



The City of
RICHWOOD
WEST VIRGINIA

The Code of the City of Richwood, WV

The General Ordinances and Resolutions

Published by order of The City Council

Compiled, revised and edited from its original 1981 version, including
all amendments and addendums as notes since then, by Grayson
Phillips

By order of the Mayor on this date August 5, 2021

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Master Copy Edition

Gary Johnson, Mayor

Chapter 1: General Provisions

Section 1-1. How Code Designated and Cited

The ordinances embraced in this and the following chapters and sections shall constitute and be designated and may be cited as “The Code of the City of Richwood, West Virginia.” Such Code may also be cited as the “Richwood City Code.”

For state law as an authority of the city refer to [S.B. No. 77 AN ACT TO GRANT THE CHARTER FOR THE CITY OF RICHWOOD \(1921\)](#)

Section 1-2. Definitions and Rules of Construction

In the construction of this Code and of all other ordinances and resolutions of the city the following definitions and rules of construction shall be observed, unless it shall be otherwise expressly provided in any section, ordinance or resolution, or unless inconsistent with the manifest intent of the city council, or unless the context clearly requires otherwise:

City council; council

The words "city council" or "council" shall mean the governing body of the City of Richwood, West Virginia.

City

The term "the city" or "this city" shall mean the City of Richwood, in the County of Nicholas, in the State of West Virginia, except where otherwise provided.

Code

The Words "the Code" or "this Code" shall mean "The Code of the City of Richwood, West Virginia."

Computation of time

The time in which any act provided by law is to be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is also excluded.

Gender

The masculine gender includes the feminine and neuter.

Joint authority

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Month

The word "month" shall mean a calendar month.

Number

The singular number includes the plural, and the plural number includes the singular.

Oath

"Oath" includes an affirmation.

Officers, departments, etc.

Officers, departments, boards, commissions and employees referred to in this Code shall mean officers, departments, boards, commissions and employees of the City of Richwood, unless the context clearly indicates otherwise.

Official time

Whenever certain hours are named in this Code, they shall mean Eastern Standard Time or Daylight Saving Time, as may be in current use in the city.

Owner

The word "owner," applied to any property, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such property.

Person

The word "person" shall extend to firms, partnerships, associations, bodies politic and corporate or any other group acting as a unit, as well as to individuals.

Personal property

The term "personal property" includes goods, chattels, real and personal, money, credits, investments and evidences thereof.

Preceding, following

The words “preceding” and “following” mean next before and next after, respectively.

Property

The word “property” shall include real and personal property.

Real property

The term “real property” shall include land, tenements and hereditaments.

Shall; may

The word “shall” is mandatory, and the word “may” is permissive.

Sidewalk

The term “sidewalk” shall mean that portion of the street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Signature or subscription by mark

“Signature” or “subscription” includes a mark when the signer or subscriber cannot write, such signer’s or subscriber’s name being written near the mark by a witness who writes his own name near the signer’s or subscriber’s name.

State

The words “the state” or “this state” shall be construed to mean the State of West Virginia.

Statute references

References to the Code of West Virginia shall mean as currently amended and as it may be amended in the future.

Street

The term “street” shall mean and include the entire width between property lines and every road, alley, avenue, parkway, boulevard, viaduct, bridge and the approaches thereto, and any public way or place, when any part thereof is open to the public as a matter of right.

Tenant or occupant

The word "tenant" or "occupant" applied to a building or land, shall include any person holding a written or an oral lease of, or who occupies the whole or a part of, such building or land, either alone or with others.

Tense

The present tense includes the past and future tenses, and the future includes the present.

Writing

"Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code or other ordinance or resolution of the city council, it shall be made in writing in the English language, unless it is expressly provided otherwise.

Year

The word "year" shall mean a calendar year, except where otherwise provided.

Section 1-3. Provisions considered as continuations of existing ordinances

The provisions appearing in this Code, so far as they are substantially the same as those of ordinances in effect immediately preceding the effective date of this Code and included herein, shall be considered as continuations thereof and not as new enactments.

Section 1-4. Catchlines and headings of portions of Code

Chapter, article, division or section headings of this Code are intended as mere catchwords to indicate the contents thereof and shall not be deemed or taken to be titles thereof, nor as any part thereof, nor, unless so provided, shall they be so deemed when any of such chapters, articles, divisions or sections, including the headings or catchlines, are amended or reenacted.

Section 1-4.1. Applicable Ordinances

Sections entitled "Applicable Ordinances" contained within this Code, along with this particular section, being Section 1-4.1, are special sections made at the discretion of the compiler and editor of this master edition of the Richwood City Code which

contain ordinances which, when adopted by the City Council, made no special provision for their inclusion into this Code, identified in each respective section by an editor's note to the same effect. Each of these respective sections so titled is applicable to the chapter, article, division and/or section wherein they are located respectively and are intended as mere catchwords to indicate the contents thereof and shall not be deemed or taken to be titles any of such respective chapters, articles, divisions or sections, including the headings or catchlines, are amended or reenacted. ***Added at compiler's discretion 2021.***

Section 1-4.2. Applicable Resolutions

Sections entitled "Applicable Resolutions" contained within this Code, along with this particular section, being Section 1-4.2, are special sections made at the discretion of the compiler and editor of this master edition of the Richwood City Code which contain resolutions which, when adopted by the City Council, became applicable to portions of the Code, identified in each respective section by an editor's note to the same effect. Each of these respective sections so titled is applicable to the chapter, article, division and/or section wherein they are located respectively and are intended as mere catchwords to indicate the contents thereof and shall not be deemed or taken to be titles any of such respective chapters, articles, divisions or sections, including the headings or catchlines, are amended or reenacted. ***Added at compiler's discretion 2021.***

Section 1-5. Severability of parts of Code

It is hereby declared to be the intention of this city council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if a phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since they would have been enacted by the city council without the incorporation in this Code of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

Section 1-6. Effect of repeal or expiration of ordinance

The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired. When any ordinance which repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

Section 1-7. General penalty; continuing violations

Wherever in this Code or in any ordinance or resolution of the city council, or in any rule, regulation, notice or order promulgated by any officer or agency of the city under authority duly vested in him or it, any act is prohibited or is declared to be unlawful or an offense or misdemeanor, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, and no specific penalty is provided for the violation thereof, the violation of any such provision of this Code or of any such ordinance, resolutions rule regulation, notice or order shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

Each day any violation of this Code or any such ordinance, resolution, rule, regulation, notice or order shall continue shall constitute, except where otherwise provided, a separate offense.

Chapter 2: Administration

Article I: In General

Section 2-1. Duties of mayor

The mayor shall devote his full time to the performance of the duties associated with the office of the mayor including serving on various boards in the community, chairing the water and sewer board meetings, overseeing the water and sewer departments, maintaining regular office hours open to the public and representing the city at events and meetings inside and outside the community. **Amended 2000.**

Section 2-2. Salaries--Mayor

The mayor of the city shall receive for services as a salary the sum of fifteen thousand six hundred dollars (\$15,600) payable from the City of Richwood general fund, plus four thousand four hundred and fifty (\$4,450) per year starting July 1, 2003, for the duties associated with chairperson of the water board and chairperson of the water department payable by the Richwood Water Department per annum plus four thousand four hundred and fifty (\$4,450) per year starting July 1, 2003, for the duties associated with chairperson of the sewer board and chairperson of the sewer department payable by the Richwood Sewer Department per annum in addition to the fees provided by law. The salary shall be payable twice monthly. The mayor will be eligible for retirement, insurance and any other benefit available to other employees of the city. The mayor shall be entitled to one week of paid vacation per year. The expenses associated with all of the benefits shall be shared between the City of Richwood, Richwood Water Department and Richwood Sewer Department. **Amended 1997; amended 2000.**

[parts of this section removed due to expiration]

Section 2-3. Same--Recorder

The recorder of the city shall receive for his services as a salary the sum of one thousand two hundred dollars (\$1,200) from the City of Richwood General Fund, plus six hundred dollars (\$600) for the duties associated with treasurer of the water department, plus six hundred dollars (\$600) for the duties associated with the treasurer of the sewer department per annum in addition to the fees provided by law. Along with the established duties of the recorder, on behalf of the City of Richwood's general fund, water fund and sewer fund, the recorder will be required to present before the council monthly, a monthly reconciled bank statement and proof of paid quarterly state and

federal taxes. The recorder will be eligible for retirement. The expenses associated with all of the benefits shall be shared between the City of Richwood, Richwood Water Department and Richwood Sewer Department. The salary shall be payable once monthly. **Amended 1997; amended 2000.**

Section 2-4. Same--City council members

The salary of the city council members shall be thirty-five dollars (\$35) per council meeting or combined committee meeting in which the council member attends. A quorum of the council is required to be in attendance for a meeting to be held. Each council member will be eligible for retirement. The salary shall be payable once monthly. **Amended 2000.**

- (a) When any officer, elected or appointed, of the City submits a resignation, be it written or verbal it shall be effective immediately unless an alternative date is so offered. The resignation shall be read into the official record at the next regularly scheduled Council meeting. The purpose of this Ordinance is to prevent Officials resignations from having an adverse impact on this and future municipal elections. **Added 2020.**

Section 2-5. Planning commission

A city planning commission is hereby established consisting of nine members, which shall be governed and have all the rights and authority authorized by the Charter, the provisions of this Code and the laws of the state pertaining to a city planning commission.

The members of such commission shall be nominated by the administrative authority of the city and confirmed by the governing body of same. One member of the commission shall be a member of the governing body of the city and one member shall also be a member of the administrative department of the city. The terms of these two members shall be co-extensive with the term of office to which he has been elected or appointed. The remaining members of the commission first appointed shall serve for terms of one year, two years and three years, respectively, divided equally or as nearly equally as possible between these terms. Thereafter members shall be appointed for terms of three years each. Vacancies shall be filled by appointment for the unexpired term only.

Applicable Ordinances

Note: Original ordinance(s) made no provision for position within the Code; such provision was made at the discretion of the compiler, being in Article I, Chapter 2 of the Code.

Ordinance 1: Adoption of Rules Regarding Regular, Special and Emergency Common Council Meetings for the City of Richwood

The Common Council of the City of Richwood does ordain as follows:

Regular Meetings

Notice of all regularly scheduled meetings of the Common Council shall be posted three (3) business days in advance of the meeting. The requirements of “notice” and “posting” shall be accomplished by posting a meeting agenda for each regular meeting in a public office and having copies of the agenda available to be picked up by the general public at the same public office during regular business hours. The meeting agenda for a regular meeting may be amended up to two (2) business days prior to the meeting. All amended meeting agendas must also be posted in the same method and manner as the original meeting agenda.

Special Meetings

Notice of all special meetings of the Common Council shall be posted two (2) business days in advance of the meeting. The requirements of “notice” and “posting” shall be accomplished by posting a meeting agenda for each special meeting in a public office and having copies of the agenda available to be picked up by the general public at the same public office during regular business hours.

Emergency Meetings

Notice of all emergency meetings shall be posted as soon as practicable and set forth the reason for an emergency meeting. The requirements of “notice” and “posting” shall be accomplished by posting a meeting agenda for each emergency meeting in a public office and having copies of the agenda available to be picked up by the general public at the same public office during regular business hours.

An emergency meeting is only to be used in those situations where the governing body (Common Council) will need to take immediate official action in response to an emergency situation.

Ordinance 1 added 2012.**Ordinance 2: Freedom of Information Act****1. PURPOSE.**

The purpose of this policy is to standardize procedures within the City of Richwood associated with processing Freedom of Information Act (FOIA) requests, except as otherwise may be directed by the Mayor.

2. SCOPE.

This policy applies to all employees of the City and any individual or organization charged with producing City FOIA responses and contracted organizations and individuals as their contracts may require compliance with this policy or City policies generally.

3. APPLICABLE W. Va. CODE.

West Virginia Code, Chapter 29B, "Freedom of Information."

4. DEFINITIONS.

The definitions below are applicable unless the context in which the defined words are used clearly requires a different meaning.

4.1. Addressee: The person to whom the FOIA Request is addressed.

4.2. Department: Any of the following units of the City: Council, Boards, or Offices of the City.

4.3. Legal Counsel: In order of availability:

4.3.1. City Attorney and/or

4.3.2. An attorney or law firm designated by the Mayor.

4.4. Record: A writing including any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics (such as notes, computer files and e-mails) containing information relating to the conduct of the public's business, prepared, owned, retained by, or subject to the control of, the City.

4.5. Request; An oral or written statement or question, including voice-mail and e-mail, to the City or one of its Departments or employees for inspection or copying of one or more Records.

4.6. Requester: The person requesting a FOIA response.

5. ALTERNATIVE DISPOSITIONS OF A FOIA REQUEST.

The disposition of a FOIA Request may be resolved by:

5.1. Notifying the Requester that the Request lacks reasonable specificity for fulfillment;

5.2. Notifying the Requester that the requested Records are not possessed by the City;

5.3. Notifying the Requester where the requested Records may be obtained from the City's website or other websites;

- 5.4. Notifying the Requester of the time and place at which he or she may inspect and request copies of Records. Responses to such Requests will be in accordance with the law and, except where it may be inapplicable, this policy. Consult the Legal Counsel if guidance is needed;
 - 5.5. Furnishing copies of the requested Records in accordance with the law and this policy;
 - 5.6. Responding to the Requester, as provided in Section 9.2 of this policy, when the requested Records are relevant to a suit or grievance against the City; or
 - 5.7. Denying the Request, in whole or in part, and providing the Requester with a written statement containing the information in Section 9.3.2 of this policy. A copy of the denial shall be maintained in the office of the City Manager for retention for one year, unless law or other policy requires a longer period.
6. TIME TO RESPOND TO A FOIA REQUEST; REQUEST FOR EXTENSION.
- Time to Respond.
- 6.1. Except as provided in Sections 6.2 and 9.5.2.2 of this policy, a response fulfilling ordering a FOIA Request must be made within five days of receipt of the Request by the City or its Department, not including the day of receipt, Saturdays, Sundays, and legal holidays. (The day after Thanksgiving is not a legal holiday.)
- Request for Extension.
- 6.2. If the City or its Department determines that the requested Records cannot be retrieved and copied before the response is due, the City or its Department;
 - 6.2.1. Processes the Request in conformance with Sections 9.1 through 9.5.2.2 of this policy;
 - 6.2.2. Attempts to contact by telephone or e-mail the Requester to:
 - 6.2.2.1. Provide any fee information required by Section 9.5;
 - 6.2.2.2. Explain why the response cannot be timely prepared;
 - 6.2.2.3. Provide an estimated time when the response will be ready; and
 - 6.2.2.4. Request an extension of the due date. If the request for an extension is refused, but there is agreement to pay any estimated fee, proceed to provide the response as soon as practicable.
 - 6.2.3. Sends a letter or e-mail to the Requester documenting any telephone conversation, including any fee information required by Section 9.5.2; and

- 6.2.4. If there was no telephone conversation or e-mail reply, sends a letter to the Requester containing the information and request that would have been provided in the telephone call.

7. PROCESSING OF REQUESTS RECEIVED BY THE MAYOR.

For FOIA Requests addressed to the Mayor, either as the sole Addressee or as a joint Addressee with one or more Departments or persons of the City, the Mayor's office Designee:

- 7.1. Reduces to writing any oral Request, other than one received on voice-mail;
 - 7.2. Faxes and mails the Request (or forwards the e-mail or voice-mail Request) to the appropriate Department Supervisor for preparation of a response and signature by the Department Supervisor, his or her Designee or Legal Counsel;
 - 7.3. If the Request is for Records that may be in more than one Department, faxes and mails the Request (or forwards the e-mail or voice-mail) to the other relevant Department Supervisors, selects a lead Department to collect the requested Records from all relevant Departments and to respond to the request, and informs the relevant Department executive heads regarding the identity of the designated lead Department;
 - 7.4. Sends the appropriate Department Supervisor the copies of any Records in the Mayor's office that are responsive to the Request; and
 - 7.5. If the Request is related to a potentially controversial or sensitive matter, sends a copy of the Request (or forwards the e-mail or voice-mail) to the Legal Counsel.
- #### 8. DEPARTMENT RECEIVING, FORWARDING AND REDIRECTING OF REQUESTS.
- 8.1. If a Department Supervisor, or his or her Designee, thinks a Request was misdirected by the Mayor's Office to the Department, he or she calls the Mayor's Office for instructions.
 - 8.2. A Department employee receiving an oral Request, other than a voice-mail Request, reduces it to writing.
 - 8.3. If a Request is received by a Department employee, he or she refers the Request by hand or by fax, e-mail or voice-mail to his or her Department Supervisor.
 - 8.4. If an Addressee Department possesses some of the requested Records, but other Departments possess other requested Records, the Addressee Department is the lead Department for collecting the requested Records from all relevant Departments and for responding to the Requester. The Addressee Department's Supervisor or Designee, faxes or e-mails copies of the Request to the other Departments possessing requested Records.

- 8.5. If an Addressee Department possesses none of the requested Records, but some or all of the requested Records are held by other City Departments, the Addressee Department's Supervisor, or Designee, faxes and sends the Request (or forwards the e-mail or voice-mail) to the most appropriate other Department to be the lead Department for collecting the requested Records from all relevant Departments and for responding to the Requester. The Addressee Department writes to inform the Requester, that the requested records are not possessed by the Addressee, but that the Request has been forwarded to another City Department for further response.

9. PROCEDURES FOR PROCESSING OF REQUESTS RECEIVED BY A DEPARTMENT.

When a Department Supervisor receives a Request directly or by referral, he or she, or the Designee shall proceed using the following guidelines:

- 9.1. If the Request is related to a potentially controversial or sensitive matter, hand-delivers or faxes a copy of the Request (or forwards the e-mail or voice-mail) to the City Manager, and Legal Counsel, if the Requester did not address or copy them
- 9.2. If it is known that the requested Records relate to a suit or grievance against the City, hand-delivers or faxes a copy of the Request (or forwards the e-mail or voice-mail) to the attorney defending the City and inquires if a FOIA response should be prepared or whether the attorney will respond as part of the suit or grievance.
- 9.3. Hand-delivers or faxes a copy of the Request (or forwards the e-mail or voice-mail) to the City; if the Request is routine, may inquire if Legal Counsel needs to approve the response when it is prepared; and, as appropriate, consults with him or her regarding:
- 9.3.1. The drafting of the response letter and any Records that may be exempt from disclosure under the West Virginia FOIA, W.Va. Code § 29B-1-4, other provisions of law, court orders, or court recognized privileges, such as attorney-client, attorney work-product, deliberative process, etc.; and
- 9.3.2. If the response will be a denial of the Request, in whole or in part, inclusion of statements that notifies the Requester:
- 9.3.2.1. The reasons for the denial. (The City is not required to prepare a Vaughn index, which lists all of the records that the City is not producing due to the applicable exemptions. In *Farley v. Worley*, 215 W.Va. 412, 599 S.E.2d 835 (2004), the Supreme Court of Appeals of West Virginia made this distinction clear. "In other words, the Vaughn index is

- implicated by FOIA litigation — not by a FOIA denial.” Id., at 426, 849.)
- 9.3.2.2. That the responsibility of the Department Supervisor to produce the denied Records is at an end; and
 - 9.3.2.3. That the Requester may institute proceedings in the Circuit Court of the jurisdiction where the Records are kept, i.e., the Circuit Court of Putnam County, West Virginia.
- 9.4. Makes an estimate of the fee to be charged based on the fees established in Section 10 of this policy;
 - 9.5. Takes the following action when the estimated fee is more than \$5.00 and the Requester did not include in his or her Request an agreement to pay an amount equal to or greater than the estimated fee:
 - 9.5.1. Attempts to telephone or email the Requester to inform him or her:
 - 9.5.1.1. Of the estimated fee and requests agreement of the Requester to pay that fee;
 - 9.5.1.2. That the exact fee will be communicated to him; or
 - 9.5.1.3. That no copies of Records will be released until the fee is paid; and
 - 9.5.2. Sends a letter or e-mail to the Requester to:
 - 9.5.2.1. Confirm any agreement of the Requester to pay the estimated fee; or
 - 9.5.2.2. If the Requester refused to pay the fee, or if there was no telephone conversation or e-mail reply, inform the Requester of the estimated fee and that nothing further will be done regarding the Request until the Agency receives agreement to pay the estimated fee.
 - 9.6. Compiles the requested Records that are under the possession or control of the Department, and if the Department is the lead Department, collects and includes Records from all relevant Departments;
 - 9.7. Determines the exact fee in accordance with Section 10 of this policy;
 - 9.8. Drafts the response letter and obtains the review and approval of the Response by the Legal Counsel, unless he or she has stated that such is not necessary.
 - 9.9. Signs the response letter or requests the Legal Counsel to sign it;
 - 9.10. Telephones or e-mails the Requester (or, if the Requester cannot be reached by telephone, sends a letter) and informs him or her of the fee and that the response to the Request will be held until payment is received by check or money order made payable to City of Richwood; and
 - 9.11. When the fee is received, sends the fee to Finance Manager, mails or e-mails the response to the Requester, and files a complete copy of the

response with the Department Supervisor and the Mayor for retention for one year, unless law or other policy requires a longer period.

10. FEES

- 10.1. In addition to the search and compilation fee, fees for copies of requested Records are as follows:
 - 10.1.1. Each additional page is furnished at a charge of twenty-five cents (\$5.00) per page printed on 8 ½" x 11" or 8 ½" x 14" paper.
 - 10.1.2. Records reproduced on larger paper, tape recordings, videos, or any other type of format other than the method described in 10.1.1 above, are provided at actual cost, which includes but may not be limited to, materials, the operator's time, transportation, fees charged by outside entities, and delivery charges.
- 10.2. For Records provided on disk or by e-mail, there is no fee in addition to any search and compilation fee.
- 10.3. Fees may be waived only by the Mayor.

Ordinance 2 added 2017.

Applicable Resolutions

Note: Resolution(s) included herein are applicable to Article I, Chapter 2 of the Code.

Resolution 1: Municipal Corporation

This City of Richwood, a municipal corporation, does hereby elect to be a participating public employer under [Chapter 5, Article 10, Section 16, of the Official West Virginia Code](#) as amended by the Acts of the Legislature, Regular Session, 1961, and thereby include its employees in the membership of the Public Employees Retirement System. **Adopted 1993.**

Resolution 2: Contributions to Retirement System

The City of Richwood, a political subdivision, does hereby elect as a participating public employer, to pick up and pay the contribution which such employees are required by law to make to the Retirement System, pursuant to [Chapter 5, Article 10c, of the Official Code of West Virginia](#), as amended by the Acts of the Legislature, Regular Session, 1986.

The City of Richwood does hereby permit the entity from which it derives its funds to deduct from its appropriations any sums the Board of Trustees of the

Retirement System funds are delinquent and pay such delinquent funds to the Board of Trustees of the System, pursuant Rule No. 19 of the Rules and Regulations of the Retirement System. ***Adopted 1993.***

Resolution 3: Capital Asset Report

The City of Richwood will hereafter have available the city's capital asset report. Capital assets are defined by the government as assets with an initial, individual cost of \$5,000 or more and estimated to have a useful life more than one year. The categories of assets will include; machinery and equipment, buildings, transmission and distribution and infrastructure. Depreciation of these assets will be as follows:

Machinery and Equipment: five to fifteen years

Transmissions and Distribution: five to fifty years

Infrastructure: five to fifty years

Buildings: thirty to fifty years

The City of Richwood will also maintain a detailed asset list which will include the date of purchase, amount of purchase, salvage value, and depreciation as required by generally acceptable accounting principles. ***Adopted 2012.***

Article II: Cemetery Association

Section 2-6. Created

The Cemetery Association of the city is hereby created.

Section 2-7. Composition; appointments; terms

The association shall consist of five members. The members of the association shall be appointed by the council. Two members of the council shall be appointed as members of the board. The term of the association membership of any such councilman so appointed shall continue during his term as councilman and until his successor on the association is selected from the council. The terms of other appointed members shall be for six years and until their successors have been duly appointed and qualified; provided, however, that of the three such members of the first association, one shall be appointed to serve for a term of six years, one for a term of four years and one for a term of two years. The terms of such members of the association shall begin on January 1, 1977, and one member on January 1 each second year thereafter; provided, however, that the members of the first association, appointed herein shall serve, in

addition, from the effective date of the ordinance from which this section is derived to January 1, 1977.

Section 2-8. Organization

The association shall fix the dates for its regular and special meetings. At the first meeting held after the first association has been appointed, and thereafter at its first meeting after January 1, 1977 and after January 1 of each second year thereafter, the members of the association shall organize by electing one of their members president and another vice president, and by electing a secretary who need not be a member of the association. The association shall make no commitment for the payment of compensation to a secretary until the association has income from operations from which such compensation may reasonably be paid.

Article III: Municipal Court

Section 2-9. Court created; jurisdiction generally

There is hereby created a court, to be known as the "municipal court," which shall have criminal jurisdiction over violations of city ordinances.

Section 2-10 Municipal judge--Appointment; term; removal; compensation; oath and bond

There shall be a judge, to be known as the "municipal judge" who shall be appointed by the mayor with the consent and approval of the city council, who shall serve for a term of two years and who shall be subject to removal for cause only. The municipal judge shall receive such compensation as may be fixed by the city council. The person so appointed as municipal judge shall qualify by taking the oath of office as such and shall give bond in an amount fixed by council, under which bond he shall be responsible for all funds coming into his hands by virtue of such appointment.

Section 2-11. Same--Vacancy in office

In the event of the death, resignation, removal or permanent disability of the municipal judge, the mayor shall appoint a similarly qualified person to serve as municipal judge for the unexpired term, with the consent of the city council.

Section 2-12. Same--Power and duties generally

The municipal judge shall preside over the municipal court. He shall have jurisdiction to hear and determine alleged violations of this Code and other ordinances, orders, bylaws, acts, resolutions; rules and regulations of the city council and shall exercise such other jurisdiction and judicial powers, authority and duties as set forth in sections 8-10-1 and 8-10-2 of the Code of West Virginia.

Section 2-13. Acting municipal judge

In the event of the temporary absence or disability of the municipal judge, the mayor shall appoint a person similarly qualified to serve as acting municipal judge during such absence or disability; and such acting municipal judge shall have all and the same powers and authority as the municipal judge.

Section 2-14. Warrants, orders and process; authority and liability of police officers in service of process

All warrants and other process and orders of the municipal court shall be directed to the chief of police, to be executed by him or by one of his subordinates. The police officer executing any such process or order shall have the same authority and be subject to the same liability as a sheriff of the state in the performance of like services.

Section 2-15. Maintenance of records

The municipal judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him and of all trials, fines or sentences imposed or judgments entered by him in a permanent book to be known as the municipal court docket. A record of all entries made in such docket shall be signed by the municipal judge on the date of such entry.

Section 2-16. Arrest or appearance in answer to charge of Code or ordinance violation

Any person who has violated any of the provisions of this Code or other city ordinance may be arrested and brought before the municipal court, or given notice to appear and answer to a violation of any of the provisions of this Code or other city ordinance before the municipal court at a time specified in such notice. Before the time specified in such notice, the person so summoned may appear before the clerk of the municipal court or other municipal officer designated by the judge of the municipal court and make answer to the violation set forth in such notice, and pay the fine fixed by the

municipal judge for such offense to the clerk or other officer so designated. Acceptance of the prescribed fine by the clerk or other officer shall be complete satisfaction for the violation, and the clerk or other officer shall give the violator a receipt to that effect, and pay the fine into the municipal court; provided, that any person so summoned to appear before the municipal court to answer a violation of any of the provisions of this Code or other city ordinance may deposit with the clerk of the municipal court cash or other bond, in an amount equal to the fine fixed by the judge of the municipal court for such violation, conditioned for his appearance to answer such charge in court at the time specified by the clerk or other officer taking the bond. In case any person posting a bond for his appearance shall fail to appear at the time specified, such bond shall be forfeited to the court, and in case such bond is posted in cash, it shall be taken by the municipal court as satisfaction for the violation.

The notice to appear, hereinabove provided for, may be served in person or affixed to the vehicle of such violator by a police officer in the case of a parking violation, in which case it shall be deemed to have the same effect as personal service, and such notice may summon the violator to appear by name or by the registration number of his vehicle. As to general penalty for violations of Code, see §1-7 of this Code.

The municipal judge may in such cases, as he deem appropriate, set or fix a bond amount which may be posted, or met, by a second person, or party other than the person charged with a violation of this Code; and in the event a bond is posted by a second person, he shall be entitled to return thereof upon appearance of the person charged before the municipal court at the time required as a condition of said bond. In the event the person charged fails to appear, and a bond posted by a second person is posted in cash, it may be taken by the municipal court as satisfaction for the violation, provided that if a party who posted such bond shall appear at the time required before the municipal court, then the person posting such bond shall be afforded a hearing at which he or she may present any relevant evidence to show cause why such bond should not be forfeited. **Added 1997.**

Article IV: Board of Park Commissioners

Section 2-17. Created

The board of park commissioners of the city is hereby created.

Section 2-18. Composition; appointment and terms of members

The board shall consist of five members. The members of the board shall be appointed by the council. Two members of the council shall be appointed as members of the board. The term of the board membership of any such councilman so appointed shall continue during his term as councilman and until his successor on the board is selected from the council. The terms of other appointed members shall be for six years and until their successors have been duly appointed and qualified; provided, however that the three such members of the first board shall be appointed to serve, one for a term of six years, one for a term of four years, and one for a term of two years. The terms of such members of the board shall begin on January 1, 1956, and one member on January each second year thereafter; provided, however, that the members of the first board, appointed herein, shall serve, in addition, from the effective date of this section to January 1, 1956.

Section 2-19. Organization

The board shall fix the dates for its regular and special meetings. At the first meeting held after the first board has been appointed, and thereafter at its first meeting after January 1, 1958, and after January 1 of each second year thereafter, the members of the board shall organize by electing one of their members president, and another vice president, and by electing a secretary who need not be a member of the board. The board shall make no commitment for the payment of compensation to a secretary until the board has income from operations from which such compensation may reasonably be paid.

Section 2-20. Powers and duties

The board shall have all the authority, powers and duties provided in article 21, chapter 8 of the Code of West Virginia as presently amended, and as hereafter amended, from the effective date of such future amendments. Except as provided above, such article of the Code, as presently amended, is here made a part of this chapter by incorporation by reference, to the same effect as if fully set out herein, for the governance of such board, and any future amendments thereto shall be taken and treated as amending this chapter to the same extent.

Article V: Public Library

Section 2-21. Created

A public library shall be immediately organized under the name of “Richwood Public Library” and hereafter operated for the use and benefit of the people of the city.

Section 2-22. Materials, etc., to be furnished

The city public library shall provide a public reading room, properly furnished, and reading material and other facilities and activities usually provided by public libraries.

Section 2-23. Appropriations from council

The city council shall Provide in its annual budgets for such financial assistance as is reasonably possible under the then existing circumstances.

Section 2-24. Acceptance of donations, gifts, etc.

The city public library shall be authorized to accept donations of money, materials and services for the purpose of furthering its general aims and objectives.

Section 2-25. Title to property

Title to all property acquired by the library, whether by gift or purchase, shall vest and remain in the city for the benefit of the people of the city for use in connection with such public library.

Sec. 2-26. Board of directors

Pursuant to the statutes of the State of West Virginia, and in particular Chapter 10, Article 1, of the West Virginia Code, the Board of Library Directors of the City of Richwood is hereby created to be composed of five members. One member shall be appointed for a term of one year; one for two years; one for three years; one for four years; and one for five years. Subsequent appointments shall be for five years.

Such board shall be governed by, and have all Powers and duties made and provided for by the statutes of the State of West Virginia, and in particular Chapter 10, Article 1, as if such statutes were recited herein.

Article VI: Emergency Services

Section 2-27. “Emergency services” defined

As used in this chapter, the term “emergency services” shall mean the preparation for and the carrying out of all emergency functions, other than functions for which the military are primarily responsible, necessary to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, fire, flood or other natural causes.

Section 2-28. Policy and purpose

In view of the possibility of local disasters resulting from enemy attack, fire, flood or other natural causes, and in order to ensure that preparations of the city will be adequate to provide for the common defense and to protect the public peace, health and safety it is hereby found desirable:

- (a) To create an emergency services agency as authorized by law.
- (b) To provide for the rendering of mutual aid to other cities within the state and, if necessary and only by compact with the approval of the governor, the neighboring cities and counties of another state.
- (c) To cooperate with the state government with respect to carrying out emergency services functions.

Section 2-29. Advisory council

There is hereby created an emergency services advisory council, which shall consist of five citizens appointed by the mayor, with the approval of the common council, who shall advise the director of emergency services on all matters pertaining to emergency services. The members of the advisory council shall serve without compensation but shall be reimbursed for the reasonable and necessary expenses incurred in the performance of their duties.

Section 2-30. Director—Appointment and duties generally

The mayor, with the approval of the common council, shall appoint a director of emergency services, who shall perform such duties as are imposed upon him by this chapter and as are delegated to him when not contrary to the provisions of state law, this Code or other ordinances or resolutions of the city

Section 2-31. Same--Powers and duties

The director of emergency services shall coordinate the activities of all organizations for emergency services within the city and shall maintain liaison with and cooperate with the emergency services agencies and organizations within the state and within the state government. The director shall have direct responsibility for the organization, administration and operation of the city organization for emergency services, subject to the direction and control of the mayor.

In performing his duties under this chapter the director of emergency services is hereby authorized to cooperate with the state government, with other cities and counties and with private agencies in all matters pertaining to the emergency services of the city and of the state.

In performing his duties under this chapter and to effect its policy and purpose, the director of emergency services is further authorized and empowered:

- (a) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him, with due consideration of the plans of the state government.
- (b) To prepare a comprehensive plan and program for the emergency services of the city, such plan and program to be integrated into and coordinated with the emergency services plan of the state government and of other cities and counties within the state to the fullest extent.
- (c) In accordance with such plan and program for the emergency services of the city, to procure supplies and equipment, to institute training and public information programs and to take all other preparatory steps, including the partial or full mobilization of the emergency services organization in advance of actual disaster, to ensure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.
- (d) To make such studies and surveys of the industries, resources and facilities in the city as may be necessary to ascertain the capabilities of the city for emergency services, and to plan for the most efficient emergency use thereof.
- (e) On behalf of the city and subject to final approval by the common council, to enter into mutual aid arrangements with the other cities and counties within the state and, with the approval of the governor, with emergency service agencies or organizations of other states, for reciprocal emergency service aid and assistance in case of disaster too great to be dealt with unassisted.
- (f) To delegate any administrative authority invested in him under this chapter, and to provide for the subdelegation of any such authority.

- (g) To cooperate with the governor and the state division of emergency services and with officials and agencies of other cities and counties within the state, in matters pertaining to the emergency services of the city and state.

Section 2-32. Appropriations, gifts, etc.

Whenever the federal or state government or any agency or officer thereof or any other person shall offer to the city services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency services the city, acting with the consent of the governor and through the common council, may accept such offer, and upon such acceptance, the common council may authorize any officer of the city to receive such services, equipment, supplies, materials or funds on behalf of the city, subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

Section 2-33. Utilization of existing services and facilities

In carrying out the provisions of this chapter, the director of emergency services is hereby authorized to utilize such services, equipment, supplies and facilities of existing departments, offices and agencies of the city as may, in the judgment of the common council or the mayor, be reasonably provided under circumstances then existing.

Section 2-34. Expenditure of funds and incurring debt restricted

Nothing in this chapter shall be construed to authorize the director of emergency services or any other person, or the emergency services advisory council or any member thereof, to expend any city funds or to incur debt or obligation, except pursuant to specific authority of the common council so to do.

