor Subdivisions under the following procedures:

- (a) The adjustment of Lot lines for one or more Lots or record shall not result in an increase of housing density greater than one residential Structure per original Lot as shown on the S. Howell Brown sale map of 1869. Relief from this provision may be granted by the Town Council when the results of the minor subdivision do not create any lots that are smaller than the most common lot size on the S. Howell Brown sale map of 1869 (i.e., not smaller than 60 feet by 130 feet), and provided that nonconforming lots are not created, and the result is otherwise fully consistent with the Comprehensive Plan and the zoning ordinances.
- (b) The proposed Subdivision is located along an existing public road, and involves no opening, widening or extension of a public roadway.
- (c) An accurate survey of the Tract, prepared by a registered land surveyor, has been submitted to the Mayor or his or her appointed designee.
- (d) The Mayor or the appointed designee shall review the proposed minor Subdivision to insure compliance with all design and Off-site Improvement requirements of these Regulations and submit a written report to the Planning Commission for consideration at the next regular Planning Commission meeting.
- (e) The applicant shall provide "Certified Mail /Restricted Delivery/ with return receipt"

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015).

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notice to all Abutting landowners, as per current tax records, at least seven days before the hearing. The applicant will provide a copy of the certified mail deliveries to the Town.

1727.03 Final Plat; Town Council action.

- (a) Before recording the final plat, it shall be submitted to the Town Council for approval or disapproval.
- (b) Approval of the Town Council shall be shown over the signature of the Mayor and attested by the Town Recorder.
- (c) The disapproval of any such plat shall be deemed a refusal of the proposed dedications shown thereon, and the reasons for any disapproval shall be submitted in writing to the Subdivider.

1727.04 Final Plat; recording.

The owner or the owner's engineer shall submit the original mylar of any plat and the recording fee for filing of the plat to the Ordinance Compliance Officer or the Mayor's designee at the time approval of the Town Council is requested. All required signatures shall be properly affixed. The Town will retain possession of the original mylar, securing Planning Commission and Town Council signatures upon approval. The Ordinance Compliance Officer or the Mayor's designee will make sepias and prints for record keeping purposes, and will record the plat at the owner's expense within ten days after approval of the final plat, or in the instance where off-site improvements are constructed before the official filing of the final plat, within ten days after acceptance of the said improvements by the Town Council.

On approval of the final plat, the developer shall file the signed plat with Clerk of Jefferson County within 90 days of such approval, or within the mutually agreed upon extension of time, but no more than 180 days from the date of approval. In the event that confirmation of filing is not received by the Town Clerk of Harpers Ferry within the appropriate time, the application shall be considered withdrawn and any previous approval or modification shall be considered lapsed.

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CHAPTER THREE – Derelict, Vacant, and Uninhabitable Structures.

Article 1759. Vacant and Uninhabitable Vacant Structures.

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ARTICLE 1759 Vacant and Uninhabitable Vacant Structures

- 1759.01 Purpose and scope.
- 1759.02 Definitions.
- 1759.03 Registration of Vacant Structures; enforcement.
- 1759.04 Inspection of Vacant Structures.
- 1759.05 Determination of Uninhabitable status; corrective actions.
- 1759.90 Enforcement of corrective action.
- 1759.91 Rights of appeal; injunction.
- 1759.92 Use of registry fees.

CROSS REFERENCES

Authority to regulate—see WV Code 8-12-16, 8-12-16a, and 8-12-16c

1759.01 Purpose and scope.

The purpose of this article is to ensure that each Vacant Structure in the Corporation of Harpers Ferry is properly monitored and maintained, does not pose a hazard to persons or property, is suitable for occupancy and use, and is safe for entry by police officers, fire fighters, and other emergency personnel in times of emergency. This article provides for registration and inspection of Vacant Structures, and corrective action to address deficient structures that pose a hazard to life, limb, health, property, safety, or welfare of the general public and diminish property values of adjacent properties.

1759.02 Definitions.

When used in this article, the following capitalized words and phrases have the meanings indicated:

Building Code. Collectively, all governing guidelines applicable to housing and property as contained in the Codified Ordinances of Harpers Ferry and other applicable regulations.

Certified Mail. Certified mail, return receipt requested, addressed to the last known address of the property owner according to the records of the Jefferson County Sheriff and, if different, the records of the Jefferson County Assessor.

Code or Ordinance Compliance Officer. The Town official or employee charged with the administration and enforcement of applicable Codified Ordinances of Harpers Ferry.

Lawfully Served means that the referenced items are served upon the owner of the subject property in the same manner as service of process in a civil action under West Virginia law, and also sent by Certified Mail.

Uninhabitable. Unfit for human use because, for example:

- (a) It is dangerous to the life, health, property, or safety of the public or the occupants of the structure because:

HISTORY:

Ord. 2022-02 (passed 03-24-2022) created Article 1759.

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- (1) It does not provide minimum safeguards to protect or warn occupants in the event of fire;
- (2) It contains any equipment (including, without limitation, any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers, or other equipment) that is in such disrepair or condition that such equipment is a hazard to life, health, property, or safety of the public or occupants of the structure; or
- (3) It is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible or readily apparent;
- (b) It is occupied by more persons than permitted under health department guidelines or other governing regulations, or it was erected, altered, or occupied contrary to law;
- (c) Of the degree to which it is in disrepair or lacks maintenance, it is unsanitary, is vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities, or other equipment deemed essential for safe and / or healthful use;
- (d) The location of the structure constitutes a hazard to the occupants of the structure or to the public; or
- (e) It has any or all of the conditions or defects described below:
 - (1) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to reasonable safety standards and related requirements for existing buildings;
 - (2) The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of egress;
 - (3) Any portion of the structure has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to such an extent that it is likely to partially or completely collapse, or to become detached or dislodged;
 - (4) Any portion of the structure, or any member, appurtenance, or ornamentation on the exterior thereof, is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place, so as to be capable of resisting natural or artificial loads of one-half the original designed value;
 - (5) The structure, or part of the structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;
 - (6) The structure, or any portion thereof, is clearly unsafe for its use and occupancy;
 - (7) The structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children who might play in the structure to their danger, become a harbor for vagrants, criminals, or immoral persons, or enable persons to resort to the building or structure for committing a nuisance or an unlawful act;
 - (8) The structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such structure provided by the Codified Ordinances of Harpers Ferry or of any other applicable law or ordinance, to such an extent as to present either a substantial risk of fire, building collapse, or any other threat to life and safety;

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- (9) The structure, if used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, ventilation, or mechanical or plumbing system, or otherwise, is unsanitary or in a condition that is likely to cause sickness or disease;
- (10) The structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system, or other cause, is a threat to life or health; or
- (11) Any portion of the structure remains on a site after the partial demolition or destruction of the remainder of the structure, or whenever the structure is abandoned so as to constitute the structure or a portion thereof as an attractive nuisance or hazard to the public.

Vacant Structure. Any residential building that has not been occupied lawfully as a residence, or any non-residential building or other structure that has not been occupied lawfully for its ordinary expected or licensed use, during the immediately preceding six consecutive months or, in the case of seasonal structures, such as vacation homes, one year. Non-occupancy may be evidenced by the status and use of utilities, property condition, and similar factors.

- (a) A structure may not be considered occupied merely due to entry for purposes not consistent with its ordinary expected use.
- (b) A structure that is unsecured and occupied by one or more unauthorized persons may not be considered occupied lawfully for purposes of the above definition.
- (c) A new structure under construction is not considered a Vacant Structure while a building permit for the construction is issued and unexpired.

Vacant Structures Board or Board. The body charged with enforcing this article, which consists of the Mayor or his / her designee, the Ordinance Compliance Officer, and one individual member at-large selected by, and to serve at the will and pleasure of, the Mayor. The Fire Chief of the Friendship Fire Company and a representative from the Jefferson County Health Department are nonvoting members.

Violative Conditions. The conditions causing a structure to be Uninhabitable and violate provisions of governing ordinances, West Virginia Code, Health Department regulations, or other applicable guidelines.