Chapter 3: Alcoholic Beverages

Article I: In General

Section 3-1. Tax imposed on purchase prices of intoxicating liquors sold at state stores

Pursuant to West Virginia Code §8-13-7, there is hereby imposed a tax of five percent of the retail purchase price of any and all intoxicating liquors or wines purchased from any person licensed to sell same to the public under the provisions of chapter 60, Article 8 of the Code of West Virginia, within the corporate boundaries of the city. Such tax shall be levied upon the purchaser of such intoxication liquor or wine and shall be added to and collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the city from the state treasury pursuant to the rules and regulations adopted by the alcohol beverage control commissioners; provided, however, that such tax shall not be collected on intoxicating liquors sold by or purchased from holders of a license issued under the provisions of [chapter 60, article 7 of the Code of West Virginia](#).

In the event any person licensed to sell intoxicating liquors as aforesaid, shall falsely report or fail or refuse to correctly report the amount or value of the intoxicating liquors sold in the City, then such person shall be fined not more than five hundred dollars (\$500). **Amended 1997.**

Article II: Nonintoxicating Beer

Section 3-2. License--Required

No person, as defined by the statutes of the State of West Virginia, shall, from the city manufacture, brew, sell or distribute, either at retail or wholesale, nonintoxicating beer as the same is defined by the statutes of the State of West Virginia, and no person shall, in the city, without such license, engage in the business of manufacture, distribution or sale of nonintoxicating beer, as such businesses are defined by such statutes.

Section 3-3. Same--License tax imposed; classification of retail dealers; amounts of annual fees

There is hereby levied and imposed an annual license tax upon all dealers in and of nonintoxicating beer, which license period shall begin on the first day of July of each year and end on the thirteenth day of June of the following year, and if granted for a less period, the tax shall be computed quarterly in proportion to the remainder of the fiscal year, as follows:

- (a) Retail dealers shall be divided into two classes, class A and class B. In the case of a class A retail dealer, the annual license fee shall be one hundred dollars (\$100) for each place of business; the annual license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be one hundred dollars (\$100),

Class A licenses issued for social, fraternal or private clubs shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

In the case of a class B retailer, there shall be two types of a class B license, each type to be colored differently so as to be easily distinguished. The fee for a class B license authorizing the sale of unchilled beer only shall be fifteen dollars (\$15). The fee for a class B license authorizing the sale of both chilled and unchilled beer shall be one hundred dollars (\$100). A class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purposes of this section, the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.

- (b) In the case of a distributor, the license fee shall be two hundred fifty dollars (\$250) for each place of business.
- (c) In the case of a brewer with its principal place of business located in the city, the license fee shall be five hundred dollars (\$500) for each place of manufacture.

Section 3-4. Same--Application

License under this chapter shall be issued only upon the order of the city council and at its discretion. Every applicant for such license shall make out and deliver to the city council an application upon a blank to be furnished by the council for that purpose, similar in form to that prescribed by the state tax commissioner for making applications for state licenses for like purposes. Such applications shall be addressed to the city council and shall be signed and sworn to before a notary public or other officer authorized to administer oaths.

Section 3-5. Same--Nontransferable

No license issued under the provisions of this chapter shall be transferred to another person, nor shall the location of the premises to which the license relates be changed without the written consent of the city council, which consent may be refused, in its discretion.

Article III: Private Clubs Licensed by State

Section 3-6. Tax--Imposed

There is hereby levied and shall be collected an annual fee, for revenue purposes only, from every person or any group or combination acting as a unit, who shall at any time become licensees, as herein defined, of and under the provisions of [chapter 60, article 7, of the Code of West Virginia](#), as amended.

“Licensee,” as used in this section, shall mean the holder of a license to operate a private club granted under the provisions of chapter 60, article 7, of the Code of West Virginia, 1931, as amended.

Section 3-7. Same--Rates

- (a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans organization or a nonprofit social club shall be three hundred seventy-five dollars (\$375).
- (b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in the subsection (a) of this section shall be five hundred dollars (\$500) if such private club has less than one thousand members and one thousand two hundred fifty dollars (\$1,250) if such private club has one thousand or more members.

- (c) The fee of any such license issued following the first day of January of any year and to expire on the thirteenth day of June of such year shall be one half of the annual license fee prescribed by subsections (a) and (b) of this section.
- (d) All such fees shall be paid to the recorder of the city and shall be credited to the general revenue fund of the city.

Section 3-9. Same--Refund of fees

No part of the fees paid hereunder shall be refundable to the payor for any reason, but the rights permitted hereunder shall immediately cease and terminate upon suspension or revocation of the licenses of the licensee by the state.

Section 3-10. Penalty for nonpayment of fee

Any state licensee under the provisions of chapter 60, article 7, of the Code of West Virginia, operating as a private club or otherwise without having first paid the fees provided for herein and having obtained his receipt thereof shall be presumed to be in violation of this article, and the city police shall, upon orders from the mayor, close or stop any business, activity or trade for which the fee is herein required, and such closure shall continue until such fee is properly paid.

Chapter 4: Animals and Fowl

Note: Original chapter 4 repealed and replaced in 1998; this constitutes the most up to date version with any additional amendments and addendums noted as such.

Section 4-1. Cruelty to Animals

No person shall cruelly, unnecessarily or needlessly beat, torture, torment, mutilate, kill or overload, override or willfully deprive of necessary sustenance, any horse, or other living creature, whether such living creature is his own or that of another person, nor shall impound or confine such living creature in any place and fail to supply the same with a sufficient quantity of good, wholesome food and water, and shall carry in or upon any vehicle, or otherwise, any such living creature in a cruel or inhumane manner, or knowingly feed a cow or other living creature on feed that produces impure or unwholesome milk, nor shall abandon to die any maimed, sick, infirm or diseased living creature, nor shall be engaged in or employed at cock fighting, dog fighting, bear baiting, pitting one living creature to fight against another of the same or different kind, or any similar cruelty to animals, nor shall receive money for the admission of any person, nor shall knowingly purchase an admission, to any place kept for such purpose, nor shall use, train or possess a dog or other living creature for the purpose of seizing, detaining or maltreating any other domestic living creature. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.

Section 4-2. Animals Prohibited from Running at Large

- (a) No person, being the owner, custodian or person in charge of any living creature shall allow such living creature to run at large on any public street, sidewalk, public place or non-enclosed land, or upon the property of another person without his/her consent. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (b) No cats shall be kept in the city during an official State, County or city quarantine period on cats; provided, that the owner or custodian of a cat may keep and maintain such cat on his own premises, properly enclosed, during such quarantine period; and provide further, that the owner or custodian of any cat shall be permitted to take such cat off of his own premises onto the public streets in the city during such quarantine period, provided such cat is accompanied by a person over the age of fifteen years and provided that the cat is on a leash and muzzled while off of the premises of the owner or custodian, during such

quarantine period. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.

- (c) All people, citizens and residents of the city are hereby required to keep all dogs, cats or any other living creatures of every kind, size, sex and character on the premises of the owner of such dog, cat or other living creature at all times unless such dog, cat or other living creature is on a chain or leash and being followed or lead by its owner or someone having authority to have said dog, cat or other living creature away from the said premises. The owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (d) It shall be unlawful for any dog or cat or other living creature, as above described, to run at large in the city of Richwood, and in the event that a dog, cat or other living creature is running at large in the city, and not being accompanied by its owner or other authorized person as above designed, it may be impounded, wherever it may be found, by the city and/or county. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (e) No person shall allow any dog, cat or other living creature owned by him/her or in his/her custody to run at large within the city. "Running at large" means a dog or cat that leaves the property limits of property owned, leased or occupied by its owner without restraint. "Restraint" means being secured by leash or lead, and being under the control of a responsible person and obedient to that person's command. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (f) No person within the city limits shall keep on a leash, tied to a structure, confined in a pen, run, or cage or leave in a vehicle, any dog, cat or other living creature without adequate protection from direct sunlight or exposure to the weather or without adequate fresh water at all times. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (g) No person walking a dog or cat or other living creature shall intentionally allow the dog, cat or other living creature to defecate upon the lands of another or any public property. Any owner or custodian of such dog, cat or other living creature shall be fined for each violation.
- (h) Any dog or cat or other living creature seized and impounded, as above provided, can be detained for a period of five days and if it is not claimed or redeemed by its owner, or other authorized person, within said period of five days, then it can be disposed of in such a manner and by such person that the Humane Society may designate; provided, however, that whenever the name of any person appears on the collar of any dog, cat or other living creature so seized, an attempt to notify such person may be attempted. In addition to paying

the fees of redemption, any owner or custodian of such dog, cat or other living creature shall be fined for each violation.

Section 4-3. Permit Required to Keep Animals and Fowl; Nuisances

No living creature of any kind except dogs and cats, shall be kept in the city without the owner having received a permit to do so from the city with approval of the city council. No charge will be made for such permit, but it will only be granted upon agreement that the stable, barn, coop or other means of containment of the living creature shall be constructed in such a manner that it can be kept and maintained in a dry, clean and sanitary condition, free from offensive odors, and upon a finding that the animal and its housing is not dangerous nor offensive to the neighbors or the public. Applications for such permit shall be accompanied by a certificate signed by a majority of the householders residing within a radius of five hundred feet from the place where such stable, barn, coop, etc., is proposed to be located stating that they do not object thereto; provided, that no barn, stable, coop or other place where an living creature is kept or is to be kept, shall be built, used or maintained within fifty feet of any house inhabited by human beings and unless built and maintained in a clean, dry sanitary condition and free from offensive odors; and provided further, that none of the above enumerated living creatures shall be allowed to run at large, but shall be housed in a suitable enclosure, which shall be kept thoroughly clean and unobjectionable at all times. Upon the failure of any owner or occupant of any premises to comply with any of the provisions of this section, such barn, stable, coop, etc., shall be deemed a nuisance, and as such shall be removed or abated, as provided by law.

Section 4-4. Removal of Unsanitary Conditions

No person owning or using a barn or stable within the city shall deposit any manure or refuse from a stable or barn upon any street, sidewalk or open ground within the city except for use for gardens and lawns. All persons owning or using stables or barns shall provide a box or other receptacle, which shall be so constructed as to exclude rain water and prevent the ingress and egress of flies and be provided with a suitable cover, and all manure or stable refuse shall be deposited in such box or receptacle, pending its removal from the premises, and such box or receptacle, shall be kept from the premises, and such box or receptacle, shall be kept securely closed, except when manure or other refuse is being deposited or removed therefrom. From April 1 to November 30 in each and every year, every collection of such stable or barnyard manure shall be removed from the premises at least once a week; during the remaining period of the year, it shall be removed as frequently as may be necessary to

prevent it from becoming offensive or a menace to the health and comfort of any person in the neighborhood. The ground, such box or other receptacle in which manure is stored must at all times be kept clean and treated in such a manner that flies will not breed in it.

Section 4-5. Poisoning Animals

No person shall maliciously, or willfully or without consent of the owner, administer poison, except a licensed veterinarian acting in such capacity, to any living creature that is the property of another; and no person shall, willfully and without consent of the owner, place any poisoned food where it may easily be found and eaten by children or living creature, either upon his or the lands of another.

Section 4-6. Impoundment

Any living creature found to be living under conditions in violation of this chapter may be impounded by the city or the county.

Section 4-7. Sale of Baby Fowl or Rabbits Prohibited

No person, firm or corporation shall sell, offer for sale, barter, or give away baby chickens, ducklings, or other fowl, under three weeks of age, or rabbits under two months of age, as pets, toys, premiums or novelties or to color, dye, stain or otherwise alter the natural color of baby chickens, ducklings or other fowl, or rabbits or to bring or transport the same into the city; provided, however, that this section shall not be constructed to prohibit the sale or display of such baby chickens, ducklings or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for purposes of commercial breeding and raising.

Section 4-8. Vaccinations of Dogs

Whoever owns, keeps or harbors within the city a dog five months or more of age shall have such dog vaccinated against rabies as often as may be necessary under the provisions of [West Virginia Code Article 19-20A](#) to ensure that the dog will at all times be immune to rabies; and it shall be his/her duty to keep securely fastened to the collar of such dog the currently valid vaccination tag issued for such dog pursuant to [West Virginia Code 19-20-4](#).

Section 4-9. Kennels

Each person keeping three or more living creatures on his/her premises shall be

deemed to be keeping and maintaining a kennel. No kennel shall be kept, maintained or operated in the city without the owner thereof having received a permit to do so from the city and approved by council. No charge will be made for such permit, but the permit will only be granted upon agreement that the kennel where such living creatures are to be kept shall be constructed in such a manner that it can be kept and maintained in a dry, clean and sanitary condition, free from offensive odors. Applications for condition, free from offensive odors. Applications for such permit shall be accompanied by a certificate signed by a majority of the householders residing within a radius of five hundred feet from the place where such kennel is proposed to be located; provided, that no kennel or other place where living creatures are kept shall be built, used or maintained within seventy-five feet of any house, and unless built and maintained in a clean, dry and sanitary condition and free from offensive odors. Upon the failure of any owner or occupant of any premises to comply with any of the provisions of this section, such kennel shall be deemed a nuisance, and as such shall be removed or abated, as provided by law.

Section 4-10. Quarantine

No dog shall be kept in the city during an official State, County or city quarantine period on dogs; provided, that the owner or custodian of any dog may keep and maintain such dog on his own premises, properly enclosed, during such quarantine period; and provide further, that the owner or custodian of any dog shall be permitted to take such dog off of his own premises onto the public streets, sidewalks and public places in the city during such quarantine period, provided such dog is accompanied by a person over the age of fifteen and provided the dog is on a leash and muzzled while off of the premises of the owner or custodian, during such quarantine period.

Section 4-11. Howling or Barking Dogs

It is declared a nuisance for any person to keep or harbor any dog or any other living creature which howls or barks or makes any other noise to the annoyance of the inhabitants of the city, and no person shall create, continue, contribute to or suffer such nuisance to exist.

Section 4-12. Keeping of Vicious Dog

No person shall own, keep or harbor any dog or other living creature, know by him/her or anyone to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dog or other living creature wears a tag or muzzle, and upon satisfactory proof that such dog or other living creature is vicious, dangerous or in the habit of biting or attacking persons, the Chief of Police or any other police officer may

cause such dog or other living creature to be killed, in compliance with procedures established by law.

Section 4-13. Offenses Relating to Dog Tags

No person shall attach a license or vaccination tag to any dog to which it is not issued, or remove a license or vaccination tag from the collar of any dog without the consent of its owner.

Section 4-14. Confinement of Dogs in Heat

Every person owning or harboring any female dog or cat in heat shall keep such animal confined in a building or secure enclosure.

Section 4-15. Penalty

Every person convicted of any violation of Chapter 4, for which another penalty is not provided, shall be fined not more than \$100.00 or imprisoned not more than thirty days, or both such fine and imprisonment.

Chapter 5: Buildings

Section 5-1. Building official--Office created; appointment; term; removal; acting official

- (a) The office of building official is hereby created and the executive official in charge shall be known as the building official.
- (b) The building official shall be appointed by the common council of the city. His appointment shall continue during good behavior and satisfactory service. He shall not be removed from office except for cause after full opportunity has been given him to be heard on specific charges.
- (c) During temporary absence or disability of the building official the appointing authority shall designate an acting building official.

Section 5-2. Same--Qualifications

To be eligible to appointment, the candidate for the position shall have had experience as an architect, structural engineer building inspector or experience in building construction. He shall be in good health, physically capable of making the necessary examinations and inspections. He shall not have interest whatever, directly or indirectly on the sale or manufacture of any material, process or device entering into or used in or in connection with building construction, alterations, removal and demolition.

Section 5-3. Same--Duties

- (a) The building official shall devote such time to the duties of his office as same may require. He shall receive applications required by this Code, issue permits and furnish the prescribed certificates. He shall examine premises for which certificates have been issued and shall make necessary inspections to see that the provisions of law are complied with and that construction is prosecuted safely. He shall enforce all provisions of the Building Code. He shall, when requested by proper authority, or when the public interest so requires, make investigations in connection with matters referred to and render written reports on the same. To enforce compliance with law, to remove illegal or unsafe conditions, to secure the necessary safeguards during construction, or to require adequate exit facilities in buildings and structures, he shall issue such notices or orders as may be necessary.
- (b) Inspections required under the provisions of the Building Code shall be -made by the building official or his duly appointed assistant. The building official may

accept reports of inspectors of recognized inspection services after investigation of their qualifications and reliability. No certificate called for by any provision of the Building Code shall be issued on such reports unless the same are in writing and certified to by a responsible officer of such service.

- (c) The building official shall keep comprehensive records of applications, of permits issued, of certificates issued, of inspections made, of reports rendered and of notices or orders issued. He shall retain on file copies of required plans and all documents relating to building work so long as any part of the building or structure to which they relate may be in existence.
- (d) All such records shall be open to public inspection for good and sufficient reasons at the stated office hours, but shall not be removed from the office of the building official without his written consent.
- (e) The building official shall make written reports to his immediate superior once each month, or more often, if requested, including statements of permits and certificates issued and orders promulgated.
- (f) The governing body of a municipality shall have plenary power and authority to establish by ordinance a vacant building registration program. For purposes of this section, the term "vacant building" means a building or other structure that is unoccupied, or unsecured and occupied by one or more unauthorized persons for an amount of time as determined by the ordinance: Provided, That a new building under construction or a building that by definition is exempted by ordinance of the municipality, is not deemed a vacant building: Provided, however, That the governing body of a municipality, shall on a case by case basis, upon request by the property owner, exempt a vacant building from registration upon finding for good cause shown that the person will be unable to occupy the building for a determinate period of time.
 - (i) An owner of real property subject to registration may be charged a fee or fees as provided by ordinance. The ordinance shall provide administrative procedures for the administration and enforcement of registration and payment and collection of registration fees.
 - (ii) The ordinance may require that when the owner of the vacant building resides outside of the state that the owner provide the name and address of a person who resides within the state who is authorized to accept service of process and notices of fees due under this section on behalf of the owner and who is designated as a responsible, local party or agent for the purposes of notification in the event of an emergency affecting the public health, safety or welfare.
 - (iii) The ordinance may authorize the municipality to institute a civil action against the property owner and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed,

the municipality shall give notice to the property owner or owner's agent, by certified mail, return receipt requested, that the municipality will fill the lien unless the delinquent fees are paid by a date stated in the notice, which must be no less than thirty days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. The ordinance may provide for alternative means of service when service cannot be obtained by certified mail.

- (iv) The ordinance shall permit a property owner to challenge any determination made pursuant to the ordinance. The administrative procedures adopted pursuant to the ordinance shall include the right to appeal to the circuit court of the county in which the property is located.
- (v) The governing body of a municipality shall deposit the fee into a separate account, which shall be used to:
 - (1) Improve public safety efforts, especially for police and fire personnel, who most often contend with dangerous situations manifest in vacant properties;
 - (2) Monitor and administer this section; and
 - (3) Repair, close or demolish a vacant structure as authorized by section sixteen, article twelve, chapter eight.

Section 5-3(f) added 2019.

Section 5-4. Same--Liability

The building official or any employee charged with the enforcement of the codes adopted by this chapter, acting in good faith and without malice for the city in the discharge of his duties, shall not thereby render himself liable personally for any damage that may accrue to person or property as a result of any act required, or by reason of any act or omission in the discharge of his duties. Any suit brought against the building official or employee because of such act or omission performed by him in the enforcement of any provision of this Code, shall be defeated by the city attorney until final termination of the proceedings.

Section 5-5. Same--Cooperation of other officials

The building official may request and shall receive, so far as may be necessary, in the discharge of his duties the assistance and cooperation of other officials of the municipality.

Section 5-6. Same--Right of entry

The building official, in the discharge of his official duties and upon proper identification, shall have authority to enter any building, structure or premises at any reasonable hour.

Section 5-7. Adoption of Building Code

There is hereby adopted by the common council of the city, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of the buildings and structures including permits and penalties that certain building code known as the National Building Code recommended by the American Insurance Association, successor to the National Board of Fire Underwriters, being particularly the 1967 edition thereof and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which not less than three copies have been and now are filed in the office of the recorder of the city; and the same are hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling in the construction of all buildings and structures therein contained within the corporate limits of the city.

Section 5-7.1. Adoption of Additional Building Codes

There is hereby adopted and incorporated by reference, to safeguard life and property and to ensure the quality of construction, the West Virginia Building Code, as promulgated by the State Fire Commission under [West Virginia Code section 29-3-5B](#) and WV COR Title 87 Series 4.

The standards and requirements as set out and as published by the International Code Council, American National Standards Institute, and the National Fire Protection Association, as listed below shall have the same force and effect as if set out verbatim in this section:

1. [International Building Code, 2015 Edition](#)

- 1.1. Provided; that the section entitled "Fire Prevention" and identified as Section 1014.5 is deleted and not considered to be part of this ordinance
- 1.2. Further, provided that the entire subsection entitled "Qualifications" and identified as Section 113.3 is deleted and replaced with the following:

"Section 113.3. Board of Appeals

113.3. Qualifications. The board of appeals shall consist of five members, with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are

not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical, or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work. No less than one of the members of each Board of Appeals shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical, or Fire Protection Contractor."

2. [International Plumbing Code, 2015 Edition](#)
3. [International Mechanical Code, 2015 Edition](#)
4. [International Fuel Gas Code, 2015 Edition](#), with the following exception:
 - 4.1. Section 404.10 Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.
5. [International Property Maintenance Code](#), 2015 Edition
6. [International Energy Conservative Code 2009](#), 2009 Edition (Residential Buildings)
7. [ANSI/ASHRAE IESNA Standard 90.1](#) (2007 Edition for Commercial Buildings)
8. [International Residential Code, 2015 Edition](#), for One and Two-Family Dwellings, with the following exceptions:
 - 8.1. Chapter 11 of the 2015 edition of the International Residential Code for One and Two-Family Dwellings, Seventh Printing, entitled "Energy Efficiency", is exempt from this rule.
 - 8.2. Section G2415.12 (404.10) Minimum Burial Depth. Underground piping systems shall be installed a minimum of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.
 - 8.3. Section R311.7.5 Stair Treads and Risers
 - 8.3.1. 8.3.1 311.7.5.1 Riser Heights - The maximum riser height shall be eight and one-quarter (8 1/4) inches.
 - 8.3.2. 8.32 311.7.5.2 Tread Depth - The minimum tread depth shall be nine (9) inches.

- 8.4. Section R403.1.7.1: Building Clearances From Ascending Slopes is not applicable in this rule.
- 8.5. Section R403.1.7.2: Footing Setbacks from Descending Slope Surfaces is not applicable to this rule.
- 9. [2009 ICC/ANSI A117.1 American National Standards for Accessibility and Usable Buildings and Facilities](#)
- 10. International Existing Building Code, 2015 Edition
 - 10.1. Omit reference to International Fire Code and substitute NFPA Life Safety Code, 2018 Edition
- 11. NFPA 70 National Electric code, 2017 Edition
 - 11.1. For renovations in one- and two-family homes where no new square footage is involved, arc-fault circuit interrupter (AFCI) protection shall not be required, except for in bedrooms. For renovations in one-and two-family homes where square footage is added but no electrical service is installed, arc-fault circuit interrupter (AFCI) protection shall not be required.
- 12. [International Swimming Pool and Spa Code, 2015 Edition](#)
- 13. Whenever referenced in the several ICC codes adopted above, any reference to the International Fire Code should be substituted with NFPA Life Safety Code, 2018 Edition.
- 14. Whenever a certificate of occupancy is required of a commercial structure greater in size than 7,600 feet, the project documents shall be designed by an Architect licensed by the WV Board of Architects, or a Professional Engineer licensed by the WV State Board of Registration for Professional Engineers.

Fire Protection of Floors in Residential Buildings

- 1) New One and Two-Family Dwellings over one level in height, New one and TwoFamily Dwellings containing a basement, and new One and Two-Family Dwellings containing a crawl space containing a fuel-burning appliance below the first floor, shall provide one of the following methods for fire protection of floors:
 - (1) A ½ inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member;
 - (2) Wood floor assemblies using dimension lumber or structural dimension, or other

approved floor assemblies demonstrating equivalent fire performance; or (3) An Automatic Fire Sprinkler System as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One or Two-Family Dwellings: Provided, That floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.1 or R313.2 of the 2015 edition of the International Residential Code for One or Two-Family Dwellings are exempt from this requirement.

- 2) Townhouses meeting the Fire-Resistant Construction Standard R302.2 will be treated as New One- and Two-Family Dwellings and shall comply with the section above.

The following structures are not subject to inspection by local jurisdictions:

- 1) Group utility structures and storage sheds comprising an area not more than 200 sq. ft. which have no plumbing or electrical connections and are used only for residential storage purposes. (Examples include sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture.) Not included are those utility structures and storage sheds which have plumbing or electrical connections are non-residential use or for the storage of explosives or other hazardous or explosive materials.

Conflicts

- 1) Whenever there is a conflict between the State Fire Code and the State Building Code, the State Fire Code takes precedence.
- 2) Whenever there is a conflict between the International Plumbing Code Requirements of the State Building Code and the rules of the West Virginia State Department of Health and Human Resources, the rules of the Department of Health and Human Resources takes precedence.
- 3) Whenever there is a conflict between the State Building Code and statutory laws of the State of West Virginia, the laws of the State of West Virginia take precedence

The following additions, insertions, and changes are hereby made to the West Virginia State Building Code:

- A) Modify the International Building Code, 2015 Edition, of the State Code as follows:

- a) Section 101.1 Insert "City of Richwood"
 - b) Section 1612.2 Insert "City of Richwood"
 - c) Section 1612.3 Date of Issuance— 2011 edition NFIP
- B) Modify the International Property Maintenance Code, 2015 Edition, to the State Building Code as follows:
- a) Section 101.1 Insert "City of Richwood"
 - b) Section R301.2.2 Climatic and Geographic Design Criteria Inserts as follows:
 - 1) Ground Snow Load - 30 psf
 - 2) Roof Snow Load 21 psf
 - 3) Wind Speed — 90 mph
 - 4) Climate Zone 5A - Energy Requirements
 - 5) Seismic Design Category — "B"
 - 6) Weathering - "Severe"
 - 7) Frostline Depth -- 30" to bottom of footing
 - 8) Termite - "Moderate to Heavy"
 - 9) Ice Barrier - Underlayment Required - "yes"
 - 10) Flood Hazards, 2011 Edition, NFIP 11) Air Freezing
 - 11) Index — 1000
 - 12) Mean Annual Temperature — 51.9
- C) Modify the International Property Maintenance Code, 2015 Edition, to the State Building Code as follows:
- a) Section 101.1 Insert "City of Richwood"
 - b) Section 103.5 Insert "Local Fee Schedule"
 - c) Section 112.4 Insert "\$50.00 to \$500.00"
 - d) Section 302.4 Insert "12 Inches"
 - e) Section 602.3 Insert "January 1 to December 31"
 - f) Section 602.4 Insert "January 1 to December 31"
- D) Modify the International Existing Building Code, 2015 Edition, to the State Building Code as follows:
- a) Section 101.1 Insert "City of Richwood"
 - b) Section 1401.2 (see Richwood Historic District Resolution)
- E) Modify the International Plumbing Code, 2015 Edition, to the State Building Code as follows:
- a) Section 101.1 Insert "City of Richwood"

- b) Section 106.6.2 Insert "Local Fee Schedule"
- c) Section 106.6.2 Insert "100%"
- d) Section 108.4 Insert "Misdemeanor, \$500.00 & 30 Days"
- e) Section 108.5 Insert "\$50.00 to \$500.00"
- f) Section 305.4.1 Insert "30 Inches"
- g) Section 903.1 Insert "12 Inches"

F) Modify the International Mechanical Code, 2015 Edition, as follows:

- a) Section 101.1 Insert "City of Richwood"
- b) Section 106.5.2 Insert "Local Fee Schedule"
- c) Section 106.5.3 Insert "100%"
- d) Section 108.4 Insert "Misdemeanor, \$500.00, & 30 Days"
- e) Section 108.5 Insert "\$50.00 to \$500.00"

G) Modify the International Fuel Gas Code, 2015 Edition, to the State Building Code as follows:

- a) Section 101.1 Insert "City of Richwood"
- b) Section 106.6.2 Insert "Local Fee Schedule"
- c) Section 106.6.3 Insert "100%"
- d) Section 108.4 Insert "Misdemeanor, \$500.00, & 30 Days"
- e) Section 108.5 Insert "\$50.00 to \$500.00"

H) Modify the International Energy Conservation Code, 2009 Edition, to the State Building Code as follows:

- a) Section 101.1 Insert "City of Richwood". (Residential Energy)
- b) Section 108.4 Insert "\$50.00 to \$500.00"

I) Modify the International Swimming Pool and Spa Code, 2015 Edition to the State Building Code as follows:

- a) Section IOL1 Insert "City of Richwood"
- b) Section 105.6.2 Insert "Local Fee Schedule"
- c) Section 015.6.3 Insert "100%"
- d) Section 107.4 Insert "Misdemeanor, \$500.00, 30 Days"
- e) Section 107.5 Insert "\$50.00 to \$500.00"

WHEREAS, the City of Richwood recognizes the following changes to the West Virginia Building Code:

- A) Changes which took effect April 30, 2019
 - a) Section 87-4.4 National Standards and Codes
 - i) 4-1.g. The Standard 90.1, 2010 Edition, for commercial buildings (The rule formally adopted the 2007 edition)

- b) Section 87-4.8 Existing Building Codes
 - i) 8.1. All building codes previously adopted by local jurisdictions are null and void
- B) Changes which took effect August 1, 2020
 - a) Section 87-4.4 National Standards and Codes
 - i) 4.1.j.1. Omit reference to International Fire Code and substitute NFPA Life Safety Code, 2018 Edition
 - ii) 4.1.k. The 2017 Edition of the National Electric Code, NFPA 70.
 - iii) 4.1.k.1. For renovations in one and two-family homes where no new square footage is involved, arc-fault circuit interrupter (AFCI) protection shall not be required, except for in bedrooms. For renovation in one and two-family homes where square footage is added but no electrical service is installed, arc-fault circuit interrupter (AFCI) protection shall not be required
 - b) Section 87-4.8. Existing Building Codes
 - i) 8.1. All building codes previously adopted by local jurisdictions are null and void.

THEREFORE, the City of Richwood hereby adopts and incorporates by reference, for the purpose of safeguarding life and property and to ensure the quality of construction, the updated West Virginia Building Code, as promulgated by the State Fire Commission Under West Virginia Code 529-3-5B.

Section 5-7.1 added 1997; amended 2016; amended 2020.

Section 5-8. Fees

- (a) No permit as required by the Building Code shall be issued until the fee prescribed in this section shall have been paid. Nor shall any amendment to a permit be approved until the additional fee, if any, due to increase in estimated cost of the building or structure, shall have been paid.
- (b) For a permit for the construction or alteration of a building or structure, the fee shall be five (\$5.00) per one thousand dollars (\$1,000) upon an estimated cost up to twenty thousand dollars (\$20,000), plus three dollars (\$3.00) per one thousand dollars (\$1,000) upon the estimated cost in excess of twenty thousand dollars (\$20,000) up to one hundred thousand dollars (\$100,000); plus two dollars (\$2.00) per one thousand dollars (\$1,000) upon the estimated cost in excess of one hundred thousand dollars (\$100,000); but not less than five dollars (\$5) in any case; provided, that no fee shall be required when the estimated cost does not exceed two hundred dollars (\$200).

- (c) For a permit for the removal of a building or structure from one lot to another, the fee shall be five dollars (\$5).
- (d) For a permit for the removal of a building or structure to a new location within the same lot, the fee shall be five dollars (\$5).
- (e) For a permit for the demolition of a building or structure the fee structure 5.8.b shall be followed.

Section 5-9. Fire limits

- (a) All the territory within the city contained within the following boundaries shall be within the fire limit: Beginning on Main Street at the intersection of such street with alley between the First National Bank and the Odell Meat Market; thence with such alley in a southerly direction to Cherry River Boom and Lumber Company's railroad; thence with such railroad in a westerly direction to Oakford Avenue; thence with such Avenue in a southerly direction to the alley just south of the property of A. J. Krashowitz; thence with such alley in a westerly direction to private alley just west of J. H. Kincaid's tile garage; thence north to the main line track of the Baltimore and Ohio Railroad; thence with such track in a westerly direction to a point in an extension of the dividing line between lots number eleven and number twelve in Block "N"; thence with such line extended in a northerly direction to the alley between Main Street and Walnut Street; thence with such alley in an easterly direction crossing Oakford Avenue to the public walkway between the Sparks property and the Community House; thence with such walkway in a southerly direction to Main Street; and thence to the beginning.

And also all the territory within the City contained within the following boundaries shall be within the fire limits: Beginning at the east corner of the eastern terminus of the alley south of Main Street at its intersection with the alley between the First National Bank building and the property of the Odell Meat Market; thence with such alley south one hundred feet; thence in a westerly direction parallel with such alley south of Main Street to a point eighty one feet east of Oakford Avenue; thence south and parallel with Oakford Avenue to Cherry River; thence with Cherry River crossing Oakford Avenue to a point on Cherry River, eighty feet west of Oakford Avenue; thence north parallel with such Oakford Avenue on the west thereof to the alley just south of the McClung Hospital.

All buildings hereafter constructed within such limit shall be built of brick, stone, reinforced concrete, tile or other standard fireproof material; the roofs of such buildings shall be of metal, slate, tile, asbestos or other fireproof material. The outside walls of all buildings within such fire limit shall be not less than eight

inches thick of brick, stone, reinforced concrete, tile or other standard fireproof building material, if such building stands within eighty feet of any street, but if not within eighty feet of any street, such wall shall not be less than six inches thick. Nothing herein shall be construed to permit offsets, air spaces or light spaces being constructed of wood frame covered with metal, but in all cases the walls adjoining such spaces shall be built of brick, stone, reinforced concrete, tile or other standard fireproof material as in other parts of the building; provided, that repairs and additions to buildings heretofore erected within such limit of material other than brick, stone, concrete, tile or other standard fireproof material, may be permitted by the council, in its sound discretion, of other than fireproof material, when in the opinion of the council the fire risk occasioned therefrom will not be materially increased.

Nothing in this section shall be construed to authorize any person to erect a building of any kind within such fire limit without first obtaining a permit from the city council, and the application for such building permit shall be in writing and accompanied by the plans and specifications of the building to be erected, and shall be presented to the building committee or a member thereof not less than five days prior to the meeting of the council at which applicant desires the action of the council thereon.

- (b) It shall be unlawful for any person to allow any dangerous chimney, roof or building to remain on his premises after notice to repair or remove the same has been given by the mayor.
- (c) If any person shall commit any offense against the provisions of this section, he shall forfeit and pay to the city upon the judgment of the mayor, a fine of not less than one dollar (\$1) or more than thirty dollars (\$30), and may be imprisoned for a period not to exceed thirty days.
- (d) If it becomes necessary to carry out the provisions of this section, the mayor may cause to be abated as a nuisance any building erected or attempted to be erected contrary to this section, and may cause the material used in the erection of such buildings to be levied upon and sold for the payment of the fines and costs imposed by him under this section, and any dangerous chimney, roof or building may be abated by the mayor as a nuisance at the expense of the owner of such nuisance.

Section 5-10. Reserved.

At compiler's discretion 2021.

Section 5-11. Vacant Structure Ordinance

Section 5-11.1. Adoption

There is hereby adopted a Vacant Structure Code for the City of Richwood.

Section 5-11.2. Purpose

- (a) The City has determined that an uninspected and unmonitored vacant building may present a fire hazard, may provide temporary occupancy by transients, may detract from private and/or public efforts to rehabilitate or maintain surrounding buildings, and that the health, safety and welfare of the public is served by the regulation of such vacant buildings.
- (b) Owners of uninspected and unmonitored vacant buildings shall register such vacant buildings with the City, make payment of a fee for the registration thereof, and otherwise conform to these vacant building regulations.
- (c) This article ensures that, through a registration, inspection, and monitoring process, vacant buildings will be kept weather tight and secure from trespassers, will provide safe entry to law enforcement officers and firefighters in times of emergency, will not impede private and/or public efforts to rehabilitate or maintain surrounding buildings, and will not present otherwise a public hazard.
- (d) The City, by and through its departments shall inspect and monitor vacant buildings whenever appropriate especially vacant downtown buildings, shall assess the effects of the condition of those buildings on nearby structures, and shall promote substantial efforts to rehabilitate and develop such buildings when appropriate.
- (e) These provisions will streamline and consolidate the existing procedure (that is, complaint, research, notification, inspection, orders, fines, liens, appeals and due process lien enforcement) by placing the responsibility to register and maintain vacant structures on the building owner in appropriate circumstances before the condition of a given building falls into disrepair or otherwise merits a complaint.