1759.03 Registration of Vacant Structures; enforcement.

- (a) Registry. The Vacant Structures Board will establish and maintain a Vacant Structures Registry.
- (b) Voluntary registration. The owner of any real property containing a Vacant Structure must register the real property by filing a notice with the Vacant Structures Board.
- (c) Involuntary registration.
 - (1) Upon referral by any person of real property not on the Vacant Structures Registry as containing a possible Vacant Structure, the Vacant Structures Board will investigate and determine whether the subject structure is a Vacant Structure. If inspection of a structure is necessary to an investigation, the provisions of Section 1759.04(b)(1) and (2) apply. Upon determination that a structure is a Vacant Structure, the Vacant Structures Board must set forth in a written statement its findings supporting the determination and issue an order

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that the real property be placed on the Vacant Structures Registry and that registry fees specified in Subsection (e) below be assessed against the owner of the real property. The Board must cause a copy of the order to be Lawfully Served upon the owner of the subject real property and posted on the front door or another conspicuous location on the structure.

- (2) The Board may, in its discretion, delegate to the Ordinance Compliance Officer and / or, if necessary, assisted by the Harpers Ferry Police Department, authority to conduct investigations and make determinations under the foregoing subsection (c) hereof.
- (d) Reasonable standard. The Corporation of Harpers Ferry may require that the owner maintain the vacant structure to a standard deemed reasonable by the governing body. Such a standard of reasonableness will be noticed to the owner, to act to bring the vacant structure into compliance with the reasonable standard noted or otherwise eliminate the public nuisance caused by the noncompliant condition.
- (e) Exemption from registration. The owner of real property containing a Vacant Structure may submit in writing to the Harpers Ferry Town Council a request for exemption from registration due to inability to occupy the structure for a period stated and for reasons stated in the request. Upon a finding of good cause shown, the Town Council must exempt the real property from registration. Examples of circumstances when good cause for an exemption may exist include when real property is being actively marketed for sale following the owner's move to other property, or when a resident is deployed on active military duty or when substantial renovations and corrective actions are being undertaken. A schedule of such corrective actions must be submitted and approved by the Ordinance Compliance Officer for exemption.
- (f) Registry fee. When real property is placed on the Vacant Structures Registry, a registry fee will be assessed to the owner of the property in the amount of \$250.00. Thereafter, while the real property remains on the Vacant Structures Registry, an annual registry fee of \$400.00 will be assessed on each anniversary of the date that the property was placed on the registry. Registry fees are due on the 30th day after notice of the assessment is sent by Certified Mail.
 - (1) If a registry fee is delinquent, the Corporation of Harpers Ferry may:
 - A. Institute a civil action in the Circuit Court of Jefferson County against the real property owner for the delinquent fees and reasonable attorney fees and court costs incurred relative to the civil action. Not less than 10 days prior to commencing such a civil action, the Corporation of Harpers Ferry must send by Certified Mail written notice advising that the Town intends to institute such a civil action; provided that, if such mailing is returned without evidence of proper receipt, the Town must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant Structure; and / or
 - B. File a lien against the subject real property in the Office of the Clerk of the County Commission of Jefferson County, for the full amount of the delinquent fees and filing fees. Before filing a lien, the Town must send by Certified Mail written notice advising that the Town will file the lien unless the delinquent fees are paid by a date stated in the notice, which date must be no less than 30 days from the date of receipt of the notice as shown on a signed return receipt card; provided that, if such mailing is returned without evidence of proper receipt, the Town must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant

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Structure, in which case the due date for payment must be no less than 30 days following such publication. A copy of the filed notice of lien must be sent by Certified Mail to the real property owner.