Section 5-11.3. Definitions

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

- (1) "Boarded" means a building or structure subject to the provision of this article shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
- (2) "Exterior maintenance and major systems" means the safe and lawful maintenance of the facade, windows, doors, roof and other parts of the exterior

of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable and as enforced by the provision of related Nuisance Properties Ordinance(s), particularly in connection with codes adopted by the City as well as all applicable local, state and federal laws.

- (3) "Occupied". Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this article, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid City business license, or the most recent, federal, state or City income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of bonafide pre-rental inspection.
- (4) "Open". A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
- (5) "Owner". An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this article, and as set forth below.
- (6) "Vacant". A building or structure shall be deemed to be vacant if no person or persons actually, currently conduct a lawfully licensed business, or lawfully reside, dwell, or live in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupant(s), or tenant(s) on a permanent, non-transient basis. A building or structure shall be deemed vacant and subject to the registration and possible penalty provisions provided herein if the exterior maintenance and major systems of the building and the surrounding real property thereof, as defined in this section, are in violation of any existing building code(s), maintenance code(s) or health and sanitation code(s) and if there is not proof of continual utility service evidencing actual use of electric, gas (i.e., applicable heating sources, water service, etc.).

- (7) "Continual" is meant to be without more than one thirty (30) day interruption in any given three hundred sixty (360) day period. In order for such continual utility service to be considered as being actually in use as described in this article, it must be more than merely registered to the owner for purposes of billing and must be utilized, at a minimum, in order to keep the property and the major systems of the building in compliance with any extant building and/or maintenance code(s). The person or entity asserting that there has been continued utility service has the burden to produce actual bills evidencing utility service for the relevant period.

Section 5-11.4. Standards

All vacant structures shall also comply with the following criteria:

- (a) Exterior property areas are to be mowed regularly and non-cultivated gardens maintained at no more than 12 inches of growth. All noxious weeds are prohibited.
- (b) Structure is to be broom swept and cleared of all contents, not including building materials or components to be used in the future renovation at that structure.
- (c) Electrical service is to be provided to the building via temporary pole service on the exterior of the structure or create a permanent service for the structure and install two GFCI protected receptacles.
- (d) NEC and OSHA compliant string lighting is to be provided to the entire structure so that it may be illuminated as needed to view the structure.
- (e) Unstable interior and exterior surfaces and components are to be removed. Unstable or unsound accessory buildings are to be razed by submission of demolition permit or renovated.
- (f) Using wood sheet goods, all loose, deteriorated and broken windows and doors are to be covered to eliminate the danger of their falling and to prevent the unwanted entry of trespassers. Such wood sheet goods are to be cut and neatly fit, and not just nailed over the opening.
- (g) All loose or deteriorated trim, gutter or overhang extensions (masonry or frame) are to be removed or reattached to prevent falling.
- (h) Regular routine monitoring of the structure is to occur by the owner to ensure that the building is being kept in compliance with the above items.
- (i) Utilities need to be connected to the structure.

Section 5-11.5. Applicability

The requirements of this section shall be applicable to each owner of any building that is found to be vacant pursuant to the language contained herein. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names

and addresses of all owners, as hereinafter described, and any other information deemed necessary by the City. The registration fee(s) as required by this section shall be billed by the City and shall be paid by the last day of the month when the property has been registered. For purposes of this section, the following shall also be applicable:

- (a) If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the Secretary of State.
- (b) If an estate, the name and business address of the executor of the estate;
- (c) If a trust, the name and address of all trustees, grantors, and beneficiaries;
- (d) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
- (e) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
- (f) If an individual person, the name and residence address of that individual person.

Section 5-11.6. Inspections

At the time of registration, the City shall determine whether it is necessary to inspect the structure so as to identify any public safety issues needing addressed. Inspections shall also be available to verify the status of any property concerning occupancy, vacancy, etc. If an internal inspection is deemed necessary, the owner will be notified of the same and arrangements made for the same. If the owner fails or refuses to consent to and arrange for an inspection, the City will seek an administrative search warrant from a court of competent jurisdiction, which may include the Municipal Court, to authorize inspection of the premises for the purpose of determining the structural integrity of the building, the repairs necessary to ensure its structural integrity and that it will be safe for entry by fire fighters and law-enforcement officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time that the building remains vacant.

Section 5-11.7. Corrective Action

The property owners shall be notified in writing of any corrective action deemed necessary for the protection of life and safety and enforcement of this ordinance. This notice shall contain the applicable code provisions and regulations in question, as well as setting a reasonable time for the correction to be taken.

Section 5-11.8. Registration Generally

- (a) At the time of adoption of this article, all owners of realty within the City of Richwood that contain a vacant structure, as defined above, shall register the same with the City. For those structures that qualify as a vacant structure and after the adoption of this article, the owner thereof shall be required to register the structure with the Building Inspector within 30 days after the structure is found to meet the definition of a vacant structure. The registration form shall require information from the registrant deemed necessary by the City, so as to ensure that the purpose of this article is met. Specifically, the City shall have the authority to require that the property owner provide a professional opinion (architect, engineer, etc.) to determine the structural integrity and that it will be safe for entry by fire fighters and law-enforcement officers in time of emergency, and that the building and its contents do not present a hazard to the public during the time the building remains vacant. The City shall have the authority to issue orders to the owner for corrective action deemed necessary. City official(s) shall rely upon the then-current International Property Maintenance Code [IPMC], as well as other applicable law, for guidance during any such structural review.
- (b) If none of the persons listed, as above, is shown at an address within the State, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for sixty consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party for compliance with any other requirement. One registration statement may be filed to include all vacant buildings of the owner so registering, but each structure constitutes a separate fee. The owner of the vacant property as of the last day of the month when the property has been registered of each calendar year shall be responsible for the payment of the non-refundable registration fee. Said fee shall be billed by the City; and based on the duration of the vacancy as determined by the following scale:
- (i) No fee for properties that are vacant for less than one year;
 - (ii) \$200.00 for properties that are vacant for at least one year but less than two years;

- (iii) \$400.00 for properties that are vacant for at least two years but less than three years;
- (iv) \$600.00 for properties that are vacant for at least three years but less than four years;
- (v) \$800.00 for properties that are vacant for at least four years but less than five years; and
- (vi) \$1,600 for properties that are vacant for at least five years, plus an additional \$300 for each year in excess of five years.

Section 5-11.9. Right of Appeal

- (a) The owner shall have the right to appeal the imposition of the registration fees to the City Appeals Board; upon filing an application in writing to the City no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy as defined in this article specifically.
- (b) A waiver of the registration fee, or an extension of a waiver fee up to 90 days from the date of the current billing statement, may be granted by the City upon application of the owner and upon review and advice of the Building Inspector; if the owner:
 - (i) Demonstrates with satisfactory proof to the City that he/she is in the process of demolition, rehabilitation or other substantial repair of the vacant building; and
 - (ii) Objectively demonstrates to the City a reasonable anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building;
 - (iii) Provides satisfactory proof to the City that he/she was actively attempting to sell or lease the property during the vacancy period; or
 - (iv) Provides satisfactory proof to the City, to be evaluated on a case-by-case basis, that the vacancy is temporary and may be due to illness of the owner, active military service, or some other reasonable explanation believed to be short term in nature and documentable as necessary.
- (c) Within thirty days, or as soon thereafter as possible, after the waiver application is received, the City shall grant or deny the waiver, or request for extension, in writing, and dispatch the written decision by mail to the owner. If the owner properly submitted an application for a waiver or request for extension to the City, and the City rendered a decision which the owner seeks to appeal to the City Council, the owner must file an Appeal Petition in writing no later than 30 calendar days from the date of the City decision. City Council shall either grant or deny the appeal. Thereafter the decision of the City Council is final unless within

thirty (30) days of such decision the owner appeals for injunctive relief to the Circuit Court of Nicholas County.

Section 5-11.10. Amending Information

- (a) Duty to Amend Registration Statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same, to contact the City within thirty (30) days of the occurrence of such change and advise the City in writing of those changes.
- (b) Exceptions. This section shall not apply to any building owned by the United States, the State of West Virginia, the City of Richwood, or any of their respective agencies or political subdivisions.
- (c) Violations and Penalties for Failure to Register. The failure or refusal for any reason, of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building upon adoption of this article or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.

Section 5-11.11. Re-Inspection

All vacant structures are subject to re-inspection on an annual basis or as deemed necessary pursuant to Section 5-11.6.

Section 5-11.12. Non-Payment of Fees/Liens

- (a) After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to Section 5-11.9 and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the City and the City may commence a civil action to collect such unpaid debt.
- (b) If an owner fails to pay the registration fee as assessed and the City begins the collection action to enforce its lien, then the City of Richwood shall post a written notice on the property and send the written notice to the owner(s) by certified and regular mail.
- (c) The City may take action to sell the subject property by means of forfeiture and the Court ordered enforcement process to collect the debt owed the City. Should the City take the steps necessary to sell the subject property, the City shall do so,

subject to all liens and real and personal property taxes that are due. Purchasers of the subject property shall be similarly responsible for registration pursuant to this section in the same manner as the prior owner and must begin the registration process anew if said property remains vacant.

Section 5-11.13. Relation to Other Codes and Laws

It is to be understood that the intent and purpose of this article is separate and distinct from other parts and sections of the Ordinances of the City of Richwood and the general laws of the State of West Virginia which may also be applicable. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of the Code of the City of Richwood.

Section 5-11 added 2014.

Applicable Ordinances

Note: Original ordinance(s) made no provision for position within the Code; such provision was made at the discretion of the compiler.

Ordinance 1: Historic Preservation Resolution

It is the will of the Richwood City Council that all stores and storefronts in the historic district remain in their historic and original "footprint" on the street level or, pending changes in the faces of the stores and/or the footprint of the street level of the stores, be returned to their historic state. In the event that the appropriate historic appearance cannot be established or an unforeseen change within the parameters of historic appropriateness is in dispute, the Council should consult Michael Gioulis (who played a critical role in the creation of the historic district). In the event that he cannot perform such duty, a state approved historian and/or company shall perform the aforesaid review and apprise the Council of their findings. As per the previous ordinance passed by the Council, any changes, including signage, awnings, paint choices, lighting, etc. must be approved by both the City Council and the Mayor. It is the general intent of this ordinance to return the historic district to unpainted brick (where possible), natural wood faces and signage, traditional cloth awnings, historic lighting, and the like. Furthermore, it is the intent of this ordinance to prevent historic stores from being subdivided for the purposes of creating habitats on the street level.

Ordinance 2, so placed in Chapter 5 of the Code, added 2007.

Applicable Resolutions

Note: Resolution(s) included herein are applicable to Chapter 5 of the Code.

Resolution 1: Designation of a Memorial Bridge

The South Side Bridge be named in honor of Mr. Thomas R. Turner, Jr. and hereafter will be known as "T. R. Turner Jr. Memorial Bridge." **Adopted 2009.**

Resolution 2: Renaming the Armory

The former armory complex be re-named Fitzpatrick Memorial Industrial Park in honor of Mr. James L. Fitzpatrick and his wife Joan, for their tireless and unending efforts for the City of Richwood. **Adopted 2009.**

Resolution 3: Respect to Private Property

The City of Richwood agrees not to make any repairs, changes, improvements or otherwise disturb the road or adjacent areas without prior written authorization from the property owners, to include, but not limited to a description of the work to be completed and the right of supervision by the property owners or their authorized agent. **Adopted 2018.**

Resolution 4: Multi-Jurisdictional Hazard Plan

The City of Richwood does hereby adopt the updated Nicholas County Multi-Jurisdictional Hazard Mitigation Plan, [the contents of which are to be considered as verbatim in this Code by reference.] **Adopted 2010; addendum by compiler 2021.**

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Chapter 6: Finance and Taxation

Article I: In General

Sections 6-1 to 6-3. Reserved

Section 6-4. General Assessment of Special Charges for the Police Force and Paving of Streets and Related Activities

- (a) There is hereby imposed a special services fee of \$5.00 for the calendar year to be billed on monthly basis and totaling \$60.00 per year beginning effective the first day of the next month following the readings and adopting of this ordinance by the committee and the City Council.
- (b) The City Recorder and Chief Financial Officer shall calculate and send monthly bills in advance and in conjunction with household bills for sanitation, water and sewer as provided for in section 8-4 of the Code.
- (c) There is hereby imposed a special service fee (see above) of \$120.00 per licensed business payable in advance on a monthly basis at a rate of \$10.00 per month.
- (d) The Mayor, City Recorder, and Chief Clerk shall maintain a separate account for the collected fees and shall pay solely the expenses of the police force, and expenses of paving according to an 80/20 formula;
- (e) The fee imposed by this article, if not paid when due (by the 21st of each month), shall bear interest at a rate of ten percent (10%) per month from the original due date of the remittance until paid. Payment of fees not received upon the due date shall be considered delinquent. If the delinquency exceeds a month, an additional penalty of two percent (2%) shall be added to the total outstanding delinquent fee at the end of each additional month or part thereof. Reasonable attorney's fees and costs may be sought and recovered in a civil action filed in the name of the municipality.
- (f) The Mayor, or City Recorder, is charged with the administration and enforcement of this article and may, among other remedies, institute appropriate legal proceedings in the name of the City of Richwood, in the Circuit Court of Nicholas County, West Virginia, to enforce same.

Section 6-4 amended 2004; amended 2009.

Section 6-5. Reserved

Article II: Business and Occupation Tax

Note: Original Chapter 6, Article II, along with all applicable amendments and addendums to the Business and Occupation Tax, repealed and replaced 2020. All sections proceeding have been renumbered by the editor to maintain the integrity of the Code.

Section 6-6. Short Title

This article shall be known as the "City of Richwood municipal business and occupation tax ordinance."

Section 6-7. Purpose and Intent

The purpose of this article is to impose a municipal business and occupation tax pursuant to [West Virginia Code section 8-13-5](#) 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.

Section 6-8. 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:

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 consists of dividends, interest and other charges derived from the use of money or credit.

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 or indirect. The production of raw

materials or manufactured products which are used or consumed in the main business shall be deemed a business engaged in taxable in the class for which it falls.

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.

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 trader, 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 specified in section 18 of this article.

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 words "gross income" and "gross proceeds of sales" shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sales of goods, wares, or merchandise returned by customers 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.

Municipality

The term "municipality" means the City of Richwood.

[RECORDER]

The term "[RECORDER]" means the municipality's Recorder and his or her agents, delegates, or representatives.

Person

The terms "person" and "company" are used interchangeably in this article and mean and include any individual, firm, co-partnership, joint venture, 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".

Retail sales

The term "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.

Sale

The terms "sale" and "sales" mean any transfer of ownership of or title to property, whether for money or in exchange for other property.

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.

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 RECORDER to use such fiscal year in lieu of the calendar year.

Taxpayer

The term "taxpayer" means any person liable for any tax hereunder.

Wholesale sales

The term "selling at wholesale" and "wholesale sales" mean only (a) sales of tangible personal property for the purpose of resale in the form of tangible personal property, (b) 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 to the tax imposed by this article, or (c) sales of tangible personal property in the United States of America, its agencies and instrumentalities, or to the State of West Virginia, its institutions and political subdivisions.

Section 6-9. Imposition of Tax

There are hereby levied and imposed and shall be collected annual privilege taxes, 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 10 through 19 of this article, inclusive.

If any person liable for any tax under section 10 or 11 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 10 or 11 of this article, shall neither be added nor deducted in computing the tax levied under the other sections of this article. In determining the 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.

Section 6-10. 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, and one and one-half percent (1.50%); oil or blast furnace slag, three percent (3.00%); natural gas in excess of the value of five thousand dollars (\$5,000.00), six percent (6.00%); sand gravel or other mineral products, not quarried or mined, three percent (3.00%); timber one and one-half percent (1.50%), and other natural resource products, two percent (2.00%).

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 or 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 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 be required to make returns of the gross proceeds of such sales and pay the tax imposed in section 12 of this article for the privilege of engaging in the business of selling such natural resource products in 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

12 of this article for the privilege of engaging in the business of selling such natural resource products in the municipality.

Section 6-11. 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 any 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 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 person shall ship or transport its products or any part thereof out of the state 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 state shall be the basis for the assessment of the tax imposed. The RECORDER may prescribe equitable and uniform rules of ascertaining such value; provided that, in the absence of such rules, the person manufacturing the products within the municipality shall report the value in a 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 products shall be reported under section 12 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 12 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 12 of this article for the privilege of selling such product within the municipality.

Section 6-12. 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 of one 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 West Virginia 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 generality of the foregoing, when the taxpayer has only one (1) office location and this office is located within the municipality and its activities elsewhere in West Virginia 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.

Section 6-13. Public Service of 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 (4.00%); electric light and power companies, four percent (4.00%) on sales and demand charges for domestic commercial lighting and three percent (3.00%) on sales and demand charges for all other purposes; natural gas companies, three percent (3.00%); and upon all other public service or utility business, two percent (2.00%). The measure of this tax shall not include gross income derived from commerce between the state and other states of the United States. 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.

Section 6-14. Contracting

Upon every person engaging or continuing within the municipality in the business of contracting, the tax shall be equal to two percent (2.00%) of the gross income of the business.

Section 6-15. Amusements

Upon every person engaging or continuing within 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 one-half percent (0.50%) of the gross income of the business.

Section 6-16. 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 (1.00%) of the gross income of any such business.

Gross income or gross proceeds of sales derived from services within West Virginia 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 West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

Section 6-17. 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 status 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 (1.00%) of the gross income of any such activity, The term "tangible personal property", as used herein, shall not include money or public securities.

Section 6-18. 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 (1.00%) 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 (a) interest received on the obligations of the United States, its agencies and instrumentalities; (b) 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 (c) 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 (c) above shall be reported, as to amounts, on the return of a person taxable under the provision of this section.

Section 6-19. Health Maintenance Organization

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.

Section 6-20. Additional Credits

A person taxable under section 12 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 12 for any (a) manufacturing taxes paid by such person with respect to the manufacturing of products so sold at wholesale in this municipality, and/or (b) 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.

For purposes of this section:

- (a) "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 11 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.

- (b) "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 10 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.
- (c) "Gross receipts tax" means a tax which (i) is imposed on or measured by the 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.

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.

Section 6-21. Exempt Activities

The provisions of this article shall not apply to: (a) 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; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) 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.; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) 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.; (f) 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.; and (g) gross

income derived from advertising service rendered in the business of radio and television broadcasting.

Section 6-22. 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 this 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 this municipality for the tax year upon the condition that he shall pay the tax, interest and penalty imposed by this article.

Section 6-23. Administration Generally

The administration of this article is vested in and shall be exercised by the RECORDER 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.

Section 6-24. 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 the completed return, together with any remittance due, to the location specified by the RECORDER. 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 20 of this article. The RECORDER 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 RECORDER. 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 RECORDER, in lawful money of the United States or by bank or ATM certified check, cashier's check, or other commercially acceptable means specified by the RECORDER, to be kept, deposited and accounted for as provided by law.

Section 6-25. Taxpayer Records

Each person subject to this article shall maintain sufficient records for review by the RECORDER as long as the contents of such records may be material in the administration of tax imposed by this article.

Section 6-26. Tax Return Information Confidentiality

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 [W. Va. 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 RECORDER or otherwise obtained by the municipality in an investigation undertaken by the RECORDER 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 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.

Notwithstanding the foregoing, the RECORDER may permit the proper officer, or his authorized representative or agent, of the United States or the state, 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.

Section 6-27. Erroneous Computation of Tax

If any taxpayer shall make any error in computing the tax, interest and penalty under this article, the RECORDER shall correct such error or reassess the proper amount of tax, interest and penalty, and notify the taxpayer of his or 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 RECORDER and shall be payable out of any funds available for the purpose. The taxpayer may, at its election, apply an overpayment as credit upon tax subsequently accruing hereunder.

Section 6-28. Investigations

For the purpose 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 RECORDER 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 RECORDER may take testimony and shall have the power to administer oaths.

The RECORDER has the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and production of documents for the purpose of ascertaining the correctness of a return or claim or for performing an assessment or for any hearing held by the RECORDER. In case of the failure or refusal of a witness to appear and testify or to produce evidence, the RECORDER may invoke the aid of the circuit court of Nicholas County. Upon proper showing, the RECORDER may apply for an order requiring the witness to appear and give testimony and produce evidence concerning the matter in question.

Section 6-29. 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 RECORDER believes the tax imposed by this article has been insufficiently returned by any taxpayer, the RECORDER may proceed to assess the tax and shall notify the person assessed of the amount of the tax, additional tax, interest and penalties so assessed.

The RECORDER may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever the RECORDER ascertains that such assessment is improper or incomplete in any material respect. The RECORDER may, at any time within the period prescribed for assessment, make a supplemental assessment whenever the RECORDER 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.

Section 6-30. Notice of Assessment; Petition for Reassessment

The RECORDER 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 RECORDER 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 facts, 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.

Section 6-31. 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 RECORDER 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 RECORDER for sufficient cause.

The hearing shall be informal and shall be conducted in an impartial manner by the RECORDER or a hearing examiner designated by the RECORDER, 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, in whole or in part.

After such hearing, the RECORDER shall, within a reasonable time, give notice in writing to the taxpayer of the RECORDER's decision.

An appeal may be taken by the taxpayer to the Circuit Court of Nicholas County within sixty (60) days after service of the RECORDER's administrative decision issued pursuant to this section.

Section 6-32. Injunction

After any delinquency shall have continued sixty (60) days, the RECORDER may proceed in the Circuit Court of Nicholas 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 judgement or decree for the municipality, the municipality shall be awarded its costs.

Section 6-33. 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 RECORDER, for the more effective collection of the tax, interest and penalty imposed by this article, may file with the Clerk of the Nicholas County Commission 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 RECORDER shall attest to the fact and amount of payment and shall forward a certificate of release to the taxpayer. Upon presentment and payment of the recording fee by the taxpayer, the Clerk of the Nicholas County Commission shall record such certificate in the book in which releases are recorded.

Section 6-34. 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 RECORDER 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.

Section 6-35. Revocation, Non-renewal of Licenses and Permits

The RECORDER has the authority to 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 RECORDER will 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 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 RECORDER may request legal advice from the City Attorney and adopt such procedures for its decorum and the dispatch of business at such hearings as the RECORDER may regard advisable. The revocation decision of the RECORDER 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.

Section 6-36. Settlement Agreements and Compromises

The RECORDER, with approval of the Mayor 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 RECORDER, with approval of the Mayor, 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.

Section 6-37. Additional Administrative Provisions Concerning Contracting

Without limiting the generality of the administrative and collection powers granted to the RECORDER in this article, the RECORDER is also empowered to require any person engaging or continuing within 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 materials used upon any job or to do any work within the municipality. The RECORDER may also require every person engaging or continuing within the municipality in the business of contracting who is a nonresident of the State 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.

Any person engaging a contractor or subcontractor within this municipality shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the RECORDER to the effect that all taxes levied and accrued under this article against the contractor have been paid. If any person fails to withhold as provided herein and the contractor or subcontractor fails to timely pay such tax, such person shall be personally liable for the payment of such taxes, and the same shall be recoverable by the RECORDER by appropriate legal proceedings.

Section 6-38. 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 RECORDER 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 RECORDER shall be of the opinion that the tax, interest or penalty, or any part thereof, was overpaid, the RECORDER shall refund the same to the taxpayer. If the RECORDER denies the claim, the taxpayer may within thirty (30) days after notice of denial file with the RECORDER a petition for refund or credit, which shall be heard in accordance with section 32 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.

Section 6-39. 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%) of the tax for each succeeding month, or fraction thereof of delinquency provided, that if such failure is due to reasonable cause, the RECORDER 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%) of the tax owed, exclusive of penalties.

Interest and penalties may be collected in the same manner as the tax imposed by this article.

Section 6-40. 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.

Section 6-41. Effective Date

The tax imposed by this article shall first accrue JANUARY 1, 2021.

Section 6-42. Previous Ordinances

All the previous ordinances dealing with the Business and Occupation Tax are hereby repealed and are null and void.

Article III: Public Utilities

Section 6-43. Definitions

For the purposes of this article, the following words and phrases have the meanings respectively ascribed to them by this section:

Public utility service

All services and tangible personal property purchased within this municipality from a seller, as hereinafter in this section defined, namely, telephone service, electric service, gas service, including bottled or liquid gas, if the seller hereof is classified as a public utility subject to the jurisdiction of the public service commission of the state, water service and sanitary sewer service if purchased, used or consumed within the corporate limits of this municipality;

Purchaser

Every person who purchases, uses or consumes a public utility service;

Seller

Every person, whether a public service corporation, a municipality or private corporation classified as a public utility and subject to the jurisdiction of the public service commission of the state, who sells, furnishes or supplies a public utility service.

User

The owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

Section 6-44. Imposition and levying of tax; amount of tax

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of this municipality such public utility service. Such tax shall be in the amount of two percent of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller; and shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this section is in addition to all other taxes imposed and levied by this municipality. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars (\$20,000) in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of such amount of twenty thousand dollars (\$20,000). In the event more than one public utility shall furnish the identical public utility service to the same purchaser, such purchaser

shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

Section 6-45. Collection; time of payment; proration

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this and each seller shall remit the amount of tax shown by such report to have been collected to this municipality on or before the last day of the second calendar month following the calendar quarter in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after November 1, 1971, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge, as the number of days after June 30, 1971, within the period covered by such periodic statement, bears the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality.

Section 6-46. Records

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

Section 6-47. Exemptions

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

- (a) Purchases of public utility service for resale;

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

Section 6-48. Nonliability of utility; duty of municipality; refunds; rules and regulations

There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or or erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the official of this municipality charged with the responsibility of collecting taxes due to this municipality, and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such officials of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The official of this municipality charged with the responsibility of collecting taxes due this municipality shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this chapter.

Section 6-49. Enforcement provisions; penalties

Any amount of tax due and unpaid under this chapter shall be a debt due this municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in [section 15, article 13, chapter 8 of the Code of West Virginia](#), or in any other manner now or hereafter provided by law for compelling the payment of taxes due municipalities. Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars (\$100). The failure or refusal to pay the tax for public utility service purchased, used or

consumed during different periodic statement periods shall constitute a separate and distinct offense.

Chapter 7: Fire Prevention

Article I: In General

Sections 7-1 to 7-5. Reserved

Article II: Fire Prevention Code

Section 7-6. Adopted

There is hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain Code known as the Fire Prevention Code recommended by the American Insurance Association, being particularly the 1976 edition thereof and the whole thereof, save and except such portions as are hereinafter deleted, modified or amended, of which Code not less than three copies have been and now are filed in the office of the clerk of the city, and the same are hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling within the limits of the city.

Note: Permits covered by section 17 of the Fire Prevention Code and required in various articles are for the purpose of giving the fire department more effective control over hazardous conditions regulated by the Code. Where fees are charged for such permits it is desirable that the money for fees be handled by some agency other than the fire department to avoid the impression that inspections are made for obtaining the fees rather than for providing fire prevention service.

It is also desirable to fix in the adopting ordinances the time period for which a permit is valid. Where licenses are required by a municipality in addition to permits required by the Fire Prevention Code and such licenses are renewable each year, it is suggested that permits be made valid for an indefinite period. Where licenses are not required it is suggested that permits be made renewable each year.

Section 7-7. Enforcement of Fire Prevention Code

The Code hereby adopted shall be enforced by the chief of the fire department.

Section 7-8. Establishment of districts for restricted storage of explosive and flammable agents.

The limits referred to in section 53b of the fire code hereby adopted, in which storage of explosives and blasting agents is prohibited, the limits referred to in section 74a of the code hereby adopted in which storage of class I liquids in outside aboveground tanks is prohibited, and the limits referred to in section 114 of the code hereby adopted, in which bulk storage of liquefied petroleum gas is restricted are hereby established as follows:

All business areas.

Section 7-9. Establishment of routes for vehicles transporting explosives and blasting agents.

The routes referred to in section 55i of the Fire Prevention Code for vehicles transporting explosives and blasting agents are hereby established as follows: State Route 39 or any other established safety route approved by the chief of the fire department.

Section 7-10. Establishment of routes for vehicles transporting hazardous chemicals or other dangerous articles

The route referred to in section 109.1b of the Fire Prevention Code for vehicles transporting hazardous chemicals and other dangerous articles are hereby established as follows: State Route 39 or any other established safety route approved by the chief of the fire department.

Section 7-11. Establishment of fire lanes on private property devoted to public use

All fire lanes shall be established by the chief of the fire department and the chief of police.

Note: These lanes should be established on private property, devoted to public use, where the parking of motor vehicles or other obstructions may interfere with the ingress and egress of fire department vehicles for the protection of persons and property, such as at shopping centers, bowling lanes, theatres, hospitals, churches, and similar locations. The width and route of such lanes should be specifically described.

Section 7-12. Modifications and variances

The chief of the fire department shall have power to modify any of the provisions of the Fire Prevention Code upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the Code; provided, that the spirit of the Code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the chief of the fire department thereon shall be entered upon the records of the department and a signed copy shall be furnished to the applicant.

Section 7-13. Appeals

Whenever the chief of the fire department shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the Code do not apply or that the true intent and meaning of the Code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to mayor and council within thirty days from the date of the decision appealed.

Section 7-14. Violations; penalties; remedies

- (a) Any person who shall violate any of the provisions of the Code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken or who shall fail to comply with such an order as affirmed or modified by the mayor and council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively, be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars (\$25) or more than five hundred dollars (\$500) or by imprisonment for not less than five days or more than sixty days or by both such fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense.
- (b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

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Chapter 8: Garbage and Refuse

Section 8-1. "Garbage" defined

The term "garbage" shall mean and include all waste matter and material whether consisting of food, paper, wood, metal or other substance, resulting from normal residential and business functions.

Section 8-2. Authority of mayor--Generally

The mayor is hereby authorized and directed to take such action as, in his opinion, is necessary to execute and give effect to the provisions of this chapter, including the collection of fees as hereinafter imposed, the acquisition and maintenance of equipment, the employment of labor and other help and the establishment and maintaining of regular schedules of garbage collection.

Section 8-3. Same--Purchase and maintenance of equipment; employees

The mayor is hereby authorized and directed by the council, subject to approval of the council to purchase such equipment as, in his opinion, is necessary to effectively render the service established and defined by this chapter, and to take such action, expend such sums of money and employ such assistance as is necessary to properly maintain such equipment and comply with such collection and disposal schedules as may be established. All persons so employed pursuant to this section will be considered employed by the city.

Section 8-4. Fees for collection service

As consideration for, and in order to finance the service defined herein, the following fees and rates are hereby established:

- (1) A monthly fee of eleven dollars and eighty-two cents (\$11.82), based on one pick-up per week and four weeks per month, is hereby imposed upon each and every dwelling used for residential purposes within the City of Richwood, and a monthly fee of fifteen dollars and fifty-two cents (\$15.52) is hereby imposed upon each and every dwelling or dumpster used for business purposes within the City of Richwood. If said dwelling is occupied by more than one family/business unit, a separate monthly fee shall be imposed on each family/business unit occupying said dwelling. **Amended 1999.**

- (2) Multiple pick-ups (i.e. in excess of one pick-up per week) will be assessed a fee equal to one-fourth of the specified monthly fee for each additional pick-up. Extreme volume pick-ups will be assessed a fee, based on weight and volume present, to be determined at the site. **Amended 1999.**
- (3) All new or additional dumpster set up fees will be subject to a \$50.00 charge per instance. **Added 2019.**

Section 8-5. Accumulations, etc.; engaging in collection business

No person shall accumulate, permit to be accumulated, disposed of, dump or deposit any garbage on any property within the city, regardless of whether such property is owned by such person.

All persons are hereby restricted and prohibited from engaging in the businesses of collection and disposition of garbage.

Section 8-6. Collection schedules; preparation for collection

The mayor is hereby authorized and directed to establish and maintain regular schedules governing the collection and disposal of garbage as herein provided. All persons subject to this chapter are hereby required to prepare such garbage in containers, on the day or days of such collection, and to place such containers at a location on or near the premises which will provide the maximum possible convenience for collection.

Section 8-7. Violations and penalties

Any person found guilty of violating any of the provisions of this chapter shall be guilty of a misdemeanor, and shall be subject to a fine, not to exceed five hundred dollars (\$500), or imprisonment, not to exceed thirty days, or both, at the discretion of the Municipal Court Judge. **Amended 1997; amended 1999**

Applicable Ordinances

Note: Original ordinance(s) made no provision for position within the Code; such provision was made at the discretion of the compiler.

Ordinance 1. Responsibility of the Customers of the Sanitation Department

- (1) All customers shall have all garbage in unopened, sealed, structurally sound bags or boxes at the time the sanitation workers arrive at the home of the customer or the sanitation department will not be required to pick up garbage. Loose garbage in garbage cans or non-disposable garbage containing devices will not be picked up by the City.
- (2) If the garbage of a customer has been opened, removed, thrown, blown, strewn or scattered due to any event, condition or circumstance, then it is the responsibility of that customer (not the sanitation department) to pick up the garbage immediately or risk being in violation of littering laws and other laws pertaining to the situation.
- (3) Garbage is not to be placed out sooner than the night before the day that the sanitation department is going to pick up the garbage unless it is placed in sealed, structurally sound bags or boxes and stored in a permanent trash receptacle which has a secure lid and is free of odor.
- (4) Permanent or non-permanent garbage containing devices shall be kept clean of garbage, waste and odor all days except the night before and the day of garbage pick up and shall always have attached, secure lids. Excessive or remaining garbage or odor is a violation of nuisance laws.
- (5) Non-permanent garbage cans or other garbage containing devices shall only be put out the night before garbage is to be picked up and then must be returned to storage the day the garbage is picked up.
- (6) On the day that the garbage is to be picked up, the garbage must be put out by the customer near their house and within close proximity of a city street or alley.
- (7) Broken glass or any other material that could puncture, rip, tear or otherwise destroy the integrity of a garbage bag must be put in a secure box and labeled of its contents.

Added 1999.

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Chapter 9: Licenses

Section 9-1. Required; fees

No person shall, without a current, valid, municipal license (license are to be renewed yearly, unless otherwise stated. Licenses expire on June 30 of every year, unless otherwise stated. A valid license is required for business conducted anytime during a year,) engage in or prosecute, within the corporation limits of the city, any of the businesses, activities, trades or employment or exercise any of the privileges named or contemplated in the following list; and the license fees hereinafter specified are hereby levied on every person engaging or prosecuting any such businesses, activities, trades or employment or exercising any of the privileges named or contemplated:

- (1) Alcoholic Liquors:
 - (a) Fraternal or veterans organizations or nonprofit social clubs, \$375.00
- (2) Private Club:
 - (a) Less than 1,000 members, \$500.00
 - (b) 1,000 or more members, \$1,250.00
- (3) Non-intoxicating Beer:
 - (a) Retail Dealer - Class A (Restaurants, bars and fraternal organizations,) \$150.00
 - (b) Class B (Grocery Stores: Chilled or Unchilled,) \$150.00
 - (c) Distributor, \$500.00
 - (d) Brewer, \$1,500.00
- (4) Wine:
 - (a) Retailers (Grocer,) \$150.00
 - (b) Distributors (Wholesale,) \$2,500.00
 - (c) Wine tasting, \$50.00
 - (d) Wine Sales Representative, \$50.00
- (5) Architect: \$25.00
- (6) Attorney: \$5.00
- (7) Auctioneer: \$15.00
- (8) Barber, Beautician, Manicurists: \$25.00
- (9) Barbers, Beautician School: \$250.00
- (10) Chiropractors: \$100.00
- (11) Dental Corporation: \$50.00
- (12) Dentists: \$20.00
- (13) Embalmers & Funeral Directors: \$15.00
- (14) Engineers: \$30.00
- (15) Foresters: \$5.00

- (16) Funeral Establishment: \$75.00
- (17) Hearing Aid Fitter & Dealer: \$40.00
- (18) Hospital:
 - (a) 5-49 Beds: \$20.00
 - (b) 50-99 Beds: \$30.00
 - (c) 100-199 Beds: \$40.00
 - (d) 200 or more Beds: \$50.00
- (19) Hotel, Motel and Boarding House: \$2.00
 - (a) Each Bedroom in excess of 7: \$0.25 each up to \$10.00
- (20) Insurance Broker: \$25.00
- (21) Insurance Company: \$50.00
- (22) Landscape Architect: \$50.00
- (23) Land Surveyor: \$20.00
- (24) Medical Corporation: \$300.00
- (25) Midwives: \$10.00
- (26) Nursing Home Administrator: \$50.00
- (27) Nursing Home: \$8.00 bed
- (28) Occupational Therapist: \$5.00
- (29) Osteopathic Physician and Surgeon: \$10.00
- (30) Personal Care Homes: \$4.00
- (31) Physical Therapist: \$35.00
- (32) Physician, Surgeon and Podiatrist (every 2 years): \$50.00
- (33) Practical Nurse: \$5.00
- (34) Private Detective & Investigator: \$50.00
- (35) Psychologist (Every 2 Years): \$30.00
- (36) Radiologic Technologist (Every 2 Years): \$20.00
- (37) Real Estate Broker: \$25.00
- (38) Real Estate Salesman: \$25.00
- (39) Registered Professional Nurse: \$5.00
- (40) Restaurants: \$2.00
 - (a) Each five chairs or spaces where persons are fed in excess often: \$0.25/section up to \$10.00
- (41) Social Worker: \$5.00
- (42) Veterinarian: \$5.00
- (43) General Stores:
 - (a) 1 to 5 stores: \$15.00 each
 - (b) 6 to 10 stores: \$40.00 each additional store
 - (c) 11 to 15 stores: \$80.00 each additional store
 - (d) 16 to 20 stores: \$120.00 each additional store
 - (e) 21 to 30 stores: \$160.00 each additional store

- (f) 31 to 50 stores: \$400.00 each additional store
- (g) 51 to 75 stores: \$800.00 each additional store
- (h) over 75 stores: \$1,000.00 each additional store
- (44) Special Store:
 - (a) 1 to 5 stores: \$5.00 each store
 - (b) 6 to 10 stores: \$20.00 each additional store
 - (c) 11 to 15 stores: \$40.00 each additional store
 - (d) 16 to 20 stores: \$60.00 each additional store
 - (e) 21 to 30 stores: \$80.00 each additional store
 - (f) 31 to 50 stores: \$200.00 each additional store
 - (g) 51 to 75 stores: \$400.00 each additional store
 - (h) over 75 stores: \$500.00 each additional store
- (45) Amusement or Music Devices:
 - (a) Less than 20:
 - (i) \$0.01 device: \$2.00 each
 - (ii) \$0.05 device: \$5.00 each
 - (iii) \$0.10 device: \$10.00 each
 - (iv) \$0.10 plus device: \$12.50 each
 - (b) More than 20
 - (i) \$0.01 device: \$50.00 each
 - (ii) \$0.05 device: \$150.00 each
 - (iii) \$0.10 device: \$225.00 each
 - (iv) \$0.10 plus device: \$300.00 each
- (46) Baggage or Parcel Checking Devices, Vibrator Machine and Toilet Locker,
Sanitary Napkins: \$0.50
- (47) Bagatelle Table:
 - (a) First table: \$25.00
 - (b) Each additional table: \$15.00
- (48) Billiard Table:
 - (a) First table: \$25.00
 - (b) Each additional table: \$15.00
- (49) Bowling Alley:
 - (a) First alley: \$25.00
 - (b) Each additional: \$15.00
- (50) Carnivals (Street or Other:):
 - (a) For each performance, exhibit or entertainment: \$5.00 per week
 - (b) Riding device: \$10.00 per week
 - (c) Concessions selling service, goods, wares, merchandise, food: \$5.00 per week/per occasion
 - (d) Game of skill: S 10.00 per week

- (e) Candy or merchandise wheels: \$25.00 per day
Note: each performance shall or may be required to have a separate license.
- (51) Circuses and Other Shows:
 - (a) For each railroad car used to transport property or equipment: \$4.00 for each day
 - (b) For each truck used to transport property or equipment: \$3.00 for each day
- (52) Collection Agency: \$100.00
- (53) Employment Agency: \$200.00
- (54) Fortune Telling, Palmist, Phrenologist, Spiritualist, Clairvoyant, Mind Reader, Medium: \$200.00
- (55) Hawker & Peddler:
 - (a) On foot: \$10.00
 - (b) Vehicle not exceeding 1/2 ton: \$15.00
 - (c) Vehicle not exceeding 1 ton: \$50.00
 - (d) Vehicle not exceeding 2 tons: \$100.00
 - (e) Vehicle more than 2 tons: \$ 150.00
 - (i) Each additional ton or fraction thereof: \$100.00
- (56) Itinerant Vendor: \$500.00
- (57) Junk Dealers:
 - (a) Resident junk dealer within city limits: \$25.00
 - (b) Resident junk dealer (no yard for storage): \$25.00
 - (c) Resident junk dealer's agent: \$10.00
 - (d) Itinerant junk collector: \$2.00
 - (e) Non-resident junk dealer: \$150.00
 - (i) Non-resident junk dealer's agent: \$150.00
- (58) Laundromats-Car Wash:
 - (a) 1-5 devices: \$15.00
 - (b) 6-9 devices: \$3.00 each
 - (c) 10 or more devices: \$30.00
- (59) Pawnbroker: \$100.00
- (60) Theaters & Public Shows:
 - (a) Population over 2,000 but less than 5,000: \$20.00
- (61) Trading Stamps: \$175.00
- (62) Vending Machines, Merchandise or Service Device:
 - (a) Less than 20:
 - (i) \$0.01 device: \$2.00 each device
 - (ii) \$0.05 device: \$5.00 each device
 - (iii) \$0.10 device: \$10.00 each device

- (iv) \$0.10 plus device: \$12.50 each device
- (b) More than 20:
 - (i) \$0.01 device: \$50.00
 - (ii) \$0.05 device: \$100.00
 - (iii) \$0.10 device: \$150.00
 - (iv) \$0.10 plus device: \$250.00
- (63) Business Not Specifically Listed Above: \$15.00

Section 9-1 Amended 1997; amended 1998.

Section 9-2. Application and issuance

All licenses provided for in this chapter, except as herein otherwise provided, shall be issued by the recorder or mayor's secretary, when proper so to do, to any person making proper application and tendering in full the proper fee as specified herein.

Every license issued thereunder for anything requiring a fixed location shall specify such location. Exercising any of the privileges granted by any such license elsewhere than at the specified place shall be deemed to have been done without a license. But the recorder may endorse the license for use at a different location upon proper application and business inspection.

Section 9-2 Amended 1998.

Section 9-3. Term

All annual license issued thereunder shall be for a period of one year beginning on the first day of July and ending on the thirtieth day of the following June; provided, that in the event that any business, activity, trade or employment is begun after the first day of July of any year, a license effective until the thirtieth day of the following June shall be issued upon the payment of the annual fee.

Section 9-3 amended 1998.

Section 9-4. Conditions precedent to doing business

Payment in full of the proper fee as herein specified, the issuance of a certificate of license, and the fulfillment of all the terms and conditions of such grant shall be conditions precedent to the transaction of any business, activity, trade or employment for which a license is herein required.

Section 9-5. Assignment

Any license issued hereunder may be assigned and such assignment shall be valid when the recorder has endorsed his approval thereon, provided an original license could properly have been issued to the assignee.

Section 9-6. Definitions; exceptions

Words and terms used herein shall have the same meaning as given thereto in similar context in the Code of West Virginia and particularly in Articles [12](#), [13A](#), [14](#) and [16](#) of Chapter 11 thereof, and all exceptions provided in the Code of West Virginia, and particularly in the above articles thereof, exempting from the payment of state license taxes shall here be applicable as exempting from the payment of municipal license taxes of the same type.

Section 9-7. Violations; penalty

Any violation of this chapter shall be punished by a fine of not less than five nor more than one hundred dollars or by imprisonment for not more than thirty days or both in the discretion of the mayor, and each day such violation continues shall be considered a separate offense. The city police shall, upon orders from the mayor, close or stop any business, activity, trade or employment or the exercising of any privilege, for which a license is herein required, when operation thereof is attempted without such license, and such closing or stoppage shall continue until proper license is obtained.

Chapter 10: Mobile Homes, Travel Trailers, etc.

Section 10-1. Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Camper

A mobile living unit designed to be mounted upon or conveyed by another vehicle and licensed or able to be licensed under state motor vehicles law.

Industrial housing

Used, designed to be used or capable of being used as living quarters with certain sleeping accommodations, kitchen and bathroom facilities and plumbing and electrical connections for attachment to outside systems, and placed on a solid foundation. Any industrialized housing which meets the definitions of a mobile home shall not be considered industrialized housing.

Mobile home

A structure or vehicle with the following characteristics:

- (a) Used, designed to be used or capable of being used as living quarters, and containing sleeping accommodations a flush toilet, a tub or shower bath, kitchen facilities and plumbing and electrical connections for attachment to outside systems;
- (b) Designed for transportation after fabrication on streets or highways on its own wheels and resting on its own chassis;
- (c) Arrives at the site where it is to be occupied complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, location or jacks or other temporary or permanent foundations connections to utilities, and the like; a camper/camper-trailer is not a mobile home.

Mobile home park

An area consisting of at least one acre for renting of space for mobile homes and not used or occupied by the applicant for his or their use. Two or more mobile homes are considered a park.

Mobile home space

A plot of ground outside of a mobile home park or mobile home subdivision, designated for the accommodation of one mobile home, and having an area of not less than three thousand square feet.

Mobile home subdivision

A subdivision designed and intended for residential use where the residences are mobile homes exclusively, with a minimum size of two acres.

Permit

A written permit issued by the city recorded, when approved by city council at a regular meeting, permitting a mobile home, a mobile home park or a mobile home subdivision to be located within the city limits.

Travel trailer

A mobile home not exceeding eight feet in width nor more than thirty-three feet in length.

Section 10-2. Permits

All mobile home owners whose mobile homes are now located in the corporate limits of the city are required to register their mobile homes with the city recorder, giving such recorder a brief description of the mobile home occupied by them, or rented by them, the owner of the land on which same is situated, and the mailing address of the tenant.

All mobile homes coming into the city must first obtain a permit from the city recorder before locating such mobile home in the corporate limits.

The occupant of a mobile home shall pay to the city recorder, for such permit the sum of five dollars (\$5) as a registration fee, and such permit shall be issued for a period of one year. A renewal permit, without additional charge, may be issued for additional years; provided, that the occupant thereof is not in violation of any of the provisions of this chapter.

A permit must be obtained by an owner or custodian of a mobile home that is not occupied and used for living or sleeping purposes, providing the same information as above stated, and the same registration fee must be paid.

The city council is hereby authorized, in the exercise of its reasonable discretion to revoke any permit before it expires if, after investigation, it is determined that the holder of such permit has violated any of the provisions of this chapter. Notice of revocation shall be in writing and sent by certified mail, return receipt requested, to the person in whose name the permit is issued. Such revocation notice shall set out the right of the permit holder to correct such violation and shall further state that such permit holder shall have the right to hearing before the city its next regular meeting. The date of such meeting shall be set out in this notice.

If the permit holder does not correct the violation and does not appear before the city council as directed in the notice, such mobile home camper or travel trailer must be removed from the premises as occupied within forty-five days.

As to licenses generally, see chapter 9 of this Code,

Section 10-3. Mobile home parks and mobile home subdivisions

Any person may establish a mobile home park or mobile home subdivision in the commercial zone of the corporate limits of the city by complying with the following:

- (a) Application for a permit to establish a mobile home park or mobile home subdivision must be filed with the recorder of the city. The application must set forth in detail the size of the park or subdivision, and include a permit issued by the state department of health in the name of the applicant, with a check in the amount of twenty-five dollars (\$25), payable to the city, plus the sum of five dollars (\$5) for each mobile home space contained in the park or mobile home subdivision.
- (b) If a permit is issued by the city for the park or subdivision, such permit shall run for one year commencing July 1 to and including June 30.
- (c) There shall be no renewal fees for such premises after the payment of all fees as set out in subsection (a) above.

Campers and travel trailers may be used for residential purposes within the corporate limits for temporary occupancy, provided such occupancy does not exceed fifteen days in any six-month period of any one year. All campers and travel trailers must be parked on private property and cannot be left on any city street or alley longer than twenty-four hours.

Section 10-4. Structural requirements

The following requirements shall apply to mobile homes located within the corporate limits:

- (a) All mobile homes shall be Completely underpinned with a good and suitable material such as aluminum, galvanized or plastic sheeting or material of like substance.
- (b) Mobile homes, including their porches, canopies and similar appurtenances shall be separated from other mobile homes and from other buildings and structures by at least fifteen feet and by ten feet from any street, alley or property lines.
- (c) Mobile homes located within the corporate limits shall comply with regulations of the state board of health, October 1, 1971.

Section 10-5. Violations; penalties; remedies

Any person violating any of the provisions of this chapter or failing to comply with any of its mandatory provisions shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), and each person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of any provision of this chapter is committed, continued or permitted by such person. In addition, any condition caused or permitted to exist in violation of the provisions of this chapter shall be deemed a public nuisance, and may be abated by appropriate legal action by the city.

Applicable Ordinances

Note: Original ordinance(s) included in this section were adopted without further provision as to their inclusion; such was made at the discretion of the compiler

Ordinance 1: Restricting the Location and Occupancy of Mobile Homes and House Trailers in the City of Richwood

Definitions

For the purpose of this ordinance, the following words and phrases shall have meaning respectively ascribed to them by this section:

House trailer; mobile home

The terms “house trailer” and “mobile home” means any vehicle or similar portable structure having no foundation other than wheels, jacks or skirtings, or any vehicle or similar portable structure which originally had no foundation other than wheels, jacks or skirtings and which has been mounted on blocks or other foundations, or is otherwise situated and located with the town or with a radius of one (1) mile on the approaches in town, and which is so designated or constructed so as to permit occupancy for dwelling or sleeping purposes.

Central business district and commercial area

The terms “central business district” and “commercial area” means any block or area in the City which has fifty per-cent or more of its buildings occupied and used for nonresidential and for a business nature, or any vacant land which has been designated on the official plat of restrictions adjoining to the central business district or its approaches.

Residential area

The term “residential area” means any block or area in town which has fifty percent or more of its building occupied and used for residential or dwelling purposes, or any vacant land which has been platted or laid off for residential subdivision purposes, or which adjoins a residential area.

Mobile Home Park

The term “mobile home park” is an area that is designated for the location of multiple units of house trailers or mobile homes. “Mobile home parks” must be established before March 4, 1999, and contain three or more house trailers or mobile homes. “Mobile home parks” must be approved for establishment by the City Council and meet all requirements of this ordinance after March 4, 1999.

Placement and Location Prohibited in Central Business District and Approached Thereto

It shall be unlawful hereafter for any person to place or locate any house trailer or mobile home in any commercial area of the central business district or along the roadway approaches thereto.

Application of Present and Future Ordinances

The location and occupancy of house trailers or mobile homes in non-prohibited area of the City shall be in accordance with the provisions of any ordinance of the City now in existence or hereafter enacted regulating trailer or mobile home parks, and, in no

event, shall any house trailer or mobile home be placed on a lot containing less than five thousand square feet and not having available sewerage or water facilities approved by the City Council of the City of Richwood.

Certain Exceptions as to Homes in Place on March 4, 1999

The prohibition against locating house trailers or mobile homes in certain areas of the City, as herein contained, shall not affect any house trailer or mobile home which was located upon any lot or other area in the City on March 4, 1999, and has continued in place since that date; provided, however, this provision notwithstanding, that no person shall, after March 4, 1999, locate or place any additional house trailer or mobile home on any lots or other location being used for house trailers or mobile homes on March 4, 1999, in any prohibited areas of the City; and further provided, that the owner of any house trailer or mobile home which was located upon any lot or other area in the town on March 4, 1999, and which has since then continued on place, may replace such house trailer or mobile home with another house trailer or mobile home at any time only in accordance with the provisions of this ordinance or any other currently existing ordinance requiring permission of the City therefor. The mobile home parks established before March 4, 1999, are in exception to this ordinance.

Location in Residential Area, Subject of Consent of Neighbors and the Municipal Council

Notwithstanding any other provision of the ordinance, one house trailer or mobile home may be placed upon any lot or other area of land containing at least five thousand square feet, and not situated in a commercial area as hereinbefore defined; provided that at least seventy-five percent of the owners of real estate situated within three hundred feet of the boundary line of the lot or area of land in any direction shall consent, in writing and signed, prior to the location and placement of such house trailer or mobile home and providing that such written consent is filed with the City Council and a permit for the location of such house trailer or mobile home is granted by the City Council.

Visual Shed or Visual Aesthetics

The City Council reserves the right to not approve a house trailer or mobile home permit based on the location and placement of the house trailer or mobile home blocking a visual shed or based on the location and placement of the house trailer or mobile home harming or interfering with the visual aesthetics of the area in which the house trailer or mobile home is proposed to be located.

Permit to Locate House Trailer or Mobile Home Required

In order to aid the enforcement of this ordinance, a building permit must be obtained and approved by the City Council prior to location in any area of the municipality. Prior to any location of mobile home or house trailers permits must be obtained from the City Council granting sewerage and water hookups with the City of Richwood Water and Sewer Departments. Those permits will be in the form of the standard building permit form and must be issued and presented prior to any sewerage or water hook-ups.

Map Showing Location of House Trailers or Mobile Homes as of March 4, 1999

The City Recorder or Mayor, assisted by the Chief of Police and the police department shall compile a map showing thereon the location and ownership of all house trailers and mobile homes, including mobile home parks.

Permit Required for Alteration into Dwelling

Whenever any trailer or mobile home is occupied as a dwelling or used for sleeping or other residential purposes, and has been rendered immobile by the removal of wheels or other transporting device, a permit to do so must be obtained from the City Council of the City as required for construction of a new building. Any such alterations shall be construed as converting the trailer or mobile home into a building and subject it to the requirements of the City building ordinances and codes relating to construction applicable to single family dwellings.

For any site declared to be situated within the boundaries of the 100-Year Flood Plain, additional provisions of the Flood Plain Construction (FEMA) Ordinance of August 2, 1990 apply.

Concealment of Open Area Between Base and Ground

Any house trailer or mobile home occupied as a dwelling or used for sleeping or other purposes, which has not been rendered immobile by the removal of the wheels or other transporting device, shall cover the area between the base of the trailer and the ground upon which it rests by underpinnings which are sufficient to conceal such open area in an attractive manner approved by the City Council in a building permit.

FEMA design and construction of Flood Plain Construction Ordinance of August 2, 1990 control underpinnings.

Severability

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance be severable, and if any section, paragraph, sentence, clause or phrase of this ordinance or the application thereof to any person or circumstance shall be declared unconstitutional or otherwise invalid by the judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of the ordinance or the application thereof to any other person or circumstances.

Ordinance 1, so placed in Chapter 10, added 1999.

Chapter 11: Motor Vehicles and Traffic

Note: Original chapter 11 repealed and replaced in 1997; this constitutes the most up to date version with any additional amendments and addendums noted as such.

Article I: Stopping, Standing and Parking

Division 1: Generally

Section 11-1. Parking areas for handicapped persons

The mayor is hereby authorized to designate parking spaces upon public streets and alleys at places where parking is reasonably possible, consistent with traffic conditions and other parking ordinances, for the sole and exclusive use of persons having serious physical handicaps; provided, that such spaces for such exclusive parking can reasonably be provided near the home or place of business of such physically handicapped person who owns an automobile and has definite need for such consideration. After any such space is so designated by the mayor and shall have been clearly marked, any owner or operator of any motor vehicle violating such exclusive privileges by parking in or encroaching upon such reserved space shall be punished as provided in this article.

Section 11-2. Repair of vehicles on public streets, etc.

It shall be unlawful for any owner or operator of any motor vehicle to repair or to permit the repairing of same upon any street or alley within the city, and it shall be unlawful for any person to do or perform any such repair work upon the streets and alleys within the city, except in case of emergency and then only at such place and for such time as authority may be first obtained from the city police.

Section 11-3. Taxi stands; license

- (a) Every owner and operator of a taxicab within the city shall be required to have a stand or designated place from which to operate, which stand or place shall be designated by the council of the city, unless such stand or place has been previously designated by some state authority.

- (b) Every owner and operator of a taxicab within the city shall obtain a municipal license for such stand or place from which to operate, for which license the tax shall be ten dollars (\$10) per year, from July 1 until June 30 of the following year.
- (c) Any such owner and operator who shall have obtained his license and paid his tax as required above shall have the right, under the supervision of the council of the city, to identify such stand or place with distinctive marking upon the street, curb, or other place, as may be approved by the council

Such space so marked and designated as a tax stand shall be of a sufficient size and dimension to accommodate reasonably the parking of the taxicab or cabs owned and operated by such licensee, the size and dimension thereof to be approved by the council.

- (d) Any such licensee may at his own expense erect conspicuous "No Parking" signs, as may be approved by the council, and in case such "No Parking" signs are erected, the space so marked off and designated as a taxi stand shall not be used for general parking by other vehicles, and anyone violating this regulation may be punished as provided for violation of other traffic ordinances.

Section 11-4. Restricted areas generally

When signs or appropriate markings are in place giving notice that stopping, standing or parking is restricted or prohibited in a given location, no person shall stop, stand or park any vehicle except in compliance with the directions of such signs or markings.

Section 11-5. Parking trucks and commercial vehicles in residential districts

No commercial vehicle or motor truck larger than half-ton capacity shall be parked or left standing on a street or alley located in a residential district for more than five hours at a time, except when actually engaged in loading or unloading merchandise; provided, that trucks belonging to or operated by the occupant of a business premises located in a residential district shall be permitted to stand in front of business premises actually occupied by him; and provided further, that any tradesman or mechanic, while actually engaged in work on premises located in a residential district, shall be permitted to have any truck owned or operated by him stand in front of such premises.

Section 11-6. Prohibited uses

No person shall stand or park or permit the standing or parking of vehicle upon any street or public place for the principal purpose of displaying it for sale; for the primary purpose of advertising; for the purpose of utilizing the street or public place for storage or warehousing, or for washing, greasing or repairing such vehicle, except, that temporary emergency repairs to permit removal of the vehicle may be made on a public street or public place.

Section 11-7. Right-of-way at parking areas

All moving vehicles passing a space lawfully available for the parking of vehicles shall have the right-of-way over parked vehicles, provided, that when a vehicle is being moved into or from a parking space and is actually in motion, operators of passing vehicles shall be alert to the movement of such other vehicle and shall use reasonable diligence to prevent accidents.

Section 11-8. Clearing of streets and parking areas

The mayor may require that parking sections on any of the streets of the city be cleared temporarily for the purpose of cleaning or for any other public purpose, and may cause notices to be given by posting, by barriers or otherwise; and any, person neglecting or refusing to move his vehicle as required by such notice shall be guilty of an offense under this chapter.

Division 2: Metered Parking. Repealed.

Article II: Operation of Vehicles

Division 1: Generally

Sec. 11-21. Definitions

The following words and phrases when used in this article shall, for the purpose of this article, have the meanings respectively ascribed to them in this section:

Authorized emergency vehicle

Vehicles of the fire department, duly chartered rescue squad, police vehicles and such ambulances and emergency vehicles of municipal departments or public service

corporation as are designated or authorized by the commissioner or the chief of police of an incorporated city, and such privately owned ambulances and emergency vehicles as are designated by the commissioner.

Bicycle

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.

Bus

Every motor vehicle designed for carrying more than seven passengers and used for the transportation of person; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

Business district

The territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotel, banks, or office buildings, railroad stations and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

Controlled-access highway

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.

Crosswalk

That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, in the absence of curbs, from the edges of the traversable roadway; and any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Driver

Every person who drives or is in actual physical control of a vehicle.

Explosives

Any chemical compound or mechanical mixture that is commonly used or intended, for the purpose 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 of destroying life or limb.

Farm tractor

Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

Flammable liquid

Any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a Tagliabue or equivalent closed-cup test device.

Gross weight

The weight of a vehicle without load plus the weight of any load thereon.

Institution of higher education

“State colleges,” “state college,” “state universities” and “universities,” “state university,” and “university,” and “community college” as defined in ~~subsections (b), (c), (d), (e) and (f), of section 18-26-2 of the Code of West Virginia~~ and any other institution as defined by sections 401 (f), (g) and (h) of the Federal Education Facilities Act of 1963, as amended.

Note: WV Code 18-26 repealed 1989.

Intersection

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

highway also includes two roadways thirty feet or more apart then every crossing of two roadways of such highways shall be regarded as separate intersection.

Laned roadway

A roadway which is divided into two or more clearly marked lanes for vehicular traffic.

Metal tire

Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

Moped

Every motorcycle or motor-driven cycle, unless otherwise specified in the chapter, 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.

Motorcycle

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.

Motor-driven cycle

Every motorcycle having a piston displacement of more than fifty cubic centimeters but not more than one hundred fifty cubic centimeters, or with more than five brake horsepower.

Motor vehicle

Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wire, but not operated upon rails.

Owner

A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon

performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

Park

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

Parking area

Lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge.

Pedestrian

A person afoot.

Pneumatic tire

Every tire in which compressed air is designed to support the load.

Pole trailer

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.

Police officer

Every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Private road or driveway; private property

- (a) "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- (b) "Private property" means real estate in private ownership without regard to the manner in which it is used.

Residence district

The territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

Residential street

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 said area for the purpose of vehicular travel.

Right-of-way

The privilege of the immediate use of the highway.

Road tractor

Every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of vehicle or load so drawn.

Roadway

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

Safety zone

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.

School bus

Every motor vehicle owned by a public or government 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.

School grounds

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.

Semitrailer

Every vehicle with or without motive power, other than a police 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.

Sidewalk

The portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Solid tire

Every tire or rubber or other resilient material which does not depend upon compressed air for the support of the load.

Stop

When required, the complete cessation from movement.

Stop, stopping, or standing

When prohibited, 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 direction of a police officer or traffic sign or signal.

Street or highway

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.

Through highway

Every highway or portion thereof at the entrances to which vehicular traffic from intersection highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

Traffic

Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for purposes of travel.

Traffic-control devices

All signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Traffic-control signal

Any device, whether manually, electrically or mechanically operated by which is alternately directed to stop and to proceed.

Trailer

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.

Truck

Every motor vehicle designed, used or maintained primarily for the transportation of property.

Truck tractor

Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

Vehicle

Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Division 2: Obedience to and Effect of Traffic Laws

Section 11-22. Applicability to vehicles upon streets and highways; exceptions

The provisions of this chapter 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 sections 19-69 to 19-151 shall apply upon streets and highways.

Section 11-23. Obedience--Required

It is unlawful and, unless otherwise declared in this article with respect to particular offense, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article.

Section 11-24. Same--Public officers and employees; inapplicable to persons engaged in highway surface work

- (a) The provisions of this article applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, 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 chapter with reference to authorized emergency vehicles.
- (b) Unless specifically made applicable, the provisions of this article shall not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

Section 11-25. 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 firm 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:

- (i) Park or stand, irrespective of the provisions of this article;
 - (ii) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
 - (iii) Exceed the speed limits so long as he does not endanger life or property;
 - (iv) Disregard regulations governing direction of movement or turning in specified direction.
- (c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell, siren, exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by [section 17C-15-26 of the Code of West Virginia](#), which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.
- (d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Section 11-26. Applicability 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 article, except those provisions of this article which by their very nature can have no application.

Section 11-27. No interference with rights of owners or real property

Nothing in this article shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this article, or otherwise regulating such use as may seem best to such owner.

Division 3: Traffic, Signs, Signals, and Markings

Section 11-28. Obedience to traffic-control devices and instructions--Official signs to be in proper position, etc.

- (a) The driver of any vehicle and the motorman of any streetcar shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this article, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this article.
- (b) No provisions of this article 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 positions 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.

Section 11-29. Same--At site of Street or highway construction or maintenance

The driver of any vehicle shall obey the traffic-control instructions of persons authorized by the state department of highways or by proper local authorities to operate traffic-control devices, act as flagmen or operate follow vehicles at or near the site of street highway construction or 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 article. Any person failing to comply with the requirements of this section shall be guilty of a misdemeanor.

Section 11-29.1. Obedience to traffic instruction at site of street or highway construction or maintenance

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 a flagman 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 exception granted the driver of an authorized emergency vehicle in this chapter. Any person failing to comply with the requirements of this section is guilty of a misdemeanor.

Section 11-29.2. Traffic violations in construction zones, posting requirements, criminal penalties

- (1) At each and every location where street or highway construction is to be conducted a sign shall be posted at least one thousand feet from the construction site, or as close to one thousand feet from the construction site as is practicable given the location of the site when workers are present notifying all motorists as to the limit and displaying the words "construction work."
- (2) Any person who violates any posted speed restriction or traffic restriction at such construction site referred to in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars (\$200) or incarceration in a county or regional jail not more than twenty days, or both.
- (3) 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 code for such violation.

Section 11-30. Traffic-control signal legend

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 said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

- (a) Green alone or "go":
 - (i) Vehicular traffic facing the signal except when prohibited under [section 17C-12-2 of the West Virginia Code](#) 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.
 - (ii) 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:
 - (i) 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.
 - (ii) 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":

- (i) 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 paragraphs (ii) and (iii) of this subdivision (c).
 - (ii) 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 said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such right turn against a red or “stop” signal at any intersection within such jurisdiction, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.
 - (iii) 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 said 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 said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such left turn against a red or “stop” signal at any intersection within such jurisdiction, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.
 - (iv) 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:
- (i) 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.
 - (ii) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.
- (e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions, which by their nature can have no application. Any stop required shall be made at at sign or marking on the pavement indication

where the stop shall be made, but in the absence of any such sign or marking the shall be make at the signal.

Section 11-31. Pedestrian walks and wait signals

Whenever special pedestrian-control signals exhibits 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.

Section 11-32. Flashing signals

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

- (1) 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. (2) 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.

Section 11-33. Display of unauthorized devices, signs, etc.; such devices, etc., declared nuisance and subject to removal

- (a) No local authority or person shall place, maintain or display upon or in view of any 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 highway any traffic-control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon

private property adjacent to 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 state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

Section 11-34. Interference with official traffic-control devices oy railroad signs or signals

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.

Section 11-35. Driving, under influence of alcohol, controlled substances or drugs

(a) Any person who:

(i) Drives a vehicle in the City of Richwood while:

- (1) He is under the influence of alcohol; or
- (2) He is under the influence of any controlled substances; or
- (3) He is under the influence of any other drug; or
- (4) He is under the combined influence of alcohol and any controlled substances or any other drug; or
- (5) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(ii) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term shall 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).

(b) Any person who:

(i) Drives a vehicle in this City of Richwood while:

- (1) He is under the influence of alcohol; or
- (2) He is under the influence of any controlled substance; or
- (3) He is under the influence of any other drug; or

- (4) He is under the combined influence of alcohol and any controlled substance or any other drug; or
- (5) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;
- (ii) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall 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).
- (c) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative, thereof, drives a vehicle in this City of Richwood, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall 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).
- (d) Any person who:
 - (i) Knowingly permits his or her vehicle to be driven in this City of Richwood by any other person who is:
 - (1) Under the influence of alcohol; or
 - (2) Under the influence of any controlled substance; or
 - (3) Under the influence of any other drug; or
 - (4) Under the combined influence of alcohol and any controlled substance or any other drug; or
 - (5) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;
 - (ii) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (e) Any person who knowingly permits his or her vehicle to be driven in the City of Richwood 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 six months and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (f) Any person under the age of twenty-one years who drives a vehicle in this City of Richwood while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight shall, for a first offense under this subsection, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). For a second or

subsequent offense under this subsection, such 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 vehicle alcohol test and lock program as provided for in [West Virginia Code 17C-5A-3a](#). Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.

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

(g) Any person who:

(i) Drives a vehicle in the City of Richwood while:

- (1) He is under the influence of alcohol; or
- (2) He is under the influence of any controlled substance; or
- (3) He is under the influence of any other drug; or
- (4) He is under the combined influence of alcohol and any controlled substance or any other drug; or
- (5) He has an alcohol concentration in his or her blood of ten hundredths or one percent or more, by weight; and

(ii) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall 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).

(h) A person violating any provision of subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for a period of not less than six months or more than one year, 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).

- (i) The fact that any person charged with a violation of subsection (a), (b), (c), (d), or (e) of this section, or any person permitted to drive as described under section (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (e), (f) or (g) of this section.
- (j) For purposes of this section, the term “controlled substance” shall have the meanings ascribed to it in [chapter sixty-a of the West Virginia Code](#).

Section 11-36. Reckless driving

- (a) Any person who drives 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 ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the director of the department of natural resources in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
- (b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the director of the department of natural resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

Division 5: Implied Consent

Section 11-37. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

Any person who drives a motor vehicle in the City of Richwood shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a preliminary breath analysis and secondary chemical test of either his blood, breath, or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions of [West Virginia Code 17C-5-5](#), whenever a law-enforcement officer has reasonable cause to believe a person to have committed an offense prohibited by an ordinance of this municipality. A secondary test of blood, breath, or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer

having reasonable grounds to believe the person to have been driving a motor vehicle upon the public streets or highways while under the influence of alcohol, controlled substances or drugs as prohibited by an ordinance of this municipality. The chief of police shall designate which one of the aforesaid secondary tests shall be administered: Provided, That if the test so designated is a blood test and the person so arrested making refuses to submit to such blood test, then the law-enforcement officer urine such arrest shall designate in lieu thereof, either a breath or test to be administered and notwithstanding any provisions of this code, such refusal to submit to a blood test only shall not result in the revocation of the arrested person's license to operate a motor vehicle in this state. Any person to whom a preliminary breath test is administered who is then arrested shall be given a written statement advising him that his refusal to submit to the secondary chemical test finally designated as provided in this section will result in the revocation of his license to operate a motor vehicle in this State for a period of at least one year and up to life.

For the purpose of the article, the term "law enforcement member officer" or "police officer" shall mean and be limited to (1) any member of the department of public safety (West Virginia state police), (2) any sheriff and any deputy sheriff of Nicholas County, (3) of a police department in this municipality, (4) any conservation officer of the division of natural resources, and (5) any special police officer appointed by the governor pursuant to the provisions of section forty-five, article three, chapter sixty-one of the West Virginia Code who has completed the course of instruction at a law enforcement training academy as provided for under the provision of section nine, article twenty-nine, chapter thirty of the West Virginia Code. If the city does not have available at the time, affiants or the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, or if the person to be tested is arrested by a special police officer, then any member of the department of public safety (West Virginia state police), the sheriff of the county wherein the arrest is made or any deputy of such sheriff or any municipal wherein law-enforcement officer of another municipality within the county the arrest is made, may, upon the request of such arresting law-enforcement officer and in his presence, conduct such secondary test and the result of such test may be used in evidence to the same extent and in the same manner as if such test had been conducted by such arresting law-enforcement officer. Only the person actually administering or conducting such test shall be competent to testify as to the results and the veracity of such test.

Section 11-37.1. Preliminary analysis of breath to determine alcoholic content of blood

When a law-enforcement officer has reason to believe a person to have been driving a motor vehicle upon the streets and highways of the city while under the

influence of alcohol, controlled substances or drugs, the law-enforcement officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer has a reasonable belief that the person has been driving under the influence of alcohol, controlled substances or drugs. Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the department of health for that purpose. The results of a preliminary breath analysis shall be used solely for purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, the tests as hereinafter provided in this division shall be administered in accordance with the provisions thereof.