- (2) A registry fee paid must be refunded if, on timely appeal, the Board, Town Council, or the Circuit Court of Jefferson County, as the case may be, reverses the Vacant Structure Board's determination that the subject structure was a Vacant Structure and / or the resulting order placing the subject real property on the Vacant Structures Registry.
- (g) Removal from registry. If a structure becomes occupied lawfully or is removed or demolished, the owner of the subject real property or the Ordinance Compliance Officer upon visual observation and inspection may notify the Vacant Structures Board of the change of status, and the Board must remove the real property from the Vacant Structures Registry upon the Board's confirmation of the change in status, determination that all registry fees have been duly paid, and determination that the structure is not Uninhabitable, all following due investigation by the Board or its designee.

1759.04 Inspection of Vacant Structures.

- (a) Review of Vacant Structures Registry.
 - (1) At least annually, the Vacant Structures Board must review the Vacant Structures Registry and determine which of the Vacant Structures on the real properties on the Registry, if any, require inspection for Uninhabitable status. The Board must base such determinations on visual observations, public records, and such other facts as may reasonably evidence that a structure is Uninhabitable.
 - (2) The Board may, in its discretion, delegate to the Ordinance Compliance Officer authority to make determinations under this subsection (a).
- (b) Inspection. At least annually, the Board, by such of its members as it determines, must inspect each Vacant Structure determined to require inspection for Uninhabitable status.
 - (1) Entrance upon property and into structures for the purpose of conducting inspections must be made in a manner that minimizes inconvenience to any person in possession of the property or its owner.
 - (2) If a property owner or the person in possession of a property or structure refuses to consent to and schedule inspection, the Town must seek a search warrant from the Circuit Court of Jefferson County to authorize inspection for determining whether a Vacant Structure on the property is Uninhabitable.

1759.05 Determination of Uninhabitable status; corrective actions.

- (a) Determination of Uninhabitable status. Following inspection of a Vacant Structure, the Vacant Structures Board must determine whether the structure is Uninhabitable, based upon the criteria in the definition of the term above and the following additional criteria:
 - (1) No structure may be determined Uninhabitable unless it violates a provision of the Codified Ordinances of Harpers Ferry;
 - (2) All determinations must be made with due consideration of the ordinary expected lawful use of the subject structure (for example, a garage for vehicles would not be expected to contain sanitary facilities, utilities, and serve as a habitable structure);
 - (3) Structures under active construction or ongoing renovation, as evidenced by a valid and current building permit, may not be deemed Uninhabitable merely due

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- to conditions that will be rectified by such construction or renovation; and
- (4) Determinations of Uninhabitable status must be set forth in a written statement of findings specifying the Violative Conditions observed.
- (b) Order of corrective actions. Upon determining that a structure is Uninhabitable, the Vacant Structures Board may issue an order requiring the owner of the subject real property to take specified corrective actions to rectify or address the Violative Conditions and specifying the time in which such corrective actions must be taken. The owner of the subject real property must make the ordered corrective actions within the time specified.
- (1) Corrective actions that may be ordered to rectify or address Violative Conditions are: repair, alteration, or improvement of the structure; vacating and closing of the structure; removal or demolition of the structure; or any combination of the above. Removal and / or demolition of structures will not be allowed without the required review and approval process, including, when appropriate, review by the Board of Zoning Appeals.
- (2) The Board must strive to order the least severe corrective actions necessary and appropriate to rectify or address the Violative Conditions, taking into account the severity of the conditions, the economics of the possible actions, the historical or cultural value of the structure, and such other factors as the Board determines relevant.
- (3) The Board must specify a reasonable period of time in which corrective actions must be taken, taking into consideration any risk of imminent harm, immediate environmental impact, and the impact on the general health and welfare of adjacent property owners and others.
- (c) Notice of Uninhabitable Property. Within five days of a determination that a structure is Uninhabitable, the Board must post on the structure's front door or another conspicuous location, and cause to be Lawfully Served upon the owner of the subject real property, a written Notice of Uninhabitable Property and a copy of any order of corrective actions issued by the Board. The Notice of Uninhabitable Property must contain the following:
- (1) A description of the structure and the parcel of real property on which it is located;
- (2) An explanation of the Violative Conditions observed;
- (3) An explanation of any corrective actions required under the Board's order and the date by which actions must be taken;
- (4) A statement that failure to take corrective actions ordered within the time required may result in the Town having the required actions undertaken, with the real property owner being required to reimburse all costs and expenses of such actions and with a lien on the subject real property for such costs and expenses;
- (5) A description of the Registry of Uninhabitable Properties;
- (6) The date the registry fee will be assessed against the real property owner;
- (7) An explanation of how real property may be removed from the Registry;
- (8) An explanation of the appeals process; and
- (9) A statement that failure to pay the registry fee, or failure to reimburse the Town for costs and expenses incurred to rectify or address Violative Conditions, may result in a civil action.
- (d) Delegation to Ordinance Compliance Officer. The Board may, in its discretion, delegate to the Ordinance Compliance Officer authority to make determinations, order corrective actions, and issue Notices of Uninhabitable Property under the preceding subsections

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(a), (b), and (c) hereof.

- (e) Consideration of possible Nuisance. If the Vacant Structures Board determines that a property or structure may constitute a public Nuisance, as defined in the Codified Ordinances of Harpers Ferry, the Board must report the same to the Ordinance Compliance Officer or Town Council for further consideration.

1759.90 Enforcement of corrective action.

- (a) Town's performance of corrective action. If specified corrective actions have not been completed within the time specified in an order of corrective action, the Town may have the required corrective actions performed, and the real property owner must promptly reimburse the Town for all costs and expenses incurred with respect to such actions.
- (1) After having required corrective actions performed, the Town must send to the real property owner by Certified Mail a written notice summarizing all costs and expenses incurred with respect to such actions, which amounts the real property owner must reimburse to the Town.
 - (2) The Town may file a lien against the subject real property in the Office of the Clerk of the County Commission of Jefferson County for the full amount of all such costs and expenses. A copy of the filed notice of lien must be sent by Certified Mail to the real property owner.
 - (3) Civil action.
 - A. The Town may institute a civil action in the Circuit Court of Jefferson County against the real property owner for all costs and expenses incurred by the Town with respect to the subject property, including reasonable attorney fees and court costs incurred relative to the civil action.
 - B. Not less than 10 days prior to commencing such a civil action, the Town must send by Certified Mail written notice advising that the Town intends to institute such a civil action; provided that, if such mailing is returned without evidence of proper receipt, the Corporation of Harpers Ferry must cause the notice to be published as a Class III-0 legal advertisement and also posted on the front door or another conspicuous location on the Vacant Structure.
- (b) Registry of Uninhabitable Properties; registry fee. The Vacant Structures Board must establish and maintain a Registry of Uninhabitable Properties. After the passage of 90 days following a real property owner's receipt of a Notice of Uninhabitable Property, the Vacant Structures Board may place the subject real property upon the Registry of Uninhabitable Properties unless: (i) within 45 days of receipt of said notice, the real property owner completes required corrective actions so that the structure is no longer Uninhabitable, as determined by the Board following inspection at the request of the property owner; (ii) the real property owner provides to the Board within 45 days of receipt of said notice written information evidencing that required corrective actions will be completed in a reasonable period, as determined by the Board, and such corrective actions are thereafter completed in said period so that the structure is no longer Uninhabitable, as determined by the Board following inspection at the request of the property owner; or (iii) the real property owner appeals the Board's determination of Uninhabitable status under Section 1759.91(b), and the Board's determination is reversed on such appeal or is reversed on appeal to the Circuit Court of Jefferson County under Section 1759.91(b)(1).
- (1) If real property is placed on the Registry of Uninhabitable Properties, a registry fee of \$3,000 must be assessed to the owner of the real property on the date

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specified in the Notice of Uninhabitable Property. Thereafter, while the real property remains on the Registry of Uninhabitable Properties, an annual registry fee of \$5,000.00 must be assessed on each anniversary of the date that the property was placed on the registry. Registry fees are due on the 30th day after notice of the assessment is sent by Certified Mail.