Section 11-38. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining the alcoholic content thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venipuncture. The person tested may, at his own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his employment, of his own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him. No person who administers any such test upon the request of a law-enforcement officer as herein defined, no hospital in or with which person is employed or is otherwise associated or in which such test is administered, and other person, firm or corporation by whom or with which such person is employed or is in any way associated, shall be in anywise criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

Section 11-38.1. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

- (a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood, for the purpose of determining the child's blood alcohol content. Such breath analysis must be administered as soon as possible after the law enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with an amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, and should therefore be taken into custody to administer a secondary test in accordance with the provisions of this section.
- (b) A child may be taken into custody by a law enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than two hundredths of one percent, by weight, the child may not be taken into custody unless other grounds exist under [subsection \(b\), Section eight, article five, chapter forty-nine of the West Virginia Code](#). Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or if the parent or custodian cannot be located to a close relative.
- (c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law enforcement agency by which such law enforcement official is employed shall designate whether the secondary test is a test of either blood, breath or urine. Provided, That if the test so designated is a blood test and the child refuses to submit to the blood test, then the law enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered Notwithstanding the provisions of section eight of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this municipality Any Child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of

either blood, breath or urine: Provided, That If the test so designated is a blood test and the child refuses to submit to the blood test, then the law enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of prior sections of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this municipality. Any Child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally designated by the law enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this municipality for a period of at least thirty days or a revocation of the license for a period up to life.

- (d) If the law-enforcement official taking the child into custody is employed by an enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request a another qualified person to administer a secondary breath test: Provided, That the breath test shall be administered in the presence of the official who took the child into custody. The results of such breath test may be used in evidence to the same extent and in the same manner as if such test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the division of public safety, the sheriff of the county wherein the child was taken into custody or any deputy of such sheriff, or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of section seven of this article.
- (e) After taking the child into custody, if the law enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of this article if the child were an adult then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of this article.
- (f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of ten hundredths of one percent or less, by weight, and if the law enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would

provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall release the child Provided, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, the child shall only be released to a parent or custodian, to some other responsible adult.

Section 11-39. Refusal to submit to tests: suspension of license or privilege: consent not withdrawn if person arrested is incapable of refusal

If any person under arrest as specified in section 11-37 refuses to submit to the test finally designated in the manner provided section 11-37, no test shall be given, but the commissioner of motor vehicles, upon receipt of a sworn statement of the law-enforcement officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets or highways of the city while under the influence of intoxicating liquor, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways while under the influence of intoxicating liquor, (3) such person refused to submit to the test finally designated in the manner provided in section 11-37, and (4) such person was told that his operator's or chauffeur's license, or junior or probationary operator's license, or nonresidence privilege to drive would be suspended for a period of six months if he refused to submit to the test finally designated in the manner provided in section 11-37, shall make and enter an order suspending such person's operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive for a period of six months. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested. No such suspension shall be effective until ten days after receipt of the copy of such order. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn his consent for a test of his blood, breath or urine as provided in section 11-37 and the test may be administered although such person is not told that his failure to submit to the test will result in the suspension of his operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to operate a motor vehicle for a period of six months.

A suspension hereunder shall run concurrently with the period of any suspension or revocation in accordance with other provisions of this Code and growing out of the same incident which gave rise to the arrest for driving a motor vehicle while under the influence of intoxicating liquor and with the provisions of section 11-37.

Section 11-40. Hearing procedures: judicial review

Upon the written request of a person whose operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive has been so suspended, the commissioner of motor vehicles shall afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of suspension. The hearing shall be before said commissioner or authorized deputy or agent of said commissioner, and all of the pertinent provisions of [section 29A-5-1 et seq. of the Code of West Virginia](#) shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of section 29A-5-1 of the Code of West Virginia were set forth in extenso in this section, except that in the case of a resident of this state the hearing shall be held in the county wherein the person resides unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county. Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefore, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or upon application of such person for good cause shown. For the purpose of conducting such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section 29A-5-1 of the Code of West Virginia. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced as specified in section 29A-5-1 of the Code of West Virginia, and all of such sections, provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

The scope of such hearing shall be (1) whether the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor, (2) whether such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor, (3) whether such person refused to submit to the test finally designated in the manner provided in section 11-37, and (4) whether such person had been told that his operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive would be suspended for a period of six months if he refused to submit to the test finally designated in the manner provided in section 11-37.

After such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming or rescinding his earlier order of suspension. The commissioner shall affirm his earlier order of suspension if he finds that (1) the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets or highways of this city while under the influence of intoxicating liquor, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this city while under the influence of intoxicating liquor, (3) such person refused to submit to the test finally designated in the manner provided in section 11-37, and (4) such person had been told that his operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive would be suspended for a period of six months if he refused to submit to the test finally designated in the manner provided in section 11- 37. If the commissioner finds to the contrary with respect to any one of the above issued, he shall rescind his earlier order of suspension.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of such hearing, the suspension of the operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive of such person shall be stayed, and if the commissioner has possession of such person's operator's or chauffeur's license, or junior or probationary operator's license, the same shall be forthwith returned to him pending the outcome of such hearing or any judicial review thereafter, as hereinafter provided.

If the commissioner shall after hearing make and enter an order affirming his earlier order of suspension, such person shall be entitled to judicial review thereof. All of the pertinent provisions of section 29A-5-4 of the Code of West Virginia shall apply to and govern such review with like effect as if the provisions of such section were set forth in extenso in this section. The judgment of the circuit court shall be final unless reversed on appeal to the supreme court of appeals, in accordance with the provisions of section [29A-6-1 of the Code of West Virginia](#), except, that notwithstanding the provisions of such section, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court. Notwithstanding any provisions in said chapter 29A of the Code of West Virginia to the contrary, during the pendency of any appeal to the circuit court or supreme court of appeals, the suspension of the operator's or chauffeur's license, or junior or probationary operator's license, or nonresident privilege to drive of such person shall be stayed, pending the outcome of such judicial review.

Section 11-41. Interpretation and Use of Chemical Test

Upon trial for the offense of driving a motor vehicle in this municipality while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood, breath, or urine is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or the acts alleged, and shall give rise to the following presumptions or have the following effect:

- (a) Evidence that there was, at that time, five hundredths of one percent or less, by weight of alcohol in his or her blood, shall be prima facie evidence that the person was not under the influence of alcohol;
- (b) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person's blood shall be relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;
- (c) Evidence that there was, at that time ten hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of (1) the number of grams or one hundred cubic centimeters of blood, (2) the number of grams of alcohol per two hundred ten liters of breath, or (3) the number of grams of alcohol per sixty-seven milliliters of urine.

A chemical analysis of a person's blood, breath, or urine, in order to give rise to the presumptions or to have the effect provided for in the subdivision (a), (b), and (c) of this section must be performed in accordance with methods and standards approved by the state department of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the division of public safety.

The provisions of this article shall not limit the introduction in any judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

Section 11-42. Repealed.

Section 11-43. Reporting

If a conviction for an offense defined in Section 11-35 is the judgment of a municipal court judge, the clerk shall forward an abstract, transcript or notification thereof to the Department of Motor Vehicles when the person convicted has not perfected an appeal within ten days from and after the date upon which the sentence is imposed

Division 6: Speed Restrictions

Section 11-44. Speed limitations generally; penalties for violation of speed limits in school zones.

- (a) No person may drive a vehicle on a 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 highways in compliance with legal requirements and the duty of all persons to use due care.
- (b) Where no special hazards 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 in this subsection or established as hereinafter authorized is unlawful.
 - (i) 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. The 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 state road commissioner (division of highways);
 - (ii) Twenty-five miles per hour in any business or residence district;
 - (iii) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in [sections 17C-6-2 and 17C-6-3 of the West Virginia Code](#).

- (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 going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.
- (d) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars (\$100): Provided, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for a prior offense which occurred within the preceding one-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars (\$100): Provided however, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for two or more prior offenses which occurred within the preceding two-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500) or confined in jail for not more than six months, or both: Provided further, That any person who violates subdivision (i), subsection (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), Or shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) and confined in jail for not more than six months, or both, for a violation of said subdivision after having been previously convicted for one or more violations of said subdivision which occurred within the preceding two-year period.
- (e) If an owner or driver is arrested under the provisions of this section or the offense of driving above the posted speed limit on a controlled-access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then, upon conviction thereof, such person shall be fined not more than five dollars (\$5), plus court costs.

If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled-access highway or interstate highway of this state, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then a certified abstract of judgment on such conviction shall not be transmitted to the division of motor vehicles.

Section 11-45. Minimum speed regulation

- (a) No person shall drive a motor vehicle at such 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.
- (b) Whenever the commissioner or local authorities within their respective jurisdiction determine on the basis of an engineering and traffic investigation that slow speeds on any part of the highway consistently impede the normal and reasonable movement of traffic, the commissioner or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.
- (c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars (\$100); Provided, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for a prior offense which occurred within the preceding one-year period is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than two hundred dollars (\$200); Provided, however, That any person who violates the provisions of this section after having been previously convicted under the provisions of this section for two or more prior offenses which occurred within the preceding two-year period, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars (\$500) or confined in jail for not more than six months, or both.

Section 11-46. Special need limitations

- (a) No person shall drive any vehicle equipped with other than pneumatic tires at a speed greater than a maximum of ten miles per hour.
- (b) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a 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 sign posted as provided in this section.
- (c) The state road commission (commissioner of highways) upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of the highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed be erected and maintained at a distance of one hundred feet before each end of such structure.

- (d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said commission and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

Section 11-47. Special speed limitations--Vehicles not designed for carrying passengers and equipped with pneumatic tires

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

- (a) Twenty miles per hour in any business district;
- (b) Twenty-five miles per hour in any residence district;
- (c) Forty miles per hour on open country highway;
- (d) Trucks licensed at eight thousand pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

Section 11-48. Charging violations; rule in civil actions

- (a) In every charge of violation of any speed regulations in this article the complaint, and also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location and in the event charge shall also be made of violation of any other provisions of this article, the complaint and the summons or notice to appear shall also specify such other offense alleged to have been committed.
- (b) The provisions of this article declaring speed limitations shall not be constructed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

Section 11-49. Prima facie evidence of speed by devices employing microwaves; placing signs relative to radar

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves, when such evidence is obtained by members of the department of public safety, by police officers of incorporated municipalities in classes one, two and three, as defined in [section 8-1-3 of the Code of West Virginia](#), and by the sheriff and his deputies of the several counties of the state. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

In order to inform and educate the public generally that speed of a motor vehicle operating within the state is being tested by radar mechanisms, the state road commission shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of the state giving notice to the public that such radar mechanisms are in use.

Section 11-50. Racing on streets and highways

It shall be unlawful for any person to 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 state. For the purposes of this subdivision, "speed race" means:

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

Section 11-50.1. Slow-moving vehicle emblem

- (a) All farm machinery and other machinery including all road construction machinery except when guarded by flagmen or flares, designed to operate at twenty-five miles per hour or less, traveling on a public highway during day or night shall display a triangular slow-moving emblem on the rear of the vehicle.
- (b) The use of this emblem shall be restricted to the use specified in subsection (a) and its use on any other type of vehicle or as a clearance marker on wide machinery or on stationary objects on the highway is prohibited.

Division 7: Driving on Right Side of Roadway, Passing, etc.

Section 11-51. 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:
 - (i) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - (ii) When the right half of a roadway is closed to traffic while under construction or repair;

- (iii) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
 - (iv) 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.

Section 11-52. Passing vehicles 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.

Section 11-53. Overtaking and passing vehicle proceeding in same directions--Passing On the left generally.

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.

- (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 over taking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

Section 11-54. Same--When overtaking on the right is permitted

- (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - (i) When the vehicle overtaken is making or about to make a left turn;
 - (ii) Upon a street or highway with unobstructed pavement not occupied by parked vehicle of sufficient width for two or more lines of moving vehicles in each direction;

- (iii) 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.

Section 11-55. Same--Limitations on overtaking on the left

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 one hundred feet of any vehicle approaching from the opposite direction.

Section 11-56. Same--Further Limitations on driving to left of center of roadway

- (a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:
 - (i) When approaching the crest of a grade or upon a curve in the 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;
 - (ii) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;
 - (iii) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel.
- (b) The foregoing limitations shall not apply upon a one-way roadway.

Section 11-57. Same--No passing zones

The state road commission is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in

place and clearly visible to an ordinary observant person every driver of a vehicle shall obey the directions thereof.

Section 11-58. One-way roadways and rotary traffic islands

- (a) The state road commission may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.
- (b) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.
- (c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

Section 11-59. Driving on roadways laned for 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 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 except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or 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.

Section 11-60. 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 highway.
- (b) It shall be unlawful for the operator of any motor truck, registered for a gross weight of more than eight thousand pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another

vehicle; provided, that this provisions shall not be construed to (1) prevent overtaking and passing, (2) apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a “no-passing zone,” (3) apply to any convoy of vehicles of the military service of the United States or of this state and (4) apply to funeral processions.

- (c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to (1) funeral processions; or (2) any convoy of vehicles of the military service of the United States or of this state.

Section 11-61. Driving on divided highways

Whenever any 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 such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a cross-over or intersection established by public authority.

Section 11-62. Controlled-access roadway

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.

Division 8: Turning and Starting

Section 11-63. Required position and method of turning at intersections

The driver of a vehicle intending to turn at an intersection shall do so as provided in this division.

Section 11-64. Right turns

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

Section 11-65. 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.

Section 11-66. 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.

Section 11-67. Turning on curve or crest of grade prohibited

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 five hundred feet.

Section 11-68. Starting parked, etc., vehicle

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

Section 11-69. Turning movements and required signals

- (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 19-98 to 19-100, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

- (b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred 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.

Section 11-70. Signals to be given by hand and arm or signal device

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

Section 11-71. Method of giving 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 turns: hand and arm extended horizontally.
- (b) Right turn: Hand and arm extended upward.
- (c) Stop or decrease speed: Hand and arm extended downward.

Division 9: Right-of-Way

Section 11-72. Vehicle approaching or entering intersection

- (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 highway.
- (b) When two vehicles enter an intersection from a different 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 subsection (a) and (b) are modified at through highways and otherwise as hereinafter stated in this article.

Section 11-73. Vehicle turning left a intersection

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 said driver, having so yielded and having given a signal when and as required by this article, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicles making the left turn.

Section 11-74. Vehicle entering through highway or stop intersections

- (a) The driver of a vehicle shall stop as required by [section 17C-12-5 of the Code of West Virginia](#), at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highways or which are approaching so closely on said through highway as to constitute an immediate hazard, but said 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 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.

Section 11-75. Vehicle entering highway from private road or driveway

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

Section 11-76. Operation of vehicles and structures on approach of authorized emergency vehicles

- (a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by [section 17C-15-26 of the Code of West Virginia](#), which is visible under normal atmospheric conditions from a distance of five hundred 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:

- (i) 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.
 - (ii) Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar, shall immediately stop such car clear of any intersection and keep it 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 highway.

Division 10: Pedestrians' Rights and Duties

Section 11-77. Pedestrians subject to traffic regulations powers of local authorities

- (a) Pedestrians shall be subject to traffic-control signals at intersections as provided in section 11-30, unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.
- (b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any road-way in a business district or any designated highways except in a crosswalk.

Section 11-78. Pedestrians' right-of-way in crosswalks.

- (a) When traffic-control signals are not in place or not in operation the delivery of a vehicle shall yield the right-of-way, slowing down or stopping if need be to 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. These provisions shall not apply under the conditions stated in section 11-79(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.

Section 11-79. Crossing at other than crosswalks

- (a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.
- (b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.
- (c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Section 11-80. Drivers to exercise due care

Notwithstanding the foregoing provisions 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.

Section 11-81. Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

Section 11-82. Pedestrians on roadways

- (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.
- (b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.
- (c) No person shall stand in a roadway for the purposes of soliciting a ride from the driver of any vehicle.

Section 11-83. Persons working on streets and highways

The driver of 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 flagmen.

Division 11: Operation of Bicycles and Play Vehicles

Section 11-84. Obedience to provisions; duty of parents and guardians

- (a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this division.
- (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 article.
- (c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

Section 11-85. Traffic laws applicable to persons riding bicycles

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 chapter, except as to special regulations in this article and except as to those provisions of this chapter which by their nature can have no application.

Section 11-86. Riding on bicycle seats; carrying more than one person on bicycle

- (a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- (b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

Section 11-87 Clinging to vehicles

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.

Section 11-88. Riding on roadways and bicycle paths

- (a) 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.
- (b) 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
- (c) 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.

Section 11-89. 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.

Section 11-90. Lamps and other equipment on bicycles

- (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 five hundred feet to the front and with a red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred 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 five hundred 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 one hundred 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.

Section 11-90.1. Requirements for helmet use - bicycles

- (a) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the strings of the helmet.
- (b) It is unlawful for any parent or legal guardian of a person under fifteen years of age 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.

Section 11-90.2. Same - Penalties

- (a) Any parent or legal guardian violating any requirement set forth in section 11-90.1 shall be fined ten dollars (\$10) 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 any other provisions, no court costs may be assessed to any person violating the requirements of a first violation of section four of this article.
- (b) In the case of a first violation of section four of this article, 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 this article that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay must 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.

Division 12: Special Stops Required

Sections 11-91 to 11-94. Repealed.

Section 11-95. Vehicles must stop at through highways: erection of signs

- (a) The city may designate through 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 said 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 and every motorman of a streetcar 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 of nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic-control signal.

Section 11-96. Stopping before emerging from alley or private driveway

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 said roadway.

Section 11-97. Overtaking and passing school bus

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 said school bus flashing warning signal lights, and said driver shall not proceed until 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. Any such driver acting in violation of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty (\$50) nor more than two hundred dollars (\$200), or imprisoned in the county jail not more than six months, or both fined and imprisoned. If the identity of the driver cannot be ascertained, then any such owner or lessee of the vehicle in violation of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five (\$25) nor more than one hundred dollars (\$100): Provided, however, That such conviction shall not subject such owner or lessee to further administrative or other penalties for said offense, notwithstanding other provisions of this code to the contrary.

Division 13: Stopping, Standing and Parking

Section 11-98. Outside of business or residence districts

- (a) Upon any highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park or leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.
- (b) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

Section 11-99. Officers authorized to remove illegally stopped vehicles

- (a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article 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 such highway.
- (b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

Section 11-100. Prohibited in specified places

- (a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:
 - (i) On a sidewalk;
 - (ii) In front of a public or private driveway;
 - (iii) Within an intersection;
 - (iv) Within fifteen feet of a fire hydrant; or in a properly designated fire lane;
 - (v) On a crosswalk;

- (vi) Within twenty feet of a crosswalk at an intersection;
 - (vii) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic signal located at the side of a roadway;
 - (viii) 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;
 - (ix) On a bridge or other elevated structure on a highway;
 - (x) 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 said entrance (when properly signposted);
 - (xi) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
 - (xii) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - (xiii) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
 - (xiv) At any place where official signs prohibit stopping;
 - (xv) 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;
 - (xvi) Upon any controlled-access highway;
 - (xvii) At any place on any highway where the safety and convenience of the traveling public is thereby endangered.
- (b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

Section 11-101. Right and left parallel parking; angle parking; highway signs restricting parking, etc.

- (a) Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.
- (b) Local authorities may by ordinance permit parking of vehicles with the left hand wheel adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.
- (c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the state road commission has determined by resolution or order entered

into its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of the traffic.

- (d) The state road commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

Section 11-102. Stopping, standing or parking privileges for person with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration application; violations; penalties

- (a) As used in this section, the following terms have the meanings ascribed to them in this subsection:
- (i) A person with a “mobility impairment” means a person who, as determined by a licensed physician:
- (1) Cannot walk two hundred feet without stopping to rest;
 - (2) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;
 - (3) Is restricted by lung disease to such extent that the person’s force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
 - (4) Uses portable oxygen;
 - (5) Has a cardiac condition to such an extent that the person’s functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or
 - (6) Is severely limited in his or her ability to walk because of an arthritic, neurological, orthopedic or other physical condition.
- (ii) “Special registration plate” means a registration plate that displays the international symbol of access in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate.

- (iii) “Removable windshield placard” (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one-half inches, with all of the following on each side:
 - (1) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background;
 - (2) An identification number measuring one inch in height;
 - (3) An expiration date in numbers measuring one inch in height; and
 - (4) The seal or other identifying symbol of the issuing authority.
- (iv) “Regular registration fee” means the standard registration fee for a vehicle of the same class as the applicant’s.
- (v) “Public entity” means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.
- (vi) “Public facility” means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site, where the facility is located.
- (vii) “Place(s) of public accommodation” means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:
 - (1) Inns, hotels, motels and other places of lodging;
 - (2) Restaurants, bars or other establishments serving food or drink;
 - (3) Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;
 - (4) Auditoriums, convention centers, lecture halls or other places of public gatherings;
 - (5) Bakeries, grocery, stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;
 - (6) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;
 - (7) Terminals, depots or other stations used for public transportation;
 - (8) Museums, libraries, galleries or other places or public display or collection;
 - (9) Parks, zoos, amusement parks or other places of recreations;
 - (10) Public or private nursery, elementary, secondary, undergraduate or post graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters,

food banks, adoption agencies or other social services establishments; and

- (11) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation
- (viii) “Commercial facility” means a facility whose operations affect commerce and which, are intended for nonresidential use by a private entity.

Any person who falsely or fraudulently obtains or seeks the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard hereunder, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars (\$100).

- (b) A handicapped parking space should, when possible, comply with the provisions of the Americans with Disabilities Act Guidelines, contained in [28 C.F.R. 36, Appendix A, Section 4.6 of the Code of Federal Regulations](#). In particular, the parking space should be a minimum of eight feet wide with an adjacent access aisle for vans having side mounted handicap lifts. Access aisles should be marked using diagonal stripes or other appropriate markings denoting that the space is a no- parking zone. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for handicapped parking.
- (c) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access, shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.
- (d) Free stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county, and municipal; buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons, with a mobility impairment during the hours that those buildings are open for business.
- (e) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking

during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provisions of any ordinance or any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The privileges provided for in this subsection apply only during those times • when the vehicle is being used for the transportation of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the transportation of a person with a mobility impairment is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined one hundred dollars (\$100).

- (f) No person may stop, stand, or park a motor vehicle in an area designated, zoned or marked for handicapped parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. Such signs may be mounted on a post or a wall in front of the handicapped parking space and instructions may appear on the ground or pavement, but use, of both methods is preferred. Handicapped parking spaces for vans having an eight-foot adjacent access aisle should be designated as “van accessible” but may be used by any vehicle displaying a valid special registration plate or removable windshield placard. These spaces are intended solely for persons with a mobility impairment, as defined in this section. If at any time, a person is not mobility impaired and does not display upon his or her vehicle a special registration plate or removable placard issued by the Th commissioner, he or she may not lawfully park in a handicapped parking space: Provided, That any person in the act of transporting a person with a mobility impairment as defined in this section, may stop, stand or park a motor vehicle not displaying a special registration plate or removable windshield placard in the area designated for handicapped parking by the international symbol of access for the limited purposes of loading or unloading a passenger with a mobility impairment Provided, however, That the vehicle shall be promptly moved after the completion of this limited purpose.

Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined one hundred dollars (\$100).

- (g) Signs erected in the future that designate areas as “handicapped parking” or that display the international symbol of access shall also include the words “\$100 fine.”
- (h) No person may stop, stand or park motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or

regular handicapped parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor, and upon conviction thereof shall be fined one hundred dollars (\$100).

Section 11-103. Signs on workers' and church buses: when lawful for such buses to stop on highways and street

Any bus used primarily for the transportation of workers only and any bus operated by a church may bear upon, the front and rear thereof a plainly visible sign, either painted or affixed on the body of the bus proper, or attached securely to the bus, containing the words, "workers' bus" or "church bus," respectively, in letters not less than eight inches in height. Any bus used primarily for the transportation of workers only and any bus operated by a church and bring signs in that manner may lawfully stop upon the paved portion of any highway or street where there is no loading zone or pull-off adjacent to the highway or street to load or discharge persons; provided, that such bus shall be equipped with warning lamps permitted under subsection (D) of [section 17C-15-19 of the Code of West Virginia](#) and shall use such warning lamps when stopped on the highway or decreasing speed in order to stop, in order to warn the operators of other vehicles of a possible traffic hazard.

Division 14: Miscellaneous Rules

Section 11-104. Unattended motor vehicle

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

Section 11-105. Limitations on backing

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic. No persons shall drive a vehicle backward into the crossing of Main Street and Oakford.

Section 11-106. Obstruction to driver's view or driving mechanism

- (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 or streetcar shall ride in such position as to interfere with the driver's or motorman's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

Section 11-107. 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 said motor is being operated on the streets or highways of this state; provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for an occupancy of four persons including the operator, and so designated on the registration card by the department of motor vehicles.

Section 11-108. 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 state.

Section 11-109. Repealed.

Section 11-110. Coasting prohibited

- (a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.
- (b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

Section 11-111. 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 five hundred 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.

Section 11-112. Crossing fire hose

No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Section 11-113. Putting glass, etc., on highway

- (a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such highway.
- (b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
- (c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Section 11-114. Vehicles parked on private property

It shall be unlawful for any driver of a vehicle to 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 any liability for any the cost damage of moving any vehicle, nor shall he be liable to the owner of the vehicle for done to such vehicle in moving it, unless the owner, tenant or lessee of authorizing such private road or driveway or private property was negligent in removing or responsible the removal of the vehicle. The owner of such vehicle shall be person who to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the department of public safety of such action, and, if such vehicle is removed within a municipality shall, in addition notify the police department of such municipality.

Section 11-114.1 Police Officers authorized to conduct investigations on private property

Notwithstanding any provision of law to the contrary, nothing may prohibit any duly authorized municipal police officers, from entering upon private lands in order to

investigate a motor vehicle accident when said private lands are open to the use of the public at-large for any purpose.

Section 11-115. Disposition of abandoned motor vehicles.

- (a) Definition: The term “abandoned motor vehicle” in this section shall mean any motor vehicle parked or left on any public street or alley in violation of the maximum period of eighteen hours and which either bears no current registration plates or tags or, if it does bear such plates or tags, is not removed from the public streets and alleys within twenty-four hours after a violation ticket has been placed thereon.
- (b) Removal by police: The city police are authorized and directed to transport junk and remove every abandoned motor vehicle from the public streets and alleys to any yard, junk pile or other place of disposal.
- (c) Vehicle claimed by owner: The owner of such abandoned motor vehicle shall not thereafter take possession thereof or salvage therefrom, without first paying to the city its costs and expense of removal and storing or disposal and also the fine hereof for violation of parking regulations as provided by other ordinances, and any violation shall be punished by fine and/or jail sentence as provided by section 11-118.
- (d) Disposal of unclaimed vehicles: In case the owner of such abandoned vehicle does not appear and comply with subsection (c) of this section for retaking possession of, or salvage from, such vehicle within ten days after its removal from the public streets and alleys, the same shall be treated as property permanently and conclusively abandoned and the mayor shall sell such vehicle or salvage therefrom, if sale therefore can be had, and shall deposit the proceeds therefrom in the city treasury.

Section 11-116. Permitting unauthorized person to drive

No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any highway by any person who is not authorized to drive pursuant to [chapter 17B of the Code of West Virginia](#).

Section 11-116.1. Driving while license suspended or revoked

- (a) Except as otherwise provided in subsection (b) of this section, any person who drives a motor vehicle on any public highway of this city at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction for driving under the influence of alcohol or controlled substances, shall, for the first offense, be guilty of a misdemeanor, and, upon

conviction thereof, shall be confined in jail for forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500); and for the second offense, such person is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

- (b) Any person who drives a motor vehicle on any public highway of this city 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, by weight, but less than ten hundredths of one percent, by weight, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or both.

Section 11-117. Vehicles not to operate without required equipment or in unsafe condition

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required by [section 17C-16-1 et seq. of the Code of West Virginia](#) and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any highway.

Section 11-117.1A. Certificate of inspection required

No person shall operate, or permit to be operated, a vehicle without having displayed thereon a current and valid certificate at inspection.

Section 11-117.1B. Operation without certificate or failure to produce certificate of inspection, penalties

It is a misdemeanor for any owner or operator, or both owner and operator of any vehicle required to be inspected under West Virginia Code §17C-16-4(a) to operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as designated under said subsection; Provided, That a dealer licensed to sell new vehicles under West Virginia Code §17A-6-1 et seq., shall not be required to display a certificate of inspection approval upon any new vehicle, if the vehicle is driven for an operational purpose including all activities associated with dealer

preparation for sale of a motor vehicle belonging to such dealer when such vehicle has not been titled or delivered to a purchaser, and when such is not to be used in the demonstrator fleet or otherwise routinely driven on the highways or road of this state.

Every person convicted of a misdemeanor for operating a vehicle without having displayed thereon a current and valid certificate of inspection and approval or for failure to produce such certificate upon demand of an authorized person shall be punished by a fine of not more than one hundred dollars (\$100): Provided, That any person who obtains an inspection and a current and valid certificate of inspection and who, within five days of the issuance of a citation for a violation of the provisions of this section, provides a receipt of inspection to and makes the vehicle so operated available for examination by a court of competent jurisdiction, shall not be guilty of a violation of the provisions of this section: Provided, however, That the misdemeanor penalty shall be imposed if the certificate of inspection has not been valid for a period exceeding three months prior to the date of the issuance of a citation.

Section 11-117.1C. False certificates

- (a) No person shall make, issue, or knowingly use any imitation or counterfeit of any official certificate of inspection.
- (b) No person shall display or cause or permit to be displayed upon a vehicle any certificate of inspection and approval knowing the same to be fictitious or issued for another vehicle or issued without an inspection having been made.

Section 11-117.2. Operation of motorcycles, motor-driven cycles or mopeds

- (a) 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.
- (b) 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 more than two persons, the operator and one passenger, shall ride the same vehicle at the same time. No person shall ride sidesaddle on a seat.

- (c) Every motorcycle, motor-driven cycle or moped shall be equipped with a rearview mirror affixed to the handlebars 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 two hundred feet.

Section 11-117.3. When lighted lamps are required

Every vehicle other than a school, bus, motorcycle, motor-driven cycle or operated upon a highway within this city 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 highway at a distance of live hundred 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 the West Virginia Code. Every school bus, motorcycle, motor driven cycle and moped shall display lighted head lamps at all times when upon the highway.

Division 15: Penalties

Section 11-118. Violations of chapter; penalties for misdemeanor

- (a) It is a misdemeanor for any person to violate any of the provisions of this chapter.
- (b) Every person convicted of a misdemeanor for a violation of any of the provisions of this article for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction such person shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months or both such fine and imprisonment.

Division 16: Parties, Procedure Upon Arrest and Reports in Criminal Cases

Section 11-119. Parties to a crime

Every person who commits, attempts to commit, conspires to commit or knowingly aids or abets in the commission of, any act declared herein to be a crime,

whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this article is likewise guilty of such offense.

Section 11-120. Offenses by persons owning or controlling vehicles; owner present in vehicle to be arrested rather than driver for certain traffic violations

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

If the owner of a motor vehicle is present in the vehicle at a time when another driver is operating the vehicle upon the highways of this state (1) With defective or improper equipment; (2) with improper registration; (3) with an expired vehicle inspection decal or certificate, the owner rather than the driver shall be arrested for any violation enumerated herein in lieu of an arrest of the driver. If the owner of the vehicle is not present therein, then the driver shall be arrested for any violation enumerated in this section.

Section 11-121. When a person arrested must be taken immediately before a court

- (a) Whenever a person is arrested for any violation punishable as a misdemeanor, the arrested person shall be immediately taken before the municipal court or magistrate who has jurisdiction of the offense and who is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:
- (i) When a person arrested demands an immediate appearance before such court;
 - (ii) When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any controlled substance or any other drug;
 - (iii) When the person is arrested upon a charge of failure to stop in the event of an accident causing personal injury or damage to property;
 - (iv) When the person arrested is a resident of a state that has not entered into a nonresident violator compact with this State;

- (v) In any other event when the person arrested refuses to give his written promise to appear in court.
- (b) When the person arrested is a resident of a state that has entered into a nonresident violator compact with this State, the arresting officer shall issue the person a written notice and may not take the person immediately before the court, except under the terms of the compact or under the circumstances set forth in subsection (a) of this section.

Section 11-122. When person arrested to be given five days notice to appear in court

- (a) Whenever a person is arrested for any violation of this article punishable as a misdemeanor, and such person is not immediately taken before the municipal court of the city as hereinbefore required, the arresting officer shall prepare written notice to appear in court containing the name, and address of such person, the license where number of his vehicle, if any, the offense charged, and the time and place when and such person shall appear in court.
- (b) The time specified in said notice to appear must be at least five days after such arrest unless the person arrested shall demand an earlier hearing.
- (c) The place specified in said notice to appear must be before the municipal court of the city.
- (d) The arrested person in order to secure release, as provided in this section, must accept a copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear.

Thereupon, said officer shall forthwith release the person arrested from custody.

Section 11-123. Procedure prescribed by article not exclusive

The following provisions of this article shall govern all police officers in making arrests without a warrant for violations of this article, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

Section 11-124. Form for and records of books of traffic citations

- (a) Every traffic-enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations, in quadruplicate and meeting the requirements of this article.
- (b) The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every

such book and each citation contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.

Section 11-125. Disposition and records of traffic citations

- (a) Every traffic-enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with the municipal court of the city.
- (b) Upon the deposit of the original or a copy of such traffic citation with the municipal court of the city as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge or said court, including forfeiture of the bail by the person to whom such traffic citation has been issued by the traffic-enforcement officer.
- (c) It shall be unlawful and official misconduct for any traffic-enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.
- (d) The chief administrative officer of every traffic-enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.
- (e) Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court in which the original or copy of the traffic citation was deposited.

Section 11-126. Record of traffic cases

The municipal court of the city shall keep or cause to be kept a record of every traffic complaint, or other legal form of traffic charge deposited with or presented to said court, and shall keep a record of every official action by said court in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, agent of acquittal and the amount of time or forfeiture resulting from every said traffic complaint deposited with or presented to said court.

Section 11-127. Guaranteed arrest bond certificates as cash bail

Any guaranteed arrest bond certificate of any surety company licensed to do business by the insurance commissioner, shall, when presented by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars, as a bail bond, to guarantee the appearance of such person in the municipal court of the city at such time as may be required by the court when such person is arrested for violation of any motor vehicle law of this state or traffic ordinance of any municipality in this state (except for the offenses of reckless driving, driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate; provided, that any such guaranteed arrest bond certificate so presented as a bail bond in any court in this state shall be subject to the same forfeiture and enforcement provisions as any other bail bond.

The term "guaranteed arrest bond certificate," as used herein, means any printed card or other certificate issued by an automobile club or association to any of its members which said card or certificate is signed by such member and contains a printed statement that such automobile club or association and a surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will in the event of failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed five hundred dollars (\$500).

Article III: Vehicle Registration

Section 11-128. Registration card to be signed, carried and exhibited on demand; valid registration required

- (a) Every owner, upon receipt of a registration card, shall write his signature thereon in ink in the space provided. Every such registration card shall be carried at all times in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle.
- (b) Every person driving or in control of such vehicle shall display the registration card upon the demand of a police officer.
- (c) No person shall operate or permit the operation of such vehicle without a valid registration.

Section 11-128.1. Improper use of evidences of registration

No person registration plate, borrow the same shall lend to another any certificate of special plate, or permit issued to him if would not be entitled to the use

thereof, title, registration card, the person desiring to 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 chapter. Any violation of this section is a misdemeanor.

Section 11-129. Display of registration plates

Registration plates issued for vehicles required to be registered shall be attached to the rear thereof. 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, at a height of not less than twelve inches from the ground, measuring from the bottom of such plate, in a place and position be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible.

Article IV: Further Provisions

Section 11-130. Child Passenger safety device required

Every driver who transports a child under the age of nine years in a passenger automobile, van or pickup truck other than one operated for hire, shall, while such motor vehicle is in motion and operated on a street or highway of this city provide for the protection of such child by properly placing, maintaining and securing such child in a child passenger safety device system meeting applicable federal motor vehicle safety standards: Provided, That if such child is between the age of three and eight, both inclusive, a vehicle seat belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars (\$10) nor more than twenty dollars (\$20).

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 shall not be considered as violating this section.

Section 11-131. Operation of vehicles with safety belts

A person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat under eighteen years of

age, and any passenger in the front seat of such passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term "passenger vehicle" means a motor vehicle which is designed for transporting ten passengers or less, including the driver, except that such term does not include a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section shall apply to all passenger vehicles manufactured after the first day of January, one thousand nine hundred sixty-seven, and being 1968 models and newer.

- (a) 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 be a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in such safety belt lithe condition is duly certified by a physician who shall state the nature of the disability as well as the reason such restraint is inappropriate.
- (b) Any person who violates the provisions of this section shall be fined not more than twenty-five dollars (\$25). No court costs or other fees shall be assessed for a violation of this section Enforcement of this section shall be accomplished only as a secondary action when a driver of a passenger vehicle has been detained for probable cause of violating another section of this code.
- (c) Nothing contained in this section shall be construed to abrogate or alter the provisions of section 11-30 of this article relating to the mandatory use of child passenger safety devices.

Section 11-132. Injuring or tampering with vehicle

Any person who either individually or in association with one or more persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor.

Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts 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 sets in motion any vehicle while the same is at rest and unattended is guilty of a misdemeanor.

Section 11-133. Drivers license to be carried

Every driver 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 judge, peace officer, or an employee of the division. However, no person charged with violating this section shall be convicted if such person produces in court or the office of the arresting officer a driver's license theretofore issued to such person and valid at the time of such person's arrest.

Section 11-134. Separate endorsement for a license valid for operation of motorcycle

A driver who is licensed to drive in the State of West Virginia shall not operate a motorcycle unless he has qualified for, and obtained a separate endorsement on his driver's license valid for operation of a motorcycle.

Section 11-135. Certificate of Insurance - vehicles

All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of the State of West Virginia, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of the West Virginia Code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the department of motor vehicles shall by rules require, all motor vehicles covered. The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of financial security, and must be presented at the time of vehicle inspection or request by an officer: Provided, That an insured shall not be guilty of a violation of this section if he furnished proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

Section 11-136. Criminal penalties - vehicle insurance

Any person who violates City Code Section 11-135 is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars (\$200) nor more than five thousand dollars (\$5,000), or imprisoned in the county jail not less than fifteen days nor more than one year, or both fined and imprisoned.

Section 11F-1. Reserved

Added ~2012-2016.

Section 11G-1. Prohibition of Operation and Use of All-Terrain Vehicles

FIRST:

- (a) The riding, operation, or other use of all-terrain vehicles for transportation, public service or recreational purposes, save for duly licensed, insured and helmeted operators, within or upon the streets, alleys, sidewalks, parking lots, and other governmentally-owned, leased or controlled property situate within the corporate limits of the City of Richwood is prohibited.
- (b) Any violation of Article "FIRST", Paragraph "a", hereof, constitutes the commission of a misdemeanor criminal offense, and the police department of the City of Richwood, or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City of Richwood, is hereby authorized and empowered to issue a citation and to charge any person who commits a violation of said Article "FIRST", Paragraph "a", jurisdiction thereof being in the Municipal Court of the City of Richwood.
- (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 court costs.
- (d) Any person convicted of a second or subsequent 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.

SECOND: Notwithstanding any other provision of this ordinance, 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 corporate limits of the City of Richwood.

THIRD: Nothing contained within this ordinance 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 City of Richwood, 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 City of Richwood, relating in any manner to the enforcement or non-enforcement of this ordinance by the officers, officials, employees, or agents of the City of Richwood.

FOURTH: For the purpose of this ordinance, the term "all-terrain vehicle"

shall be defined as set forth in §17-A-1-1(ii), West Virginia Code.

FIFTH: The provisions of this ordinance 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 ordinance not specifically held to be invalid.

[portions of this section were removed due to expiration]

Section 11G-1 added ~2012-2016.

Applicable Ordinances

Note: Original ordinance(s) made no provision for position within the Code; such provision was made at the discretion of the compiler. Ordinances included herein are applicable to chapter 11 of the Code.

Ordinance 1: Use of Jake Brakes Within Corporate Limits Illegal

It shall be illegal to operate engine/jake brakes on large trucks within the corporation limits of Richwood, West Virginia to slow the vehicle unless an emergency situation exists that requires the use of an engine brake. At the current speed of 25 mph within the corporation, or at any lesser speed so designated in the future, regular air and hydraulic brakes are sufficient to reduce speed. Violation of this ordinance will result in fines of \$100.00 for a first offense, and \$250.00 for additional offenses. **Added 2005.**

Ordinance 2: Incorporation of Revised State Code

The provisions of Chapter 11 of the Richwood City Code are hereby repealed and replaced by equivalent provisions of Chapters 17 through 17E of State Motor Vehicle and related Code, the reference of which is included in this Code as if verbatim with all effects and penalties therewith. **Added date unknown.**

Ordinance 3: Regulating the Use of ATVs, UTVs, and Unlicensed Off-Road Motorcycles

1. The City may prohibit ATV, UTV, and unlicensed off-road motorcycle traffic on any street within the corporate limits by clearly marking that street is closed to

such traffic, except as necessary to travel to or from a place of lodging or residence.

2. Unless otherwise marked, pursuant to the proceeding section, all city streets with less than four (4) lanes of travel are open to ATV UTV, and unlicensed off-road motorcycles use as provided herein.
3. The use of ATV, UTV, and unlicensed off-road motorcycle upon city streets shall be limited to travel between a place of residence or lodging and legal access to off-road trails, fields, and areas of operation, include stops for food, fuel, supplies and restrooms
4. All ATV, UTV, and unlicensed off-road motorcycles shall obey the posted speed limit or 25 miles per hour, whichever is less.
5. No ATV UTV, and unlicensed off-road motorcycles may be operated at any time between dusk and dawn without the approved permit.
6. No ATV, UTV, and unlicensed off-road motorcycles may be operated with a passenger unless passengers are allowed under manufacturer's specifications.
7. No ATV, UTV, and unlicensed off-road motorcycles with a passenger under the age of eighteen (18), unless the operator has at minimum a level two (2) intermediate driver's license or its equivalent or is eighteen (18) years of age or older.
8. No ATV, UTV, and unlicensed off-road motorcycles unless all operators and passengers are wearing size appropriate helmets that meet the current performance specifications established by the American National Standards Institute, Standard Z90.1, the United States Department of Transportation, Federal Motor Vehicle Standard Number 218, or SNELL safety standards for protective head gear for vehicle users.
9. No ATV, UTV, and unlicensed off-road motorcycles without a manufacturer installed or equivalent spark arrestor and a manufacturer installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system. This will be enforced at the officer's discretion, due to determine.
10. Every person operating or riding as a passenger on an ATV, UTV, and unlicensed off-road motorcycle who is under the age of sixteen (16) years of age shall at times be under the immediate supervision of, and within sight of, a person who is at least eighteen (18) years of age and who either is a parent or guardian of the youth, or has the express written permission of a parent or guardian to supervise the youth. No parent, guardian or supervising adult may allow a child under the age of sixteen (16) years to leave that person's sight and supervision.
11. Every person operating an ATV, UTV, and unlicensed off-road motorcycle, shall be subject to all of the duties applicable to the driver of a motor vehicle by the provisions of [Chapter 17C of the West Virginia Code](#) except where inconsistent

with the provisions of this article and except as to those provisions of Chapter 17C, which by their nature can have no applications and may not operate a motor vehicle in violations of those duties.

12. A person may not operate or ride a UTV or any other motor vehicle with a bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standards and properly worn by the driver and all passengers.
13. All UTVs are restricted to only allowing the amount of people that seat belts are provided for from the factory. The beds are not to be used to transport passengers.
14. No glass containers allowed being in possession of any sorts.
15. While in city limits stereos are to be unused.
16. No ATVs, UTVs, and unlicensed off-road motorcycles are to enter a river or stream within city limits.
17. ATVs, UTVs, and unlicensed off-road motorcycles will ride single file and not side by side.
18. All ATVs, UTVs, and unlicensed off-road motorcycles will display a current annual permit displayed in clear view or a copy of weekend permit.
19. All ATVs, UTVs, and unlicensed off-road motorcycles will yield right away to any other vehicles and pedestrians.
20. A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500).
21. Any provisions or changes will be approved by the chief and appropriate counsel.
22. Youth riders must take an approved ATV class prior to permit to ride in City limits.
23. The ATV, UTV, and unlicensed motorcycle must be insured.

Added date unknown.

Applicable Resolutions

Note: Resolution(s) included herein are applicable to Chapter 11 of the Code.

Resolution 1: Control of Streets and Roads Relinquished

The Council, upon recommendation of Mayor Jeremy Rose, unequivocally and without reservation does hereby relinquish the maintenance and upkeep of the following streets and roads with approximate descriptions below, located within the corporate boundaries of the City of Richwood to the West Virginia Department of Transportation, Division of Highways:

Name	Ward	Width	Length
Alderson Ave.	II	30	2133
Arlington St.	III	15	241
Avenue A	III	35	1910
Avenue B	III	35	1867
Bear Alley	III	20	237
BFG St.	II	20	450
Birch St.	III	10	187
Boggs Ave.	IV	15	360
Bridge Ave.	III	state	state
Butler Alley	II	10	477
Camden Ave.	II	60	582
Cemetery Rd.	II	25/50	2114
Cherry St.	I	50	910
Chestnut St.	III	30	947
Chicken Alley	I	20	162
Church St.	III	10	2474
Coe St.	II	10	1193
Commercial Ave.	II	30	1305
Copeland Ave.	I	50	1673
Jailhouse Alley	II	15	635
Jelly Alley	IV	10	362
Johnson St.	IV	15	370
Johnstown Rd., Upper	I	state	state

Johnstown Rd., Lower	I	state	state
Jones Alley, East	I	15	240
Jones Alley, West	II	15	420
Junior St.	II	50	1100
Laurel Ave.	III	20	522
Legion St.	III	20	610
Link St.	II	30	145
Little Laurel Rd.	III	state	state
Locust St., East	I	40	301
Locust St., West	II	40	267
Lumberjack Ave.	I	30	1265
Lynn St.	I, II	40, 20	1870
Main St. Alley, East	I	15	2020
Main St. Alley, West	II	15	780
Main St., East	I	state	state
Main St., West	II	state	state
Maple St.	IV	20, 40	3457
McCarty Ave., Lower	IV	50	527
McCarty Ave., Upper	IV	30	2345
McClung St.	I	20	450
Mickey Ave.	I	15	840
Milltown Alley	I	10	920
Morris Ave.	III	25	1864

Mylem St.	IV	30, 20	645
Oak St., East	I	40	362
Oak St., West	II	40	399
Obie Ln.	IV	15	1140
Orchard Hts. Rd.	III	20	2516
Paper Co. Addition	III	15	324
Park Place	I	state	state
Pine St., East	I	50	267
Pine St., West	II	50	554
Poplar St.	III	20	725
Pratt Alley, East	I	15	236
Pratt Alley, West	II	15	505
Railroad Ave.	I	50	910
Railroad St. (Rt. 39-55)	II	state	state
Richwood Hts.	II	20	476
River Rd.	I	30	1300
Riverside Dr.	III	state	state
Riverview Ave.	III	30	1111
School Alley	I	15	446
School St.	I	45	438
Sewell St.	III	15	125
Short Alley	I	15	305
Short St.	I	50	295
Spruce St., Upper	I	30	1053
Spruce St., Lower	I	50	901

Spencer Alley, East	I	15	240
Spencer Alley, West	II	15	235
Store Co. St.	I	30	778
Sue Alley	IV	15	287
Summit St.	III	50	417
Tannery Hollow	III	20	535
3rd St.	III	40	244
Treatment St.	I	40	506
Valley Ave.	I	50	658
View St.	III	330	786
Walnut Alley, East	I	15	1950
Walnut Alley, West	II	15	780
Walnut St., East	I	50	1989
Walnut St., West	II	45	995
Water St.	I	40	1173
Weber City Rd.	I	20	1340
White Ave.	IV	40	674
Williams Ave.	IV	50	2449
Wood Ave.	II	50	314
Yew Pine Ave.	II	50	135

Resolution 1 adopted 2000.

Chapter 12: Noise

Section 12-1. Noises of certain character prohibited

The creation and continuation of any loud, disturbing and unnecessary noise in the city is hereby prohibited. It shall be unlawful for any person to cause, make or contribute to creating any loud or disturbing noise of such character, intensity or duration as to be detrimental to the life or health of any individual or such noises as disturb the quiet and peace of any citizen of the city.

Section 12-2. Some of the specific noises prohibited

The following acts, among others, are declared to be loud, disturbing annoying and unnecessary noises in violation of this chapter but such enumeration shall not be deemed to be exclusive:

- (a) Blowing horns: The sounding or blowing horn or signal device on any automobile, motorcycle, motor bus or other vehicle except as danger signal if, another vehicle is approaching apparently out of control, or if in motion only as a danger signal; the creation by means of any signal device of any loud or harsh noise and the sounding of such device for any unnecessary or unreasonable period of time.
- (b) Radios, phonographs, etc.: The playing of any radio, phonograph, piccolo or any musical instrument in such manner or with such volume as to annoy or disturb any person, or the playing of such instrument in such manner as to annoy or disturb the quiet, comfort or repose of any person in any dwelling, hotel or other residence.
- (c) Pets: The keeping of any animal or bird which by causing frequent or long continued noise, shall disturb the comfort or repose of any persons in the vicinity.
- (d) Use of vehicle: The use of any automobile, motorcycle or vehicle so out of repair, so loaded, or used or repaired in such manner as to create loud or unnecessary noises, particularly grating, grinding, rattling, riveting or other disturbing noises.
- (e) Blowing whistles: The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
- (f) Exhaust discharge: To discharge into the open air the exhaust from any steam engine, stationary internal combustion engine, motor boat engine or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

- (g) Devices using compressed air: The use of any mechanical device operated by compressed air, unless the noise created thereby is effectively muffled and reduced.
- (h) Building operations: The erection (including excavation) , demolition, alteration or repair of any building in a residential or business district other than between the hours of 7:00 A.M. and 6: 00 P.M. on week days, except in cases of urgent necessity in the interest of public safety, and then only with a permit from the proper city officials.
- (i) Noises near schools, hospitals, churches etc.: The creation of any excessive noise on any street adjacent to any school, institution of learning, library, sanitarium, hospital or court, while the same is in session, or adjacent to any church during church services interferes with the work or worship in any such place or institution; provided, that signs must be displayed in such streets indicating that the same is a school, hospital, church, library, sanitarium or court street.
- (j) Loading and unloading operations: The creation of loud and excessive noises in connection with loading or unloading any vehicle, or repairing any vehicle opening and destroying bales, boxes, crates and containers.
- (k) Bells or gongs: The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of any person in the vicinity thereof.
- (l) Hawking, peddling or soliciting: Shouting, loud talking, crying or soliciting by peddlers hawkers taxi drivers solicitors and vendors, which disturb the quiet and peace of the neighborhood, or any person therein.
- (m) Noises to attract attention: The use of any drum, loud speaker or other instrument or device for the purpose of attracting attention to any performance or event, show, sale or the display or advertisement of merchandise, by the creation of noise.
- (n) Loud-speakers or amplifiers on vehicles: The use of any mechanical loud-speakers or amplifiers on trucks, airplanes or other vehicles for advertising purposes, except by special permission of the city council.
- (o) Business noises at night near residences: The operation of any garage, filling station, auto repair business, taxi business, plant, store, factory or other place of business, between the hours of 8:00 P.M. and 7:00 A.M., in such manner as to create loud and disturbing noises, of such frequency or such volume as to annoy or disturb the quiet and comfort of any citizen, and particularly the creating of disturbing noises of such frequency and volume as to annoy or disturb the quiet, comfort, peace or repose of any person in any dwelling, hotel, boarding house or other type of residence.

Section 12-3. Authority of police officers

For the purpose of enforcing the provisions of this chapter, it shall be lawful for any police officer of the city to enter any unoccupied property or place of amusement, to arrest any person violating the provisions of this chapter.

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Chapter 13: Nuisances

Note: Original chapter 13 repealed and replaced 2003; this constitutes the most up to date version with any additional amendments and addendums noted as such.

Article I: In General

Section 13-1. Certain acts, etc., prohibited and declared nuisances

- (a) It shall be unlawful for any person to create make, erect, place, maintain, conduct or operate, upon his own property or upon the property of another, or upon any public street or alley, any building, structure, excavation, machine, materials, substance, deposit, condition, noise, odor, business or operation which injures damages or endangers or tends to injure damage or endanger the life, health or property of the inhabitants of the city or which is or tends to be unnecessarily offensive, objectionable, annoying, unsightly or unwholesome to inhabitants of the city or which unnecessarily obstructs or interferes with or tends to obstruct or interfere with the inhabitants of the city in the lawful pursuit of their business or pleasure or in the lawful use of their property of the public streets or alleys.
- (b) It shall likewise be unlawful for any owner, tenant or occupant of any property to suffer, permit, allow, continue, or fail to abate, in or upon any property owned by him or under his control, any act, thing or condition prohibited or made unlawful herein.
- (c) Any and every act, failure to act, or condition prohibited or made unlawful herein shall be deemed a nuisance.

Applicable Resolutions

Note: Resolution(s) included herein are applicable to Chapter 13, Section 1 of the Code.

Resolution 1: Controlled Substances

The City of Richwood declares that opiate abuse, addiction, morbidity and mortality has created a serious public health and safety crisis and is a public nuisance. **Adopted 2019.**

Article II: Duties and Power of Municipal Health Officer

Section 13-2. General

The Municipal Health Officer shall cause to have enforced the provisions of this code.

- (a) Notices and Orders. The Municipal Health Officer shall issue all necessary notices or orders to ensure compliance with the code,
- (b) Right of Entry. The Municipal Health Officer is authorized to enter the structure or premises at reasonable times to inspect. Prior to entering into a space not otherwise open to the general public, the Municipal Health Officer shall make a reasonable effort to locate the owner or other person having charge or control of the structure or premises, present proper identification and request entry. If requested entry is refused or not obtained, the Municipal Health Officer shall pursue recourse as provided by law.
- (c) Access by Owner or Operator. Every occupant of a structure or premises shall give the owner or operator thereof, or agent or employee, access to any part of such structure or its premises at reasonable times for the purpose of making such inspection, maintenance, repairs or alterations as are necessary to comply with the provisions of this code.

The legal representative of the jurisdiction, through the office of the Mayor, to proceed at law or in equity against the person responsible for the violation for the purpose of ordering that person:

1. To restrain, correct or remove the violation or refrain from any further execution of the work;
2. To restrain or correct the erection, installation, maintenance, repair or alteration of such structure;
3. To require the removal of work in violation; and/or
4. To prevent the occupancy of the structure that is not in compliance with the provisions of this code.

Article III: Violations

- (a) Unlawful acts and/or conditions. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, remove, demolish, maintain, fail to maintain, provide, fail to provide, occupy, let to another or occupy or permit another person to occupy any structure or equipment regulated by this code, or

cause same to be done, contrary to or in conflict with or in violation of any of the provisions of this code, or to fail to obey a lawful order of the Municipal Health Officer, or to remove or deface a placard or notice posted under the provisions of this code.

- (b) Penalty. Any person who shall violate a provision of this code shall, upon conviction thereof, be subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) per day. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
- (c) Prosecution. In case of any unlawful act, the Municipal Health Officer shall cause to have instituted an appropriate action or proceeding at law to extract the penalty provided in Article III (b) above. The Municipal Health Officer may ask in a conspicuous place in or about the structure affected by such notice. Service of the notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.
- (d) Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Article III (b), above
- (e) Transfer of ownership. It shall be unlawful for the owner of any dwelling unit structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of to another, until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Municipal Health Officer and shall furnish to the Municipal Health Officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the correction or repairs required by such compliance order or notice of violation.

Article IV: Notices and Orders

- (a) Notice to owner or to person or persons responsible. Whenever the Municipal Health Officer determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner prescribed in the provisions of Article IV (b) which follow. Notices for condemnation procedures shall also comply with requirements of Articles V and/or VI, below.
- (b) Form Such notice prescribed in Article IV (a), above shall
 - (i) Be in writing;
 - (ii) Include a description of the real estate sufficient for identification;

- (iii) Include a statement of the reason or reasons why the notice is being issued; and
 - (iv) Include a correction order allowing a reasonable time for the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
- (c) Method of service. Such notice shall be deemed to be properly served if a copy thereof is
 - (i) Delivered to the owner personally; or
 - (ii) Sent by certified or registered mail addressed to the owner at the last known address with return receipt requested. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted
- (d) Identification. The Municipal Health Officer shall carry proper identification when inspecting structures or premises in the performance of his duties under this code.
- (e) Organization. The Municipal Health Officer shall request such number of officers, technical assistants, inspectors and other persons shall be necessary for the administration of this code and as authorized by the appointing authority. The Municipal Health Officer is authorized to designate a person as deputy who shall exercise all the powers of the Municipal Health Officer during the temporary absence or disability of the Municipal Health Officer.
- (f) Relief from personal responsibility. The Municipal Health Officer charged with causing the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act required or permitted in the discharge of official duties. Any suit instituted against an officer, employee or agent of the City in the lawful discharge of duties under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings.
- (g) Official records. An official record shall be kept of all business and activities of the Municipal Health Officer, and all such records shall be open to public inspection at all appropriate times and according to reasonable rules to maintain the integrity and security of such records.

Article V: Unsafe Structures, Equipment and Related

- (a) General. When a structure or equipment is found by the Municipal Health Officer to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.

- (b) **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is likely.
- (c) **Unsafe Equipment.** Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which 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 premises or structure.
- (d) **Structure unfit for human occupancy.** A structure is unfit for human occupancy whenever the Municipal Health Officer finds that such structure is unsafe, unlawful or because of the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
- (e) **Unlawful structure.** An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.
- (f) **Closing of vacant structures.** If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Municipal Health Officer is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the Municipal Health Officer shall cause the premises to be closed through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.
- (g) **Notice.** Whenever the Municipal Health Officer has condemned a structure or equipment under the provisions of this code, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Article IV, above.
- (h) **Placarding.** Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Municipal Health Officer shall cause to have posted on the premises or on defective equipment, a placard bearing the word, "Condemned" and a statement of the penalties provided for occupying the

premises, operating the equipment or unauthorized defacing or removal of the placard.

- (i) Prohibited occupancy. Any person who shall occupy a placarded premise or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let anyone occupy a placarded premise or operate placarded equipment shall be liable for the penalties provided for in this code.
- (j) Removal of placard. The Municipal Health Officer shall cause to have removed the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Municipal Health Officer shall be subject to the penalties provided by this code.

Article VI: Emergency Measures

- (a) Imminent danger. When, in the opinion of the Municipal Health Officer, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gasses or materials, or operation of defective or dangerous equipment, the Municipal Health Officer is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Municipal Health Officer shall cause to be posted at each entrance to such structure a notice reading as follows: "This structure is unsafe and its occupancy has been prohibited by the Municipal Health Officer." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition, or of demolishing the structure.
- (b) Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the Municipal Health Officer, there is imminent danger due to an unsafe condition, the Municipal Health Officer shall order the necessary work to be done, including but not limited to the boarding up of openings, to render such structure temporarily safe, whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Municipal Health Officer deems necessary to meet such emergency.
- (c) Closing streets. When necessary for the public safety, the Municipal Health Officer shall temporarily close structures and close, or order the authority having jurisdiction to close sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

- (d) Emergency repairs. For purposes of this Article, the Municipal Health Officer shall employ the necessary labor and materials to perform the required work as expeditiously as possible.
- (e) Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on approval of the governing body. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.
- (f) Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the governing body, be afforded a hearing as described in Article VII of this code.

Article VII: Hearing

- (a) An owner or other person aggrieved by a notice given or action rendered at the behest of the Municipal Health Officer in compliance with this code, may upon petition to the governing body, be given a hearing at a specified time and place, to show cause, if any he can, why the act, thing or condition notified of should not be declared a nuisance, why he should not be required to abate same, and, on his failure to do so, why the City of Richwood should not abate same and charge him with the costs thereof in accordance with remaining terms of this code.
- (b) Notice of hearing set by the governing body subsequent to request of the property owner, shall be served upon the owner at least three (3) days before the day set for hearing in any manner which a summons or notice may be served for the circuit court under the laws of the state, 1. if such person be found or if he have a usual place of abode within the corporate limits of the city. The return upon such notice shall be evidence of the service and the manner thereof, and if made by a law enforcement officer, need not be sworn to. 2. If such person cannot be found or if he does not have a usual place of abode within the corporate limits of the city, and such a return upon the notice shall be evidence thereof, such notice may be given by publication once each week for two (2) successive weeks in a newspaper of general circulation in Nicholas County, West Virginia, the second publication thereof to be at least three (3) days before the day set for hearing, and by posting one copy thereof at the front door of the city hall and one copy at or near the location of the alleged nuisance property at least seven (7) days before the day set for hearing.
- (c) An owner desiring a hearing under this article, shall be given an opportunity to be heard in his defense as described in Article VII (a) and (b) above, at his own expense, at which hearing may introduce any proper evidence pertinent to the issue.

Article VIII: Demolition

- (a) General. The Municipal Health Officer shall order the owner of any premises upon which is located any structure, which in the Municipal Health Officers judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to raze and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than one (1) year, to raze and remove such structure.
- (b) Order. All notices and orders issued by the Municipal Health Officer shall comply with Article IV, above.
- (c) Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the Municipal Health Officer shall cause the structure to be razed and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such razing and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.
- (d) Salvage materials. When any structure has been ordered razed and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such razing and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such surplus does not remain to be turned over, the report shall so state.

Article IX: Non-liability of City

Nothing contained within this ordinance 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 City of Richwood, 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 City of Richwood, relating in any manner to the enforcement or non-enforcement of this ordinance by the officers, officials, employees, or agents of the City of Richwood.

Article X: Severability

The provisions of this ordinance 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 ordinance not specifically held to be invalid.

Article XI: Conflicting Provisions Repealed

All ordinances, resolutions, and orders, or portions thereof, in conflict with the provisions herein are, to the extent of such conflict, hereby repealed.

Article XII: Headings

Any table of contents, headings of the Chapters, Articles, Sections and Subsections herein are for convenience only, and shall neither control nor effect in any way the meaning or construction of any of the provisions herein.

Article XIII: Gender

Whenever the context requires, the gender of all words used herein shall include masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof.

[portions of this chapter removed for redundancy and irrelevancy]

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Chapter 14: Offenses--Miscellaneous

Section 14-1. Assault and battery

- (a) If any person unlawfully attempts to commit a violent injury to the person or another or unlawfully commits an act which places another in reasonable apprehension of immediately receiving a violent injury, he shall be guilty of assault.
- (b) If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, he shall be guilty of battery.

Section 14-1.1. Stalking

- (a) Any person who knowingly, willfully, and repeatedly follows and harasses, or knowingly, willfully, and repeatedly follows and makes a credible threat or knowingly, willfully and repeatedly harasses and makes a credible threat against a person with whom he or she has, or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not such intention is reciprocated, or against a member of that person's immediate family, with the intent to place that person in reasonable apprehension that he or she or a member of his or her immediate family will suffer death, bodily injury, sexual assault, battery or kidnapping, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars (\$1,000), or both.
- (b) Any person who violates the provisions of subsection (a) of this section in violation of an order entered by a circuit court, magistrate court or family law master is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000), or both.
- (c) A second conviction for a violation of this section occurring within five years of a prior conviction is punishable by incarceration in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000), or both.
- (d) Notwithstanding any provision of this code any person against whom a permanent restraining order issued who is convicted of a second or subsequent violation of the provisions of this section shall be incarcerated in the county jail for not less than six months nor more than one year, or fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000), or both

The definitions of the terms as used in this ordinance and Section shall be the same as the definitions of each term under the stalking statutes of the State of West Virginia.

Section 14-1.1 added 1997.

Section 14-2. Curfew

No person under the age of eighteen, shall be upon the streets, alleys or in other public areas of the City between the hours of 10:00 P.M. and 6:00 A.M. Sunday through Thursday and between the hours of 11:00 P.M. through 6:00 A.M. Friday and Saturday, unless accompanied by a parent, guardian or some adult person lawfully in charge of such minor.

No parent, guardian or other person having the custody of a person under the age of eighteen years, shall allow such minor to be upon the streets, alleys or in other public places in the City between the hours set forth above unless accompanied by a parent, guardian or some adult person lawfully in charge of such minor.

The provisions of this section shall not be construed as to prohibit persons under eighteen years of age from going to and from work, unaccompanied by a parent, guardian or other adult person, not shall this section apply to high school students attending school sponsored functions or small gatherings after athletic events ending prior to 1:00 A.M.; nor shall this section apply to persons under the age of eighteen years who are legally married.

Any child found in violation of this section shall be taken to the City Hall and the parent, guardian or person in loco parentis shall be notified to come to the City Hall and take personal charge of the child. The child shall be released only to such parent, guardian or person in loco parentis, or to the juvenile authorities. Any child found in violation of this section who has once before been held by the authorities for violation of this section shall be held for the juvenile authorities for proper disposition.

Any parent, guardian or person in loco parentis who permits any child to violate this section shall, upon first offense, be fined the sum of twenty dollars (\$20); upon the second offense the parent, guardian or person in loco parentis shall be fined not more than forty dollars (\$40) and upon any subsequent offense the parent, guardian or person in loco parentis shall be fined not more than two hundred fifty dollars (\$250).

Amended 1996.

Section 14-3. Disorderly conduct

- (a) Any person who shall do or engage in any of the following shall be guilty of disorderly conduct:
- (i) Any person who shall act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health.
 - (ii) Any person who shall act in a violent or tumultuous manner toward another, whereby public property or property of any other person is placed in danger of being destroyed or damaged.
 - (iii) Any person who shall endanger lawful pursuits of another by acts of violence or threats of bodily harm.
 - (iv) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another or public property.
 - (v) Any person who shall assemble or congregate with another or others and cause, provoke or engage in any fight or brawl.
 - (vi) Any person who shall collect in bodies or in crowds and engage in unlawful activities.
 - (vii) Any person who shall assemble or congregate with another or others and engage or attempt to engage in gaming.
 - (viii) Any person who shall frequent any public place and obtain money from another by an illegal and fraudulent scheme, trick, artifice or device, or attempt to do so.
 - (ix) Any person who assembles with another or others and engages in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person, or attempts to do so.
 - (x) Any person who utters, in a public place or any place open to the public, any obscene words or epithets.
 - (xi) Any person who frequents any place where gaming or the illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs is practiced, allowed or tolerated.
 - (xii) Any person who shall use fighting words directed towards any person who becomes outraged and thus creates turmoil.
 - (xiii) Any person who shall assemble or congregate with another or others and do bodily harm to another.
 - (xiv) Any person who shall, by acts of violence, interfere with another's pursuit of a lawful occupation.
 - (xv) Any person who shall congregate with another or others in or on as to halt the flow of vehicular or pedestrian traffic and refuses to clear such public way when ordered to do so by a peace officer or other person.

- (xvi) Any person who damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition.
- (b) Any person convicted of disorderly conduct, as defined in this section, shall be punished as provided in section 1-7.

Section 14-4. Disturbing religious worship

It shall be unlawful for any person to willfully interrupt, molest or disturb any assembly of people met for the worship of God.

Section 14-5. False alarm of fire

No person shall make, turn in or telephone, or by use of any means or methods 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 or turning in the alarm.

Section 14-6. Repealed.

Repealed 1997.

Section 14-7. Handbills, signs. etc. -- Posting without lawful authority

It shall be unlawful for any person to post any advertisements or handbills of any character upon any fence, wall or building without lawful authority to do so.

Section 14-8. Officers--Hindering, obstructing. Etc.

Any person who, by threats, menaces, acts or otherwise, shall forcibly or illegally hinder, obstruct or oppose, or attempt to hinder, obstruct or oppose, or counsel or advise others to hinder, obstruct or oppose, any officer of the city in the lawful exercise or discharge of his official duties therein shall be deemed guilty of a misdemeanor.

Section 14-8.1. Fleeing

If any person intentionally flees from or attempts to flee from any officer in this city who is attempting to make a lawful arrest of such person, and the person knows or reasonably believes that the officer is attempting to arrest him or her, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty

(\$50) nor more than five hundred dollars (\$500), and may, in the discretion of the municipal court, be imprisoned for a term not exceeding thirty days.

Section 14-8.1 added 1997.

Section 14-9 Profanity

It shall be unlawful for any person to utter or speak any loud or filthy words or profanity, curse or swear or make use of any profane language in any street or public place within the city.

Section 14-10. Property--Injuring, damaging, destroying, etc.

It shall be unlawful for any person to destroy, damage, mutilate or remove the property of another. The following acts, among others, are declared to be in violation of this section, but this enumeration shall not be deemed to be exclusive:

- (a) Personal property: No person within the city shall willfully, unlawfully and maliciously cut, shoot, main, wound or otherwise injure any personal property of another person.
- (b) Fixtures and real property: No person within the city shall willfully, unlawfully and maliciously cut, mutilate, deface or otherwise injure any tree, house, outside fence or fixtures of another, or commit any other trespass upon real property in the possession of another.
- (c) Municipal property: No person, unless authorized by city officials, shall remove, interfere with or destroy any city property.
- (d) Grassplots, flowers etc.: No person shall drive any animal or vehicle along, on or across any grassplot in any street, public place or sidewalk, or trample, or pluck, mutilate or injure the grass, shrubs or flowers planted or growing in such place.
- (e) Trees and shrubs: No person shall cut, scar, mutilate, dig up or otherwise injure or destroy any trees or shrubs on the public streets or in the parks of the city.

Section 14-11. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests

- (a) A person shall not in the City of Richwood:
 - (i) Appear in a public place in an intoxicated condition;
 - (ii) Drink alcoholic liquor nor nonintoxicating beer in a public place;
 - (iii) Drink alcoholic liquor nor nonintoxicating beer in a motor vehicle on any highway, street, alley, or in a public garage;

- (iv) Tender a drink of alcoholic liquor or nonintoxicating beer to another person in a public place;
 - (v) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals required by the statutes of the State of West Virginia, and without having first obtained written authority therefor.
- (b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (i), of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible: (2) if it does not impose an undue burden on the officer he may, after issuance of such a citation transport the individual, to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible: the officer shall transport or arrange for transportation to the appropriate judicial officer; or (4) if the individual is incapacitated and, in the, law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.
- (c) Upon presentment before the proper judicial officer the law-enforcement officer shall serve as the chief complaining witness. The municipal judge must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he may be released, (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him, he may be released to the responsible person, or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of West Virginia Code §27-6A-1 et seq.

- (d) Any person who violates subdivision (i) subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof shall be sentenced by the municipal judge in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100) and not more than sixty 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 municipal 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 less than five dollars (\$5) nor more than one hundred dollars (\$100) and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100) and not less than five nor more than sixty days in jail or a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100) 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.
- (e) A person charged with a violation of subdivision (i), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to [West Virginia Code §20-5-6a](#).
- (f) Any person who violates subdivision (ii) or (iii), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five (\$5) nor more than one hundred dollars (\$100), or confined in jail not more than thirty days, or both such fine and imprisonment. Any person who violates subsections (iv) or (v), subsection (a) of this subsection shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or confined in jail not less than sixty days nor more than twelve months, or both such fine and imprisonment.

Section 14-11 amended 1997.

Section 14-12. Shoplifting defined

- (a) 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:
- (i) Conceals the merchandise upon his or her person or in another manner; or
 - (ii) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
 - (iii) Alters, transfers or removes any price marking affixed to the merchandise; or
 - (iv) Transfers the merchandise from one container to another; or
 - (v) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
 - (vi) Removes a shopping cart from the premises of the mercantile establishment.
- (b) 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.