- (2) A notice of the registry fee must be sent to the real property owner by Certified Mail and also be filed and recorded in the Office of the Clerk of the County Commission of Jefferson County in the same manner as a lien. Upon payment of the registry fee, a release of the notice of the registry fee must be filed in said Clerk's Office.
- (3) If a registry fee remains unpaid on any anniversary of the date the fee was originally assessed, the notice of the registry fee must be posted on the subject real property and also sent to the real property owner by Certified Mail.
- (4) If a registry fee remains unpaid after the second anniversary of the date the notice of the registry fee was originally recorded, the Town may institute a civil action in the Circuit Court of Jefferson County against the real property owner or other responsible party for the delinquent fee and all costs and expenses incurred by the Town with respect to the subject real property, including reasonable attorney fees and court costs incurred relative to the civil action.
- (c) Follow-Up inspections. The Vacant Structures Board may, from time to time, inspect any real property containing a structure determined to be Uninhabitable to monitor the progress of required corrective actions.
- (d) Building permits. No building permit may be issued with respect to any real property on the Registry of Uninhabitable Properties unless the work authorized by the contemplated building permit will rectify all Violative Conditions on the property.
- (e) Joint owners. Each person possessing an ownership interest in real property, whether as joint tenants, tenants in common, or otherwise, is jointly and severally liable for all fees and obligations provided for in this article.
- (f) General penalty. Violations of any provisions of this article are subject to the general penalty specified in the applicable sections of the Codified Ordinances of Harpers Ferry.

1759.91 Rights of appeal; injunction.

- (a) Appeal of Vacant Structure determination.
 - (1) A determination by the Vacant Structures Board that a structure is a Vacant Structure and the resulting order placing the subject property on the Vacant Structures Registry may be appealed by the owner of the property to either the Board, Town Council, or the Circuit Court of Jefferson County, as the property owner elects, within 30 days of the property owner's first receipt of said order.
 - (2) If, on appeal to the Board or Town Council, the prior determination and order of the Board is affirmed, the property owner may further appeal that decision to the Circuit Court of Jefferson County within 30 days of the decision.
- (b) Appeal of determination of Uninhabitable status.
 - (1) A determination by the Vacant Structures Board that a structure is Uninhabitable and a resulting order of corrective actions may be appealed by the owner of the subject property to either the Board, Town Council, or the Circuit Court of Jefferson County, as the property owner elects, within 90 days of the property owner's first receipt of the Notice of Uninhabitable Property.
 - (2) If, on appeal to the Board or Town Council, the prior determination and order of the Board is affirmed, the property owner may further appeal that decision to the

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Circuit Court of Jefferson County within 30 days of the decision.

- (c) Procedures. Appeals to the Vacant Structures Board or Town Council are subject to the following procedural rules:
 - (1) The appealing property owner must receive at least 10 days prior notice of the time, date, and place of the appellate hearing;
 - (2) Appeal proceedings must be recorded by electronic device or court reporter;
 - (3) The appealing property owner must have the right to appear, testify, present evidence and witnesses (including experts), examine and cross-examine witnesses, and be represented by an attorney at law admitted to practice in West Virginia;
 - (4) A presiding officer must be appointed and must conduct generally the proceedings, including administering oaths, ruling on evidentiary matters, and regulating the course of the proceeding;
 - (5) The Vacant Structures Board must have the burden of proving its case by a preponderance of the evidence; and
 - (6) Upon completion of the proceeding, the appellate body must render a written decision that sets forth its findings of fact and conclusions.
- (d) Injunctive relief. A property owner affected by any action or determination of the Vacant Structures Board may seek before the Circuit Court of Jefferson County temporary injunctive relief restraining the Board from taking specified actions until the matter is finally resolved.

1759.92 Use of registry fees.

All registry fees assessed under Section 1759.03(e) or Section 1759.90(b) must, when collected, be deposited in a separate account and be used for only the following purposes, as the Town Council may determine from time to time:

- (a) To improve public safety with respect to vacant and uninhabitable properties, particularly in ways that will mitigate risk to public safety personnel;
- (b) To monitor and administer this article; and
- (c) To have performed under Section 1759.90(a) corrective actions ordered pursuant to Section 1759.05(b).