Original section 14-12 repealed and replaced 1997.

Section 14-12.1. Shoplifting - Evidence.

- (a) Evidence of stated price or ownership or merchandise may include, but is not limited to:
- (i) The actual merchandise alleged to have been shoplifted; or
 - (ii) The unaltered content of the price tag or marking from such merchandise; or
 - (iii) Properly identified photographs of such merchandise.
- (b) 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.

Section 14-12.1 added 1997

Section 14-12.2. Shoplifting-Penalties.

A person convicted of shoplifting shall be punished as follows:

- (a) First offense conviction. -- Upon a first shoplifting conviction:

- (i) When the value of the merchandise is less than or equal to five hundred dollars (\$500), the person is guilty of a misdemeanor and shall be fined not more than two hundred fifty dollars (\$250).
 - (ii) When the value of the merchandise exceeds five hundred dollars (\$500), the person is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), and such fine shall not be suspended; or the person shall be imprisoned in the county jail not more than sixty days; or both.
- (b) Second offense conviction — Upon a second shoplifting conviction:
- (i) When the value of the merchandise is less than or equal to five hundred dollars (\$500), the person is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and such fine shall not be suspended, or the defendant shall be imprisoned in the county jail not more than six months, or both
 - (ii) When the value of the merchandise exceeds five hundred dollars (\$500), the person is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) and shall be confined in jail for not less than six months nor more than one year.
- (c) 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), 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.
- (d) 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.

Section 14-12.2 added 1997.

Section 14-12.3. Shoplifting constitutes 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 grounds 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.

Section 14-12.3 added 1997.

Section 14-12.4. Shoplifting—Definitions

- (a) "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.
- (b) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (c) "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.
- (d) "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.
- (e) "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 [West Virginia Code § 61-3A-1](#), the difference between the merchant's stated price of the merchandise and the altered price.

Section 14-12.4 added 1997.

Section 14-13. Trespassing

No person in the city shall, without authority of law, go upon or remain upon the lands, building or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by signs posted on such lands, building, premises or part, portion or area thereof, at places there they may be reasonably seen.

Section 14-14. Brandishing deadly weapons threatening or causing breach of peace penalties

It shall be unlawful for any person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, to carry, brandish, or use such weapon in

a way or manner to cause, or threaten, a breach of the peace. Any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one thousand dollars, or shall be confined in the county jail not less than thirty days, or both. **Amended 1997.**

Section 14-15. Carrying deadly weapon without license or other authorization; penalties.

Any person who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of the West Virginia Code, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and may be imprisoned in the county jail for not more than twelve months for the first offense. **Amended 1997.**

Section 14-15.1. Exceptions as to prohibitions against carrying concealed deadly weapons

The above licensure provisions shall not apply to:

- (1) 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;
- (2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded from his 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;
- (3) Any law-enforcement officer or law-enforcement official as such are defined in [West Virginia Code §30-29-1](#);
- (4) 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;

- (5) Any member of the armed forces of the United States or the militia of this state while such member is on duty,
- (6) Any circuit judge, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney.

Section 14-15.1 added 1997.

Section 14-16. Alcoholic liquors and nonintoxicating beer—Sales to certain persons prohibited

- (a) Alcoholic liquors and nonintoxicating beer as defined in the West Virginia Code shall not be sold to a person who is:
 - (i) Less than twenty-one years of age;
 - (ii) An habitual drunkard;
 - (iii) Intoxicated;
 - (iv) Addicted to the use of any controlled substance as defined by any of the provisions of [West Virginia Code §60A-1-101](#); or
 - (v) Mentally incompetent.
- (b) It shall be a defense to a violation of subdivision (i), subsection (a) of this section if the seller shows that the purchaser:
 - (i) Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
 - (ii) Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

Section 14-16 added 1997.

Section 14-17. Unlawful acts by persons--regarding alcoholic beverages

- (a) Any person under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars (\$500) or shall be incarcerated in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned.
- (b) Any person under the age of twenty-one years who, for the purpose of purchasing liquor from a retail licensee, misrepresents his or her age, or who for such purposes presents or offers any written evidence of age which is false,

fraudulent or not actually his or her own, or who illegally attempts to purchase liquor from a retail licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed fifty dollars (\$50) or imprisoned in the county jail for a period not to exceed seventy-two hours, or both fined and imprisoned.

- (c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source, is guilty of a misdemeanor and shall, upon conviction thereof, be fined in an amount not to exceed one hundred dollars (\$100) or imprisoned in the county jail for a period not to exceed ten days or both fined and imprisoned.
- (d) No person while on the premises of a retail outlet may consume liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of this subsection is guilty of a misdemeanor and shall, upon conviction thereof be fined in an amount not to exceed one hundred dollars (\$100) or imprisoned in the county jail for a period not to exceed ten days, or both fined and imprisoned.

Section 14-17 added 1997.

Applicable Ordinances

Note: Original ordinance(s) included in this section are applicable to Chapter 14 of the Code, but were adopted without further provision as to their inclusion; such was made at the discretion of the compiler

Ordinance 1: Drugs and Related Offenses

Subdivision I. In General

All terms utilized hereinafter shall be ascribed and definitions given such terms in [West Virginia Code Section 60A-1-101](#), as amended.

Section 1. Prohibited Acts: Penalties

- (a) 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 or her professional practice, or accept as otherwise authorized by the West Virginia Uniform Controlled Substances Act, Chapter 60A of the West Virginia Code as amended. Any person who violates this Section is guilty of a misdemeanor, and disposition may be made under Section 2 of this Ordinance, subject to the

limitations specified in said Section, or upon conviction, such person may be confined in jail up to thirty (30) days or fined not more than \$500.00 or both; Provided, that notwithstanding any other provision of this Ordinance to the contrary, any first offense for possession of less than fifteen grams of marijuana shall be disposed of under said Section 2.

- (b) It is unlawful for any person knowingly or intentionally:
- (i) to create, distribute or deliver, or possess with an intent to distribute or deliver an imitation controlled substance; or
 - (ii) 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 the container or label of a counterfeit substance or an imitation controlled substance.
 - (iii) any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail up to thirty (30) days, or fined not more than \$500.00 or both.
 - (iv) the provisions of Subdivision (1) of this Subsection shall not apply to a practitioner who administers or dispenses a placebo. (West Virginia Code Section 60A-4-401)

Section 2. Conditional Discharge for First Offense Possession

- (a) Whenever any person who has not previously been convicted of any offense under this Ordinance, West Virginia Code Section 60A as amended, or under any statute of the United States or of any relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 1 hereinabove, the Court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions the Court deems just. Upon violation of any term or condition of probation, the Court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the Court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under Section 3 hereinafter set forth. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person to whom a dismissal and discharge have been affected shall be thereafter held to the guilty or perjury,

false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

- (b) After a period of not less than six months which shall begin to run immediately upon the expiration of the term of probation imposed upon any person under this section, the person may apply to the court for an Order to Expunge from all official records all recordation of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of this or her probation and during the period of time prior to his or application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the Expungement.
- (c) Notwithstanding any provision of this Ordinance to the contrary, any person prosecuted pursuant to the provisions of this Article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of Section 1 hereinabove of this subsection. Payment of such costs may be made a condition of probation.

Section 3.

Any person convicted of a second or subsequent offense of Sections 1 or 2 herein may be fined up to \$500.00 and/or sentenced up to thirty (30) days in jail for each such offense.

Ordinance 1 added 2008.

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Chapter 15: Parades, Picketing, Demonstrations, Etc.

Article I: Parades, Processions and Meetings

Section 15-1. Definitions

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Meeting

Any assembly together or concert of action between or among five or more persons for the purpose of protesting any matter or of making known any position or promotion of such persons, or of or on behalf of any organization or class of persons or for the purpose of attracting attention to such assembly.

Parade or procession

Any assemblage of five or more persons participating in or three or more vehicles being operated in, any march, ceremony show, exhibition or procession of any kind in or upon the public streets, sidewalks, alleys, parks or other public grounds or places not including a bona fide funeral procession.

Section 15-2. Permit--Required

No procession or parade shall occupy, march or proceed along any street, sidewalk or any other public place, nor shall any person conduct any public or private meeting on any street, sidewalk or other public place in the city, except in accordance with a permit issued by the mayor and such other regulations as are set forth in this article which may apply.

As to licenses generally, see chapter 9 of this Code.

Section 15-3. Same--Applications; authority of mayor to designate route of parade or processions, etc.

A written application shall be made to the mayor by any person desiring to have a parade, procession or meeting setting forth the object, time, place and route of the parade or procession or the object, time and place of the meeting. The mayor shall have

authority to designate the route of the parade or procession and the portion of the streets or other public places to be used in such, a way as to avoid as much as possible the obstruction or impediment of public travel or public business The mayor may refuse to issue a permit for a parade, procession or meeting, unless application therefor is filed with him at least twenty-four hours before the time thereof.

Section 15-4. Restricted hours for parades or processions

No parades shall be permitted between the hours of 11:30 A.M. and 2:00 P.M. or between the hours of 5:00 P.M. and 6:00 P.M., local time, and no parade or procession shall commence or continue after sunset or commence before sunrise.

Section 15-5. Interfering with, addressing abusive language to participants, etc.

It shall be unlawful for any person to physically interfere with processions, marches or meetings, or with the persons lawfully engaged therein in the use of any • street, sidewalk or other public place, or to address profane indecent, abusive or threatening language or other fighting words to or at such participants, which would tend to provoke such participants or others to a breach of the peace.

Section 15-6. Conduct--Generally

It shall be unlawful for any person to conduct or participate in any parade, procession or meeting of such character, extent and duration, or of such nature, as to create a public disturbance, to operate as a nuisance or to tend to create or threaten rioting, disorderly conduct or public or private mischief.

Section 15-7. Same--Abusive, etc., language by participants

It shall be unlawful for any person conducting or participating in any parade, procession or meeting to address profane, indecent, abusive or threatening language or other fighting words to or at any person, which would tend to provoke such person or others to a breach of the peace.

Article II: Picketing

Section 15-8. Permitted; conditions

Peaceful picketing, including demonstrating, in the furtherance of a lawful purpose shall be permitted in the town, provided the same is done under the following conditions:

- (a) Picketing shall be conducted only on the sidewalks or other town owned area normally used or reserved for pedestrian movement, including easements and rights-of-way, and shall not be conducted on the portion of a street used primarily for vehicular traffic.
- (b) Not more than ten pickets promoting the same objective shall be permitted to use the sidewalks within one block in the town at any one time.
- (c) Such pickets may carry written or printed placards or signs not exceeding two feet in width and two feet in height promoting the objective for which the picketing is done; provided, that the words used are not defamatory in nature and would not tend to produce violence. The staff on which such placard is carried shall not exceed forty inches in length, must be made of wood, shall not exceed three-fourths of an inch in diameter at any point and must be blunt at each end.
- (d) Pickets must march in single file and not abreast and may not march closer together than fifteen feet, except in passing one another.
- (e) If pickets promoting different objectives desire to use the same sidewalk for picketing and such use would result in the presence of more than ten pickets thereon; the mayor shall allot time to each group of pickets for the use of such sidewalk on an equitable basis, but each group shall be permitted to picket subject to the provisions of this section at least once every two hours
- (f) It shall be unlawful for any picket to address profane, indecent, abusive or threatening language to or at any person, which would tend to provoke such person or others to a breach of the peace.

Section 15-9. Interference with pickets

It shall be unlawful for any person to physically interfere with pickets in the use of the sidewalk or to address profane, indecent, abusive or threatening language to or at such pickets, which would tend to provoke such pickets or others to a breach of the peace.

Section 15-10. Authority of police

The police officers of the town may, in the event of the assemblage of persons in such numbers as to tend to intimidate pickets pursuing their lawful objective through numbers

alone or through the use of inflammatory words, direct the dispersal of persons so assembled and may arrest any person who fails to absent himself from the placing such assemblage when so directed by the police.

Section 15-11. Maintenance of free passage

Whenever the free passage of any street or sidewalk in the town shall be obstructed by a crowd, the persons composing such crowd shall disperse or move on when so directed by a police officer as provided in section 15-10.

Chapter 16: Solicitors and Canvassers

Section 16-1. Definition

Solicitor

A person who goes from door to door, visiting multi-family or single-family dwellings or places of business for the following purposes:

- (a) To sell goods, wares, merchandise or services or accept subscriptions or orders thereof.
- (b) To accept or request donations for any purpose.

Section 16-2. Registration

All persons, before entering into or upon a residential or business premises within the city for the purpose of soliciting, shall register with the city clerk and furnish the city clerk with the following information:

- (a) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant.
- (b) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale.
- (c) The name and permanent address of the employer or organization represented.

Section 16-3. Issuance, term and display of permit

Upon furnishing the information required under section 16-2 the applicant shall be issued a permit twenty-four hours from the date of submission of the application. A permit issued under this chapter shall be valid for one year from the date of issuance. Every solicitor shall carry his permit with him at all times while engaged in soliciting and shall display such permit to any person who shall demand to see such permit while he is so engaged.

As to licenses generally, see chapter 9 of this Code.

Section 16-4. Fees

A fee of five dollars (\$5) to cover the costs of processing of the application shall be paid to the city clerk when the application is filed, and shall not be returnable under any circumstances. If the application is approved, the five dollars so paid shall be applied as a credit against the amount due for the license tax for such activity.

Section 16-5. Prohibited acts

No person shall:

- (a) Enter into or upon a residential or business premises in the city under false pretenses, to solicit for any purpose.
- (b) Remain in or on any residential or business premises after the owner or occupant or his agent or employee has requested any such person to leave.
- (c) Enter upon any residential or business premises for soliciting, when the owner or occupant or his agent or employee has displayed a "No Soliciting" sign on such premises.
- (d) Engage in the practice of soliciting in the city without a permit, as provided by this chapter.
- (e) Knowingly give false information or withhold correct information in obtaining a permit.

As to general penalty for violations of Code, see section 1-7 of this Code.

Section 16-6. Expectations

The provisions of this chapter, except section 16-5, shall not apply to:

- (a) Any person who visits a residence or business at the request or invitation of the owner or occupant, or his agent or employee.
- (b) Newsboys soliciting subscriptions to any newspaper for home delivery within the city.
- (c) Route delivery men who make deliveries at least once a week to regular customers and whose solicitation is only incidental to their regular deliveries.

Chapter 17: Streets and Sidewalks

Article I: In General

Section 17-1. Construction of private drives, alleys, roadways or streets intersecting public street or alley

- (a) In any and all instances in which any person proposes to construct a private drive, alley, roadway or street so as to intersect with any public street or alley, it shall be necessary to apply for and obtain a permit thereof.
- (b) All such applications shall be made upon a form provided for that purpose, shall state precisely where the intersection is to be made and shall be accompanied by a sketch showing the location of the same.
- (c) In every such case, any such person shall be responsible for properly installing any and all required culverts or other drains reasonably necessary to carry surface water drainage, and in no instance shall existing ditch lines be destroyed or blocked.
- (d) No person shall install or permit to be installed a private drive, alley, roadway or street in such a way as to intersect with any existing public street or alley without first having obtained a permit therefore.
- (e) The penalty for violation of this ordinance shall be a fine of one hundred dollars (\$100) and costs for every such offense.
- (f) If the driveway entering the street or road is on an incline or on a hill that water would drain down the surface of the driveway, it must have an iron grading across the driveway emptying into the drain or tile before the driveway enters the street or roadway.

Sections 17-2 to 17-5. Reserved

Article II: Excavations

Section 17-6. Permit--Required

It shall be unlawful for any person to cut into or otherwise damage or excavate any street, sidewalk or public place within the city for the purpose of connecting property with water, sewer or gas lines thereunder, or for any other purpose, except pursuant to a permit as provided in this article.

As to licenses generally, see chapter 9 of this Code.

Section 17-7. Same--Application

Any person desiring to cut, open or otherwise excavate any street, sidewalk or public place, whether paved or unpaved, in the city, for any purpose, shall apply to the superintendent of public works for a permit so to do. The application shall be in a form as prescribed by the superintendent of public works and shall contain such pertinent information as may be required by him, including but not limited to the following: The purpose of the proposed excavation; the site at which the work is to be done; the date work is to begin and the expected duration of the work; and the name and address of the person for whose benefit the proposed work is to be done and who shall be responsible for all required safeguards the diligent prosecution of the work the restoration of the surface, the payment of all expenses incurred and compliance with all requirements of this article. The application shall be signed by such person or by someone authorized by him, or by the plumber or other contractor employed by him to do the work.

Section 17-8. Same--Determination of necessity of excavation prerequisite to granting; cash deposit or bond

- (a) No excavation permit shall be granted unless it appears to the satisfaction of the superintendent of public works that the excavation is necessary for the health, safety or welfare of the person upon whose behalf the excavation is to be made; and the connection of property to a water, sewer or gas main shall be deemed sufficient under this subsection.
- (b) No excavation permit shall be granted until the applicant thereof, or someone on his behalf, has made a cash deposit or given bond to the city in such amount as may be deemed by the superintendent of public works sufficient to cover the cost of safeguards, disposal of excavated dirt, etc., and restoration of the surface of the place of excavation to as good condition as it was prior to the making of the excavation. Each such bond shall payable to the city, shall have corporate surety, shall be approved by ifhe city attorney and shall be conditioned that the work be diligently and skillfully prosecuted, subject to foreseeable circumstances beyond control of the person doing the work, that all necessary safeguards be maintained, that all excavated materials not required for refill be disposed of as provided in this article, that the surface of the place of excavation and not less than ten feet in all directions from the outer perimeter thereof be placed in as good condition as it was immediately prior to the commencement of the work and to the reasonable satisfaction of the superintendent, that all requirements of this

article be complied with and that any defective work which appears five years from the day of acceptance, of such restoration by the superintendent shall be subject to repair by the city at the expense of the permit holder.

Section 17-9. Manner of work generally; materials and methods used in restoration of surface

Any person making an excavation shall do the work in a careful, work-manlike manner and shall diligently prosecute such work to completion without undue delay. Materials used and methods employed in filling, tamping and closing excavations and in restoring the surface shall comply with all requirements of the city.

Section 17-10. Required safeguards generally; footbridges

All excavation sites shall be provided with all necessary safety devices to protect persons and animals from falling into ditches or pits. Such devices shall include, but not exclusively, warning signs, lamps and barricades and, where practicable, secure planking for pedestrians to cross upon which shall be well lighted the entire way between the period from sunset to sunrise.

Section 17-11. Lighting of bridges over excavations

Between the hours of sunset and sunrise, upon bridges for maintaining traffic over excavations, the roadway shall be indicated by a sufficient number of green lights so as to clearly identify the course of the roadway and the edges thereof, and the edges of the bridge itself shall be indicated by red lights.

Section 17-12. Safeguards relating to sidewalk excavations

All persons causing any excavations to be made for sidewalks shall have the place of excavation properly graded and protected and shall properly barricade such place for the protection of the public. Whenever necessary, they shall, at their own expense, properly erect masonry or steel construction or a sufficient retaining wall to properly support the adjoining earth. Such retaining wall shall be properly coped or provided with an iron railing to guarantee safety to the public.

Section 17-13. Handling, conveyance and disposition of dirt, etc.

Each person engaged in excavating or having charge or control of any excavation, or who may be engaged in or may have charge or control of conveying material from excavations, shall exercise reasonable care to prevent the deposit, in any

manner, upon the surface of a sidewalk or any paved street or other public place, by placing, spilling, dropping or tracking from wheels of vehicles or from the feet of animals any earth, clay, mud, sand, gravel or other excavated material; and all such excavated materials spilled or dropped upon any street, sidewalk or other such place from any such vehicle or tracked thereon from wheels of vehicles or the feet of animals removed without delay by the driver of the vehicle or animal involved.

The excavations referred to in this section include those made in private property as well as in public property.

Section 17-14. Special agreements with railroads and public utilities

Nothing contained in this article shall be construed to prevent the city council from entering into agreements with railroad and public utility companies which may exclude them from or grant them deviations from the provisions of this article when, in the judgment of the council, it is in the public interest so to do and the health, safety and welfare of the inhabitants of the city will be adequately safeguarded.

Section 17-15. When state permit required

No permit shall be granted under this article to excavate within any street or right-of-way which is a part of the state highway system, except upon display to the superintendent of public works of a permit so to do issued by competent authority of the state.

Section 17-16. Nonliability of city

No permit issued, inspection made or approval given by the superintendent of public works, his agents or employees pursuant to this article shall be construed as imposing any liability whatever upon the city for injury to any person or damage to any property which may occur by reason of any wrongful or negligent act or omission during the progress of any work under this article.

Section 17-17. Responsibility for care, repair, tort liability and related

Section 17-17.1. Definitions

Owner

- (a) In the case of a land, any person who is recorded on the tax records as the owner of land, or
- (b) In the case of property other than land, any person who is in lawful possession thereof.

Occupant

- (a) A person who is in physical possession of a property, or
- (b) A person who has responsibility for, and control over, the condition of a property, the activities conducted on that property, and the persons allowed to enter that property.

Person

Any individual, corporation, society, association, partnership or firm, and the successor or the heir, executor, administrators, or other legal representatives of a person.

Sidewalk

That part of a highway especially adapted to the use of or ordinarily used by pedestrians and includes that part of the highway between the curb line (or the edge of the roadway where there is not curb line) and the adjacent property line, whether or not paved or improved.

Section 17-17.2. Responsibility

Whereas, every occupant, owner or person of every house, shop, building, lot, parcel of land, or other property that adjoins or is adjoining to or on a sidewalk in the City of Richwood shall be charged the responsibility to keep such sidewalk in a good state of repair and free from defects and debris. Failure to maintain will result in the City of Richwood undertaking such repair or remedy and charging back to the property owner. On any claim present for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another. Alternatively, should the City of Richwood be called upon to make such payment to a third party, the City will look to the adjoining/abutting landowner for contribution and indemnity.

Section 17-17 added 2003.

Chapter 18: Water and Sewers

Article I: In General

Section 18-1. Connection to municipal sewer--Required

- (a) Every owner of a dwelling, building or premises within the city fronting or abutting upon any street, alley or easement in which there is installed a sewer line which is apart of the combined waterworks and sewerage system of the city, and which can use the sewage services and facilities of such system, shall connect, or cause to be connected, the plumbing and sewer lines of such dwelling, building or premises to the sewer system of the city and shall use such services and facilities. No other means and methods for the collection and disposal of sewage and Waste material from such dwellings, buildings or premises shall hereafter be permitted or allowed.
- (b) Any person who violates any provision of this section or fails to comply therewith, or any requirement thereof, shall be guilty of a misdemeanor. Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this section is committed, or continued, and upon conviction of any such violation, such person shall be fined not less than one dollar (\$1) and not more than twenty-five dollars (\$25), or imprisoned not more than ten days.

Section 18-2. Same--Permit; costs; damages to system

- (a) No person shall make any private sewer connection with any municipal sewer main without first applying for and obtaining a permit therefor from the water board. No such permit shall be granted until a fee of ten dollars (\$10) shall have been paid into the city treasury therefore, which fee is hereby levied.
- (b) All such connections shall be made, at the expense of the applicant, by a qualified and competent plumber under the supervision of the water board. In the installation of all such connections the sewer main shall be tapped from such tapping shall be removed from the main, and the private connection shall be effectively sealed in so as to prevent stoppage and leakage, all in accordance with the directions of the water board.
- (c) All damages to the municipal sewer system resulting from any connection made in violation of any provision of this section, and resulting in stoppage, leakage or otherwise shall be recoverable by the city from the person by or for whom such connection shall have been made.

- (d) Any person who shall make or have made any such sewer connection without first having obtained the permit here required shall be subject to a fine of not to exceed thirty dollars (\$30).

As to licenses generally, see chapter 9 of this Code.

Section 18-3. Use of heavy machinery near water mains

- (a) It shall be unlawful for any owner or operator of any bulldozer, power shovel or other heavy machinery or equipment to operate same for earth excavation or for any other purpose over or within twenty feet of any water pipeline owned by the city and located in public streets or alleys or on rights-of-way through and over private property without first having obtained from the mayor a written permit to do so, and one of the conditions of such permit shall be that such work and operations shall be done under the direction and supervision of the superintendent of the water works of the city.
- (b) It shall be unlawful for any property owner to procure or permit any such operations by and such equipment over such water mains or within twenty feet thereof without first having procured such permit.
- (c) Any damage done to any water main of the city, with or without such permit, shall be paid for by the person causing such damage or by the landowner or other person employing the one doing such damage in accordance with a bill to be furnished by the city and which bill shall include all labor, materials and supervision required for the full and complete repair of such damage, and in case such bill is not paid promptly, the city shall proceed in a court of competent jurisdiction for the collection thereof.
- (d) Any violation of this chapter by failing to obtain permit as herein required or by failing to conduct such work and operations as directed by the superintendent of the water works of the city shall be punished by fine and/or jail sentence as provided by general ordinances of the city.

Applicable Ordinances

Note: Original ordinance(s) included in this section are applicable to Chapter 18, Article I of the Code, but were adopted without further provision as to their inclusion; such was made at the discretion of the compiler

Ordinance 1: Waterworks & Sewerage System Bond Ordinance

Article I: Statutory Authority, Findings and Definitions

Section 1-1. Authority for this Ordinance

This Ordinance (together with an ordinance, order or resolution supplemental hereto or amendatory hereof, the “Bond Legislation”) is enacted pursuant to the provisions of Chapter 8. Article 20 and Chapter 22C. Article 2 of the West Virginia Code of 1931. as amended (collectively, the “Act”), and other applicable provisions of law.

Section 1-2. Findings

It is hereby found, determined and declared that:

- A. The City of Richwood (the ‘Issuer’) is a municipal corporation and political subdivision of the State of West Virginia in Nicholas County of said State.
- B. The Issuer presently owns and operates a combined municipal waterworks and sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the issuer that there be acquired and constructed certain additions, betterments and improvements to the existing sewerage portion of the System of the Issuer, together with all necessary appurtenances (the ‘Project’ and the design and other pre-construction activities are collectively defined as the ‘Design Project’) (the existing combined waterworks and sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the ‘Sstem).
- C. The Issuer intends to permanently finance the costs of the Design Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the ‘Authority’), which administers the West Virginia Water Pollution Control Revolving Fund Program (the ‘SRF Program’). all pursuant to the Act.
- D. It is deemed necessary for the Issuer to issue its Combined Waterworks and Sewerage System Design Revenue Bonds. in the total aggregate principal amount of not more than \$_____ in one or more series (the Series 2019

A Bonds”) to permanently finance the costs of the Design Project, and pay the costs of issuance thereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2019 A Bonds for a period not exceeding 6 months after completion of the Design Project; amounts which may be deposited in the Series 2019 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority including the SRF Administrative Fee (as hereinafter defined) for the Series 2019 A Bonds; discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2019 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the Design Project, and the performance of the things herein required or permitted, in connection with any thereof provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2019 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Design Project (as hereinafter defined).

- E. The period of usefulness of the System after completion of the Design Project is not less than 40 years.
- F. It is in the best interests of the Issuer that its Series 2019 A Bonds be sold to the Authority pursuant to the terms and provisions of a Bond Purchase Agreement by and among the Issuer, the Authority, and the West Virginia Department of Environmental Protection (the “DEP”) in the form satisfactory to the respective parties (the “Bond Purchase Agreement”) approved hereby if not previously approved by resolution of the Issuer.
- G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2019 A Bonds as to liens, pledge, source of and security for payment. as follows:
 - a. Combined Waterworks and Sewerage System Revenue Bonds. Series 2002 (West Virginia SRF Program). dated December 18, 2002, issued in the original aggregate principal amount of \$682,314 (the “Series 2002 Bonds”); and
 - b. Combined Waterworks and Sewerage System Revenue Bonds. Series 2009 A (West Virginia Infrastructure Fund). dated September 2, 2009, issued in the original aggregate principal amount of \$1,308,155 (the Series 2009 A Bonds’) (collectively the “Prior Bonds”).

The Series 2019 A Bonds shall be issued on a parity with the Prior Bonds, all of which shall have a first lien position with respect to pledge and source of and security for payment and in all other respects. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Ordinances. Prior to the issuance of the Series 2019 A Bonds, the Issuer will obtain (i) the certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met; and (ii) the written consent of the Registered Owners of the Prior Bonds to the issuance of the Series 2019 A Bonds on a parity with the Prior Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Design Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2019 A Bonds and the Prior Bonds and to make payments into all funds and accounts and other payments provided for herein and in the Prior Ordinances.

I. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1-3. Bond Legislation Constitutes Contract

In consideration of the acceptance of the Series 2019 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2019 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1-4. Definitions

The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means, collectively, Chapter 8, Article 20 and Chapter 22C, Article 2 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2019 A Bonds, or any

other agency, board or department of the State that succeeds to the functions of the Authority, acting in its administrative capacity and upon authorization from the DEP under the Act.

“Authorized Officer” means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

“Bond Counsel” means any law firm having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds, appointed by the Issuer, and shall initially mean Steptoe & Johnson PLLC, Charleston, West Virginia.

“Bondholder,” “Holder of the Bonds,” “Holder,” “Registered Owner” or any similar term whenever used herein with respect to an outstanding Bond or Bonds. means the person in whose name such Bond is registered.

“Bond Legislation,” “Ordinance,” “Bond Ordinance” or “Local Act” means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement heretofore entered, or to be entered into by and among the Issuer, the Authority and the DEP, providing for the purchase of the Series 2019 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

“Bond Registrar” means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

“Bonds” means, collectively, the Series 2019 A Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

“Bond Year” means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

“Closing Date” means the date upon which there is an exchange of the Series 2019 A Bonds for all or a portion of the proceeds of the Series 2019 A Bonds from the Authority.

“Code” means the Internal Revenue Code of 1986, as amended, and the Regulations.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineers” means The Thrasher Group, Inc., Bridgeport, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article I of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

“Costs” or “Costs of the Design Project” means those costs described in Section 1-2D hereof to be a part of the cost of the Design Project.

“DEW” means the West Virginia Department of Environmental Protection, or any successor thereto.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

“Design Project” means the Design Project as described in Section I-2B hereof.

“FDIC” means the Federal Deposit Insurance Corporation and any successor to the functions of the EDIC.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Council of the Issuer, as it may now or hereafter be Constituted.

“Grants” means any grants committed to the Design Project.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for

uncollectible accounts: provided, that “Gross Revenues” does not include any gains from the sale or other disposition of or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.1 hereof), or any Tap Fees, as hereinafter defined.

“Herein,” “hereto” and similar words shall refer to this entire Bond Legislation.

“Independent Certified Public Accountants” means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Issuer” means the City of Richwood, a municipal corporation and political subdivision of the State of West Virginia, in Nicholas County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2019 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2019 A Bonds Reserve Account.

“Net Revenues” means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

“Operating Expenses” means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, the SRP Administrative Fee (as hereinafter defined), insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

“Outstanding” when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for the Prior Bonds, at or prior to said date; (ii) any Bond or Prior

Bond. for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or Holders of any Bonds or Prior Bonds registered to the Issuer.

“Parity Bonds” means Parity Bonds issued under the provisions and within the limitations prescribed by Section 7-7 hereof.

“Paying Agent” means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority.

“Prior Bonds” means, collectively, the Series 2002 Bonds and Series 2009 A Bonds.

“Prior Ordinances” means the ordinances of the Issuer, as supplemented by the supplemental resolutions of the Issuer, authorizing the Prior Bonds.

“Project” means the Project as described in Section 1-2B hereof.

“Qualified Investments” means and includes any investment permitted to be made by a municipality, public service district or public corporation of the State pursuant to State Law, specifically including but not limited to Chapter 8, Article 13, Section 22 of the Code of West Virginia and the West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

“Recorder” means the Recorder of the Issuer.

“Registrar” means the Bond Registrar.

“Regulations” means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

“Renewal and Replacement Fund” means the Renewal and Replacement Fund created by the Prior Ordinances.

“Reserve Accounts” means, collectively, the reserve accounts established for the Prior Bonds and the Series 2019 A Bonds.

“Reserve Requirement” means, collectively, the respective amounts required to be on deposit in any Reserve Account for the Prior Bonds, and the Series 2019 A Bonds.

“Revenue Fund” means the Revenue Fund established by the Prior Ordinances.

“Series 2002 Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 2002 (West Virginia SRF Program), dated December 18, 2002, issued in the original aggregate principal amount of \$682,314.

“Series 2009 A Bonds” means the Issuer’s Combined Waterworks and Sewerage System Revenue Bonds, Series 2009 A (West Virginia Infrastructure Fund), dated September 2, 2009, issued in the original aggregate principal amount of \$1,308,155.

“Series 2019 A Bonds” means the Combined Waterworks and Sewerage System Design Revenue Bonds, Series 2019 A (West Virginia SRF Program), of the Issuer, authorized by this Bond Legislation.

“Series 2019 A Bonds Project Fund” means the Series 2019 A Bonds Project Fund established by Section 5-1 hereof.

“Series 2019 A Bonds Reserve Account” means the Series 2019 A Bonds Reserve Account established in Section 5-2 hereof.

“Series 2019 A Bonds Reserve Requirement” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2019 A Bonds in the then current or any succeeding year.

“Series 2019 A Bonds Sinking Fund” means the Series 2019 A Bonds Sinking Fund established by Section 5-2 hereof.

“Sinking Funds” means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2019 A Bonds.

“SRF Administrative Fee” means the administrative fee required to be paid pursuant to the Bond Purchase Agreement for the Series 2019 A Bonds.

“SRF Program” means the State’s Water Pollution Control Revolving Fund Program. Under which the Authority purchases the water pollution control revenue bonds of local

governmental entities satisfying certain legal and other requirements with the proceeds of a capitalization grant award from the United States Environmental Protection Agency and funds of the State.

“SRF Regulations” means the SRF regulations set forth in Title 47, Series 31 of the West Virginia Code of State Regulations, as amended from time to time.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2019 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2019 A Bonds, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Bond Legislation or the Prior Ordinances to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Sinking Funds and the Reserve Accounts.

“System” means collectively, the existing combined waterworks and sewerage system of the Issuer, and shall include any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

Article II: Authorization of the Design Project

Section 2-1. Authorization of the Design Project

There is hereby authorized and ordered the Design Project, at an estimated cost not to exceed \$_____. The cost of the Design Project is estimated not to exceed \$_____ which will be obtained from proceeds of the Series 2019 A Bonds.

Article III: Authorization, Terms, Execution, Registration and Sale of Bonds;
Authorization and Execution of Bond Purchase Agreement

Section 3-1. Authorization of Bonds

For the purposes of paying Costs of the Design Project not otherwise provided for and paying certain costs of issuance of the Series 2019 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2019 A Bonds of the Issuer. The Series 2019 A Bonds shall be issued as a single bond, designated as “Combined Waterworks and Sewerage System Design Revenue Bonds, Series 2019 A (West Virginia SRF Program)”, in the principal amount of not more than \$_____ and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2019 A Bonds remaining after funding of the Series 2019 A Bonds Reserve Account (if funded from Series 2019 A Bonds proceeds) shall be deposited in or credited to the Series 2019 A Bonds Project Fund established by Section 5-1 hereof.

Section 3-2. Terms of Bonds

The Series 2019 A Bonds shall be issued in such principal amounts: shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Bond Purchase Agreement. The Series 2019 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2019 A Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2019 A Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2019 A Bonds. The Series 2019 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of

principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Series 2019 A Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as specified in a Supplemental Resolution.

Section 3-3. Execution of Bonds

The Series 2019 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2019 A Bonds shall cease to be such officer of the Issuer before the Series 2019 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any such Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3-4. Authentication and Registration

No Series 2019 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3-10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2019 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3-5. Negotiability, Transfer and Registration

Subject to the provisions for transfer of registration set forth below, the Series 2019 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2019 A Bonds shall be conclusively deemed to have

agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2019 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2019 A Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2019 A Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3-6. Bonds Mutilated, Destroyed, Stolen or Lost

In case any Series 2019 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond. upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holders furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the

Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3-7. Bonds not to be Indebtedness of the Issuer

The Series 2019 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No Holder or Holders of the Series 2019 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2019 A Bonds or the interest, if any, thereon.

Section 3-8. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds

The payment Of the debt service on the Series 2019 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System, on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2019 A Bonds and the Prior Bonds and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3-9. Delivery of Bonds

The Issuer shall execute and deliver the Series 2019 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2019 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2019 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2019 A Bonds to the original purchasers;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Bond Purchase Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2019 A Bonds.

Section 3-10. Form of Bonds

The text of the Series 2019 A Bonds shall be in substantially the following [form](#), with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof.

Section 3-11. Sale of Bonds: Approval and Ratification of Execution of Bond Purchase Agreement

The Series 2019 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Bond Purchase Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Bond Purchase Agreement in the form attached hereto as “Exhibit A” and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Bond Purchase Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Bond Purchase Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

Section 3-12. “Amended Schedule A” Filing

Upon completion of the Design Project, the Issuer will file with the Authority and the DEP a schedule for the Series 2019 A Bonds. The form of which will be provided by the DEP. selling forth the actual costs of the Design Project and sources of funds therefor.

Article IV: Reserved

Article V: Funds and Accounts; System Revenues and Application Thereof

Section 5-1. Establishment of Funds and Accounts with Depository Bank

The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances); and
- (3) Series 2019 A Bonds Project Fund.

Section 5-2. Establishment of Funds and Accounts with Commission

The following special funds or accounts are hereby created (or continued if previously established by Prior Ordinances) with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2002 Bonds Sinking Fund (established by the Prior Ordinances);
- (2) Series 2002 Bonds Reserve Account (established by the Prior Ordinances);
- (3) Series 2009 A Bonds Sinking Fund (established by Prior Ordinances);
- (4) Series 2009 A Bonds Reserve Account (established by Prior Ordinances);
- (5) Series 2019 A Bonds Sinking Fund; and
- (6) Series 2019 A Bonds Reserve Account

Section 5-3. System Revenues: Flow of Funds

- A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:
 - a. The Issuer shall first, on the first of each month, transfer from the Revenue Account and remit to the Commission commencing 4 months prior to the first date of payment of interest of the Series 2019 A Bonds, for deposit in the Series 2019 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will accrue and become due on the Series 2019 A Bonds on the next ensuing quarterly interest payment date; provided, that in the event the period to elapse between the date of such initial deposits in the Series 2019 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.
 - b. The Issuer shall next, on the first of each month, transfer from the Revenue Account and simultaneously remit to the Commission (i) the amounts required by the Prior Ordinances to be deposited in the respective Sinking Funds to pay principal of Prior Bonds; and (ii) commencing 4 months prior to the first date of payment of principal of the Series 2019 A Bonds, for deposit in the Series 2019 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will

- mature and become due on the Series 2019 A Bonds on the next ensuing quarterly principal payment date; provided, that in the event the period to elapse between the date of such initial deposits in the Series 2019 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide. 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.
- c. The issuer shall next, on the first of each month, transfer from the Revenue Account and simultaneously remit to the Commission, (i) the amount required by Prior Ordinance to be deposited in the respective reserve account for the Prior Bonds; and (ii) commencing 4 months prior to the first date of payment of principal of the Series 2019 A Bonds, if not fully funded upon issuance of the Series 2019 A Bonds, for deposit in the Series 2019 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2019 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 2019 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2019 A Bonds Reserve Requirement.
 - d. The Issuer shall next, each month, pay from the monies in the Revenue Fund all current Operating Expenses of the System.
 - e. The Issuer shall next, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to the Renewal and Replacement Fund, a sum equal to 2.5% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.
 - f. After the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Monies in the Series 2019 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2019 A Bonds as the same shall become due. Monies in the Series 2019 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2019 A Bonds as the same shall come due, when other monies in the Series 2019 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during the Design Project, be deposited in the Series 2019 A Bonds Project Fund, and following completion of the Design Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2019 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2019 A Bonds Reserve Account which result in a reduction in the balance of such accounts to below the respective Reserve Requirements. shall be subsequently restored from the first Gross Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2019 A Bonds are issued. provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve accounts in an amount equal to the requirements therefor.

The Issuer shall not be required to make any further payments into the Series 2019 A Bonds Sinking Fund or the Series 2019 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2019 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

Principal, interest or reserve payments. whether made for a deficiency or otherwise. Shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2019 A Bonds in accordance with the principal amounts then outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8-1 hereof.

The Series 2019 A Bonds Sinking Fund and the Series 2019 A Bonds Reserve Account, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2019 A Bonds under the conditions and restrictions set forth herein.

- B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest, if any, and reserve payments with respect to the Series 2019 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation. The Issuer shall also on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the SRF Administrative Fee as set forth in the Schedule Y attached to the Bond Purchase Agreement for the Series 2019 A Bonds.
- C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as herein above provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

- D. The Issuer shall complete the "Monthly Payment Form." a form of which is attached 10 the Bond Purchase Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.
- E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paving Agent or the Depository Bank. on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be. shall require such additional sums as shall be necessary to pay their respective charges and fees then due In the case of payments to the Commission under this Section. the Issuer shall make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.
- F. The monies in excess of the sum insured by the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.
- G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds arid accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5-3, and the Gross Revenues shall be applied to such deficiencies on a parity and pro rata with respect to the Series 2019 A Bonds and the Prior Bonds all in accordance with the respective principal amounts outstanding before being applied to any other payments hereunder.
- H. The Gross Revenues of the System shall only be used for purposes of the System.

Article VI: Bond Proceeds; Disbursements

Section 6-1. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds

From the monies received from the sale of the Series 2019 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

- A. From the proceeds of the Series 2019 A Bonds, there shall be deposited with the Commission in the Series 2019 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2019 A Bonds Reserve Account.
- B. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2019 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2019 A Bonds Project Fund and applied solely to payment of the Costs of the Design Project in the manner set forth in Section 6-2 hereof and, until so expended, are hereby pledged as additional security for the Series 2019 A Bonds.
- C. After completion of the Design Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 20W A Bonds shall be expended as approved by the DEP.

Section 6-2. Disbursements of Bond Proceeds

On or before the Closing Date, the Issuer shall have delivered to the Authority and the DEP a report listing the specific purposes for which the proceeds of the Series 2019 A Bonds will be expended and the disbursement procedures for such proceeds, including an estimated monthly draw schedule. Payments for Costs of the Design Project shall be made monthly. Invoices for which repayment from the Series 2019 A Bonds Project Fund will be sought must be first approved by the Issuer.

Except as provided in Section 6-1 hereof, disbursements from the Series 2019 A Bonds Project Fund shall be made only after submission to, and approval from, the Authority and the DEP of a completed and signed "Payment Requisition Form," a form of which is attached to the Bond Purchase Agreement, in compliance with the project schedule.

Pending such application, monies in the Series 2019 A Bonds Project Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

Article VII: Additional Covenants of the Issuer

Section 7-1. General Covenants of the Issuer

All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2019 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2019 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2019 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7-2. Bonds not to be Indebtedness of the Issuer

The Series 2019 A Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the hinds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2019 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2019 A Bonds, or the interest, if any, thereon.

Section 7-3. Bonds Secured by Pledge of Gross Revenues; Lien Position with Respect to Prior Bonds

The payment of the debt service on the Series 2019 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System. on a parity with the lien on the Gross Revenues in favor of the Holders of the Prior Bonds. The Gross Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2019 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged. in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7-4. Initial Schedule of Rates and Charges

The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges. with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the rcquircmcnts of the Bond Purchase Agreement and the Issuer shall supply a certificate of Certified Public Accountant to such effect. The

initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted on October 18, 2018 and the sewer rate ordinances of the Issuer enacted October 18, 2018 which rates are incorporated herein by reference as a part hereof.

So long as the Series 2019 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Bond Purchase Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2019 A Bonds shall prove to be insufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Bond Purchase Agreement.

Section 7-5. Sale of the System

So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof except as provided in the Prior Ordinances and as provided herein and with the written consent of the Authority. So long as the Series 2019 A Bonds are outstanding and except as otherwise requ[red] by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2019 A Bonds, immediately be remitted to the Commission for deposit in the Series 2019 A Bonds Sinking Fund and pro rata with respect to the principal amount of each of the Bonds then outstanding and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2019 A Bonds in accordance with Article X hereof Any balance remaining after the payment of the Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer

necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders, or their duly authorized representatives, of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7-6. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances

Except as provided for in Section 7-7 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2019 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2019 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2019 A Bonds; provided, that no such

subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2019 A Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2019 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the DEP prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Design Project, or any other obligations related to the Design Project or the System.

Section 7-7. Parity Bonds

So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable. In addition, no additional Parity Bonds payable out of the revenues of the System, shall be issued after the issuance of the Series 2019 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided (unless less restrictive than the provisions of the Prior Ordinances).

All Parity Bonds issued hereafter shall be on a parity in all respects with the Series 2019 A Bonds.

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of design, acquisition and construction of additions, betterments or improvements to the System or refunding all or a portion of one or more series of the Bonds issued pursuant hereto, or to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No such Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual

issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinances and this Bond Legislation then Outstanding; and
- (3) The additional Parity Bonds then proposed to be issued.

The “estimated average increased annual Net Revenues to be received in each of the 3 succeeding years.” as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder of the Issuer prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate filed with the Recorder, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All the covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2019 A Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Gross Revenues of the System, and their source of and security for payment from said Gross Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in

addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the revenues of the System of which is subject to the prior and superior lien of the Series 2019 A Bonds on such revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Gross Revenues remaining after all payments required to be made in accordance with this Bond Legislation have first been paid. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof which rank prior to or equally, as to lien and source of and security for payment from such revenues, with the Series 2019 A Bonds except in the manner and under the conditions provided in this section.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Ordinance and the Prior Ordinances on account of the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of issuance of the Parity Bonds and the Issuer is then in full compliance with all the covenants, agreements and terms of this Bond Legislation and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments.

Section 7-8. Books; Records and Audit

The Issuer shall keep complete and accurate records of the cost of the Design Project. The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all books, documents, papers and records relating to the Design Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the DEP such documents and information as they may reasonably require in connection with the Design Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Design Project.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following commencement of the Design Project.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder

of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority and the DEP, or any other original purchaser of the Series 2019 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2019 A Bonds. requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues. Operating Expenses. Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds. notes or other obligations outstanding.

The Issuer shall also. at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with 2 CFR 200 Subpart F, or any successor thereof), and shall mail upon request, and make available generally, the report of the independent Certified Public Accountants. or a summary thereof, to any Holder or Holders of the Series 2019 A Bonds and shall submit the report to the Authority and the DEP, or any other original purchaser of the Series 2019 A Bonds. Such audit report submitted to the Authority and the DEP shall include a statement that the Issuer is in compliance with the terms and provisions of the Act, the Bond Purchase Agreement and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Bond Purchase Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to

construct the Project in accordance with the plans, specifications and designs to be prepared by the Consulting Engineers.

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in the Bond Purchase Agreement for the Series 2019 A Bonds or any Exhibit thereto or as promulgated from time to time.

The Issuer shall permit the Authority and the DEP, or their agents and representatives, to enter and inspect the System at all reasonable times. Prior to, during and after completion of the Design Project, the Issuer shall also provide the Authority and the DEP, or their agents and representatives, with access to the System as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the DEP with respect to the System pursuant to the Act.

Section 7-9. Rates

Prior to the issuance of the Series 2019 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes, in order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2019 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2019 A Bonds, including the Prior Bonds: provided, that in the event that amounts equal to or in excess of the reserve requirement are on deposit respectively in the Series 2019 A Bonds Reserve Account and reserve accounts for obligations on a parity with the Series 2019 A Bonds, including the Prior Bonds, are funded at least at the requirement therefor, such balance each year need only equal at

least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2019 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2019 A Bonds, including the Prior Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance currently in effect.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7-10. Operating Budget and Monthly Financial Report

The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the DEP within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the DEP and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the DEP and any Holder of any Bonds or any one acting for and on behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the Design Project and for two years following the completion of the Design Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Bond Purchase Agreement, and forward a copy of such report to the Authority and the DEP by the 10th day of each month.

Section 7-11. Engineering Services and Operating Personnel

The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Bond Purchase Agreement, stating, among other things, that the Project will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the DEP, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the DEP is sufficient to pay the costs of the Design Project.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the DEP covering the supervision and development of the Project.

The Issuer will serve the additional customers at the location(s) as set forth in Certificate of Engineer. The Issuer will not reduce the amount of additional customers served by the project without the prior written approval of the Authority. Following completion of the Project the Issuer will certify to the Authority the number of customers added to the System.

Section 7-12. No Competing Franchise

To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7-13. Enforcement of Collections

The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer

further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia. discontinue and shut off the services of the System to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law.

Section 7-14. No Free Services

The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or all department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7-15. Insurance and Construction Bonds

- A. The Issuer hereby covenants and agrees that so long as the Series 2019 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:
 - a. FIRE. LIGHTNING. VANDALISM. MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the actual cost thereof. In time of war the issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repair or reconstruction of such damages or destroyed portion or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, Obtain and maintain builder's risk insurance (fire and extended coverage)

to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear. In accordance with the Bond Purchase Agreement, during any construction on a 100% basis (completed value form) on the insurable portion of the System, such insurance to be made payable to the order of the Authority, the Issuer, the prime contractor and subcontractors, as their interests may appear.

- b. PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.
 - c. WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.
 - d. FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the revenues or of any other funds of the System. in an amount at least equal to the total funds in the custody of any such person at any one time.
 - e. FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.
 - f. BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.
- B. The Issuer shall require all contractors, if any, engaged in any construction to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of any construction.

The Issuer shall also require all contractors, if any, engaged in any construction to carry such workers' compensation coverage for all employees working on the

project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the project: provided that the amounts and terms of such coverage are satisfactory to the Authority and the DEP, and the Issuer shall verify such insurance prior to commencement of any construction. In the event the Bond Purchase Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7-16. Mandatory Connections

The mandatory use of the sewerage portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 20-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7-17. Completion of Project; Permits and Orders

The Issuer will complete the Design Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the Project, all orders and approvals required by State law necessary for the Project and the operation

of the System and all approvals for the issuance of the Series 2019 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7-18. Compliance with Bond Purchase Agreement and Law

The Issuer shall perform, satisfy and comply with all the terms and conditions of the Bond Purchase Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the DEP with copies of all documents submitted to the Authority. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the DEP or other state, federal or local bodies in regard to the Design Project and the operation, maintenance and use of the System. The Issuer shall perform an annual maintenance audit which maintenance audit shall be submitted to the Authority and the Public Service Commission of West Virginia.

Section 7-19. Securities Law Compliance

The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7-20. Contracts; Change Orders; Public Releases

- A. The Issuer shall simultaneously with the delivery of the Series 2019 A Bonds or immediately thereafter, enter into written contracts for the Design Project.
- B. The Issuer shall submit all proposed change orders to the DEP for written approval. The Issuer shall obtain the written approval of the DEP before expending any proceeds of the Series 2019 A Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the DEP before expending any proceeds of the Series 2019 A Bonds made available due to project underruns.
- C. The Issuer shall list the funding as being provided by the DEP and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Design Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

Section 7-21. Statutory Mortgage Lien

For the further protection of the Holders of the Series 2019 A Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take

effect immediately upon delivery of the Series 2019 A Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Article VIII: Investment of Funds

Section 8-1. Investments

Any monies held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depositors Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8-1.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2019 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2019 A Bonds from gross income for federal income tax purposes.

Section 8-2. Certificate as to Use Proceeds: Covenants as to Use of Proceeds

The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2019 A Bonds as a condition to issuance of the Series 2019 A Bonds.

In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2019 A Bonds as may be necessary in order to maintain the status of the Series 2019 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2019 A Bonds which would cause any bonds, the interest on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority or the DEP, as the case may be, from which the proceeds of the Series 2019 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority or the DEP, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Ordinance.

The Issuer shall annually furnish to the Authority, information with respect to the Issuer's use of the proceeds of the Series 2019 A Bonds and, at anytime, any additional information requested by the Authority.

Article IX: Default and Remedies

Section 9-1. Events of Default

Each of the following events shall constitute an "Event of Default" with respect to the Series 2019 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any Series 2019 A Bonds;
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2019 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2019 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond;

- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or
- (4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9-2. Remedies

Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners: provided, that all rights and remedies of the Registered Owners of the Series 2019 A Bonds shall be on a parity with those of the Registered Owners of the Prior Bonds.

Section 9-3. Appointment of Receiver

Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Design Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the Design Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and

every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Design Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Article X: Payment of Bonds

Section 10.01. Payment of Bonds

If the Issuer shall pay or there shall otherwise be paid. to the Holders of the Series 2019 A Bonds, the principal of and interest, if any, due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2019 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2019 A Bonds from gross income for federal income tax purposes.

Article XI: Miscellaneous

Section 11-1. Amendment or Modification of Bond Legislation

Prior to issuance of the Series 2019 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2019 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2019 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2019 A Bonds so affected and then Outstanding: provided, that no change shall be made in the maturity of the Series 2019 A Bonds or the rate of interest thereon. or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2019 A Bonds required For consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2019 A Bonds from gross income of the holders thereof.

Section 11-2. Bond Legislation Constitutes Contract

The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any

kind of the provisions of the Bond Legislation shall be made in any manner. except as in this Bond Legislation provided.

Section 11-3. Severability of Invalid Provisions

If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2019 A Bonds.

Section 11-4. Headings, Etc.

The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11-5. Conflicting Provisions Repealed

All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict, hereby repealed; provided, that this Section shall not be applicable to the Prior Ordinances. In the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive) so long as the Prior Bonds are outstanding.

Section 11-6. Covenant of Due Procedure, Etc.

The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11-7. Statutory Notice and Public Hearing

Upon adoption hereof an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Nicholas Chronicle, a newspaper of general circulation in the City of Richwood, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates

the issuance of the Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Ordinance 1 adopted 2019.

Article II: Water Service

Section 18-4. Availability

Water service shall be available for general domestic, commercial, industrial, private fire protection and public fire protection service.

Applicable Ordinances

Note: Original ordinance(s) included in this section are applicable to Chapter 18, Article II of the Code, but were adopted without further provision as to their inclusion; such was made at the discretion of the compiler

Ordinance 1: Cross-Connection and Backflow Prevention

- I. Purpose
 - A. To protect the public health and the public water system served by City of Richwood from the possibility of contamination or pollution by isolating within its customer's water distribution system(s), such contaminants or pollutants that could backflow due to back-pressure or back-siphonage into the public water system.
 - B. To promote the elimination and/or control of cross-connections and backflow within a customer's water distribution system(s), non-potable 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.

II. Authority

- A. 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.

III. Responsibility

The Water Purveyor shall be responsible for the protection of the public water 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 an order to said customer to install an approved backflow preventer assembly at each service connection to their 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 grounds for discontinuing water service to the premises until such an approved assembly or assemblies have been properly installed.

IV. Definitions

- A. **Approved:** An applicable specification accepted by the Water Purveyor as meeting a rule stated or cited in the WV Department of Health and Human Resources regulation, or equipment, practice, or procedure accepted as suitable for a proposed purpose.
- B. **Assembly:** A backflow preventer usually consisting of a combination of approved check valve components with approved shutoff valves and test cocks and may include other attached instrumentation.
- 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:** Backflow is the undesirable reversal of water flow or mixture of water and other liquids, gases or other substances into the distribution lines of a potable water system caused by a pressure differential in the distribution pipes.
- E. **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: An air gap is a physical separation sufficient to prevent backflow from occurring between the free-flowing discharge end of a potable water system and an open or a non-pressure receiving vessel. The physical separation is 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 properly 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.

- F. Backpressure: A pressure differential in a water system that causes water to flow back into the water supply when the water user's system is at a higher pressure than the public water system.
- G. 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 water source caused by the sudden reduction of pressure or negative pressure in the potable water system.
- H. Containment (external protection): A method of backflow prevention which requires a backflow preventer assembly installed after a meter and prior to a water service entrance.
- I. Contaminant: A contaminant is 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.
- J. Cross-connection: A cross-connection is any physical (direct or indirect) connection between the public water system and an unapproved water supply or other source of contamination or pollution.
- K. Customer: A customer is described as a billing unit or service connection to which a public water system supplies drinking water. A customer may also be called an owner.
- L. Degree of Hazard: The degree of hazard is the potential risk to public 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 or pollutant. 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 water quality or adversely affect the public water system.
- M. Device: A device is 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.
- N. Fixture Isolation (internal isolation): A method of backflow prevention using a backflow preventer other than at a water service entrance to control a cross-connection or potential source of contamination located at an in-plant or facility piece of equipment or process.
- O. 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. An owner may also be called a customer.

- P. 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.
 - Q. Pollutant: A foreign substance, if permitted to enter the public water system, will degrade potable water quality so as to constitute a non-health 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 the water for domestic use (e.g., appearance or color, odor, taste, etc.).
 - R. Potable Water: Water considered safe for human consumption as described by the West Virginia Bureau for Public Health.
 - S. Public Water System: The facilities and equipment used for the collection, treatment, storage and distribution of potable drinking water from the source of supply to a customer's premises. A public water system may also be called a water purveyor.
 - T. Water Purveyor: The Municipal Water Department, Water Board, Public Service District or other administrative authority invested with the authority and responsibility for a public water system. A water purveyor system may also be called a public water system.
 - U. Water Service Entrance: That point in the customer's water system beyond the sanitary control of the public water system or water purveyor, generally considered to be the outlet end of the water meter and always before any unprotected branch water line.
 - V. West Virginia Bureau for Public Health (WVBPH): WVBPH is an agency of the West Virginia Division of Health and Human Resources.
- V. 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 and 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 potential health hazards, and shall follow the provisions of the Water Purveyor's Cross-Connection and Backflow Prevention program.
 - C. If the Water Purveyor requires that the public water system be protected by containment, the Owner shall be responsible for the installation, testing and maintenance of required backflow preventer assembly(ies). The Owner is responsible for water quality protection beyond the outlet end of the containment assembly(ies) and the Owner may utilize isolation fixture protection for that purpose. The Owner may seek local public health

officials, or personnel from the Water Purveyor or their designated representatives, or certified /licensed private sector personnel to assist them in assessing the needs of their facility(ies) and to assist them in the selection of approved containment assemblies and/or fixture isolation devices, and for the proper installation of these assemblies/devices.

VI. Requirements

A. Water Purveyor

1. On new installations, the Water Purveyor will conduct an on-site survey and/or review of plans in order to determine the type of backflow preventer assembly(ies), if any, that will be required based on cross-connection(s) and the degree of health hazard(s).
2. For premises existing prior to the start of this program, the Water Purveyor will conduct an on-site survey and/or review of plans for cross-connections and actual or potential health hazards, then 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 a cross-connection to remain on any premise unless it is protected by an approved air gap or backflow preventer assembly(ies) which must be regularly inspected and/or tested to ensure satisfactory operation.
4. The Water Purveyor shall inform the Owner by letter, prior to a follow-up survey, of any failure to comply. 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) after the second survey, the Water Purveyor will inform the Owner by letter that the water service to the Owner's premises will be terminated within a period not to exceed five (5) days. In the event that the Owner informs the 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 surveys as necessary to determine the nature of existing or

potential health hazards. The main focus will be on high hazard industries and commercial premises.

7. The Water Purveyor must report to the WVBPH any backflow incident(s) occurring in the public water system as soon as possible but no later than twenty-four hours (24) after the incident.

B. Owner

1. The Owner shall be responsible for the elimination of all cross-connections, actual or potential health hazard(s) and other sources of degradation to the public water system, or provide acceptable backflow preventer protection in each water service line on their premises.
2. The Owner, after having been informed by a letter from the Water Purveyor, shall at his expense, install, maintain, and test, or have tested, any and all backflow preventer assemblies on his premises. This includes the costs of testing newly installed backflow preventer assemblies and required annual testing of all backflow preventer assemblies on their premises thereafter.
3. The Owner shall correct within ten (10) days any malfunction or defective backflow preventer assembly(ies) revealed by periodic testing or visual detection. This may also involve the removal and/or replacement of the backflow preventer assembly(ies). The Owner shall repair, overhaul, or replace and test the assembly at his expense.
4. The Owner shall inform the Water Purveyor of any proposed or modified cross-connection(s) and also any existing cross-connection(s) of which the Owner is aware, but has not been found by 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(ies) 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 and/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 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 surveys for non-compliance with Water Purveyor requirements.
11. The Owner must maintain records from purchase to retirement of new backflow preventer installations, removal of old backflow preventers, test results, repair and maintenance for all assemblies/devices in the Owner's water distribution system(s).
12. The Owner will report any backflow incident(s) occurring in their facility(ies)/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(ies)/building(s). These records and reports are to be made available to the Water Purveyor and/or WVBPH upon request.

VII. Degree of Hazard

The Water Purveyor recognizes the threat to the public water system arising from cross-connections and actual or potential health hazards. All threats will be classified by degree of hazard which will determine the requirements for the installation of approved backflow preventer assemblies.

VIII. Existing In-Use Backflow Preventers

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 a residential installation converting to a business establishment, any existing backflow preventer assembly(ies) 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.

IX. Periodic Testing

- A. Backflow preventer assemblies shall be tested and inspected at the time of initial installation and every twelve months thereafter.
 - B. The Water purveyor may require testing to be done on existing backflow preventer assemblies unless there are records or evidence of test results from the past twelve months indicating that a specific backflow preventer assembly(ies) was passed by a WVBPH certified backflow assembly tester.
 - C. Periodic testing shall be performed by a WVBPH certified backflow assembly tester. This testing will be done at the Owner's expense.
 - D. 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 ensure 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 ensuring uninterrupted water service during testing or repair of one of the assemblies and it is strongly recommended when the Owner desires such continuity.
 - E. Backflow preventer assemblies will be tested more frequently than specified (in IX.A. 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 borne by the Owner.
- X. Records
- A. The Water Purveyor will initiate and maintain for at least two years or otherwise stated the following:
 - 1. Records of all surveys and customer cross-connections.
 - 2. Records on all customer backflow preventer assemblies and devices in service.
 - 3. Records on customer backflow preventer inspections, and tests.
 - 4. Records on customer repairs and replacements.
 - 5. Records of replaced backflow preventers shall be maintained for at least one (1) year after date of removal from service.
 - 6. Records and reports of any backflow incident(s) occurring in the public or owner water systems shall be maintained for at least three (3) years after the date of the incident.

7. Copies of any of the above and other records and/or reports requested by the WVBPH. This material shall be maintained for at least three (3) years after submission.
- B. The owner will maintain a complete set of records of each backflow preventer assembly from purchase to retirement. This will include a list of all tests, inspections, repairs and overhauls. These records of tests, inspections, repairs and overhauls will be submitted to the Water Purveyor upon request.
- C. Upon request, the Water Purveyor will submit records of surveys, tests results, corrective actions, backflow incident reports and other pertinent information to the West Virginia Bureau for Public Health.

Added 2018.

Ordinance 2: Hazardous Conditions

Where conditions hazardous to life or property are found to exist on the customer's premises, or where the utility's regulating measuring or distribution equipment or facilities have been tampered with, the water may be shut off without notice in advance and further subject to reconnect fee. ***Added 2019.***

Article III: Sewer Service

Section 18-5. Discharge of high concentrations of substances other than sewage, etc.; authority of city to regulate use of sewerage facilities

In the event that the sewage, water or other liquid wastes being discharged into the sewers from any building or premises are determined by the city to contain unduly high concentrations of any substances which add to the operating costs of the sewerage facilities of the city, the city may establish special rates or charges as to such class of building or premises; or the city may require the owner or other interested party to treat especially such sewage, water or other liquid wastes before they are discharged into the sewers.

The city may establish rules and regulations regarding the use of the sewerage facilities which may control the amount and characteristics of wastes permitted to be discharged therein where such quantities or characteristics may be injurious to the works or deleterious to their operation.

Applicable Ordinances

Note: Original ordinance(s) included in this section are applicable to Chapter 18, Article III of the Code, but were adopted without further provision as to their inclusion; such was made at the discretion of the compiler

Ordinance 1: Sewerage and Sewage- Disposal Service

Rules and Regulations

Rules and Regulations for the Government of Sewerage 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.

Applicability

Available within the entire area served upon substantial completion of the sewer collection system improvement project.

Availability of Service

Available to general domestic, commercial, industrial and sale for resale sewer service.

Rates

First 2,000 gallons: \$18.58 per 1,000 gallons
 Next 3,500 gallons: \$12.51 per 1,000 gallons
 Next 5,000 gallons: \$11.76 per 1,000 gallons
 Next 20,000 gallons: \$8.81 per 1,000 gallons
 Next 50,000 gallons: \$7.83 per 1,000 gallons
 All over 80,000 gallons: \$3.92 per 1,000 gallons

Minimum Charge

No bill will be rendered for less than \$37.16 per month, which is the equivalent of 2,000 gallons.

Flat Rate Charge

Equivalent of 4,451 gallons: \$68.44 per month.

Flow Measurement

In the event a building or premise discharging sewage, water or other liquid wastes into the municipal sewerage system uses water supplied by other than a metered basis from either private or public water supply, then in each such case the owner or occupant shall be required to install an approved measuring device and the quantity of flow measured by said device shall determine the rate at which said building or premise is to be charged. Pending the installation of such device, the rate of charge shall be based on the estimated quantity of water discharging into the sewage system. Said estimation to be made by the Water Board and/or its representative.

In the event a lot, parcel of land, building, or premise uses water in excess of 4,500 gallons per month, and it can be proved that a substantial portion of said excess water does not and cannot enter the sewage system, then the Water Board may estimate the amount of excess water that does enter the sewage system and charge a rate equal to that amount. The Water Board may, also, require the installation of additional measuring devices so as to measure the actual amounts entering the sewage system.

Connection Fee

A connection fee of three hundred dollars (\$300) shall be charged for all new connections onto the sewage system. No connection is to be made until this fee is paid per tariff rules.

Security Deposits

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, whichever is greater. This fee may be changed by applicable statutory provisions.

Delayed Payment Penalty

The above schedule is net. On all amounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

Returned Check Charge

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25 will be imposed upon any customer whose check for payment of charges is returned by their bank due to insufficient funds. No such charge shall be assessed if the customer has paid a water returned check charge for the same check.

Leak Adjustment

\$1.22 per 1,000 gallons is to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such unusual consumption above customer's historical average usage.

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Chapter 19: Floodplain Ordinance

Note: Original ordinance called for adoption of a “chapter 26” to the Code; however, such adoption was deemed inapplicable to the Code in its current condition by compiler. Therefore the ordinance is positioned as such, with other necessary revisions, amendments and addendums included with appropriate notation. Adopted 2011.

Article I: General Provisions

Section 19-1. Authority

- A. The provisions of this ordinance have been prepared with the intention of meeting the requirements of [The National Flood Insurance Act of 1968 \(42 U.S.C. 4001 et seq.\) Amended by the Congress of the United States through the 15th of February, 1975 \(Public Law 91-152\)](#).
- B. Authority to adopt, administer and enforce this ordinance is vested in the City of Richwood pursuant to West Virginia State Codes [8-12-14](#), [7-1-3n](#), [7-1-3v](#) and [7-1-3kk](#).

Section 19-2. Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the City of Richwood.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future and protect natural drainage.
- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by [WV State Code 11-3-3A](#).
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the City of Richwood, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 19-3. Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 19-4. Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within City of Richwood, unless permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed as defined in this ordinance, a site plan with elevation data shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the City of Richwood's needs to minimize the hazards and damage resulting from flooding.

Section 19-5. Matters not provided for specifically

Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

Article II: Interpretations and Definitions

Section 19-6. Interpretations

For the purpose of this ordinance, the following interpretations shall apply:

1. Words used in the present tense include future tense.
2. The singular includes the plural.
3. The plural includes the singular.
4. The word "person" includes a corporation, unincorporated association or partnership as well as an individual.
5. The term "shall" or "will" is always mandatory.

6. The word “building” or “structure” shall be construed as if followed by the phrase “or part thereof.”
7. The word “ordinance” shall refer to the Floodplain Ordinance.

Section 19-7. Definitions

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance its most reasonable application.

Apartment Structure

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.

Base Flood

Means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Evaluation (BFE)

The water surface elevation of the base flood in relation to the datum specified on the City of Richwood’s Flood Insurance Rate Map. For the purpose of this ordinance, the one hundred year flood or 1% annual chance flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Certificate of Compliance

A certification that all development is in compliance with 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 special flood hazard area.

Contractor - [WV State Code 21-11-3\(c\)](#)

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits

a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be before performing contracting work
- (4) A pest control operator Licensed under the provisions of section seven, article sixteen-a, chapter nineteen of the West Virginia Code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or
- (5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a Registered Professional Engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Critical Facility

Any facility in which, even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities, These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it should be provided a higher level of protection so that it can continue to function and provide services during a flood,

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood

A general and temporary inundation of normally dry land areas.

Flood Insurance Rate Map (FIRM)

The official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Richwood. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study

The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information and water surface elevations.

Floodplain

- (1) A relatively flat or lowland 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.

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 nonstructural 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 or purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood anti floodway condition, such as wave action, blockage at stream crossings, and increased runoff from urbanization of the watershed. Freeboard also tends to lower the cost of flood insurance.

Highest Adjacent Grade (HAG)

The highest natural elevation of the ground surface immediately adjacent to the development or structure foundation. This is primarily used during insurance rating in approximated floodplains.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or,
 - (ii) Directly by the Secretary of Interior in states without approved programs.

Licensed Manufactured Home Retailer

A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV State Code.

Licensed Manufactured Home Installer

A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.

Licensed Professional Surveyor

Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.

Lowest Adjacent Grade (LAG)

The lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation,

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2 and usable solely for parking of vehicles, building access or storage in an area other than abasement area is not considered a building's lowest floor; Provided, that such enclosure has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after 09/27/1991 and including any subsequent improvements to such structures. Any construction started after effective date of the City of Richwood first floodplain ordinance adopted by the City of Richwood and before the effective start date of this floodplain ordinance is subject to the ordinance in effect at the time the ordinance was issued. provided the start of construction was within 180 days of permit issuance.

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.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Practice of Engineering

Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects, engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connect[on with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a Registered Professional Engineer, or by using another title implies that he or she is a Registered Professional Engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis;

- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered Professional Engineer

A person who has been duly registered or licensed as a Registered Professional Engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.

Remedy a Violation

To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Reasonably Safe from Flooding

Means that during the base flood, water should not damage structures and any subsurface waters related to the base flood should not damage existing or proposed structures.

Special Flood Hazard Area

The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-3D, and A99. This term shall also include areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

Start of Construction

The date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation, Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection

of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement. This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed.

The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Top of Bank

The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank, in the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank may be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.

Violation

The failure of any structure or development to be fully compliant with all the requirements of this ordinance, Any structure or other development tacking the certifications, finished construction event, on certificate or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

Article III: Establishment of the Special Flood Hazard Area

Section 19-8. Identification

- A. The special flood hazard area shall be those areas of the City of Richwood which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the City of Richwood by the Federal Emergency Management Agency (FEMA) dated 07/04/2011 or the most recent revision thereof, including all digital data developed as part of the FIS.

- B. The special flood hazard area shall also be those areas identified by the City of Richwood by use of historic or other technical data and shown on an officially recognized "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 19-9. Descriptions of Special flood hazard areas

- A. The special flood hazard area shall consist of the following four specific areas:
- a. The Floodway shall be those areas of AE zone identified as Floodways in the FIS and as shown on the FIRM. The term shall also include any floodway areas delineated by developers in the approximated floodplain and designated as such by the City of Richwood.
 - b. The Floodway Fringe shall be those areas of AE zone for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
 - c. The AE Area without Floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
 - d. The Approximated floodplain shall be those areas identified as an A zone on the FERM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided.

Section 19-10. Changes in Designation of Area

- A. The delineation of the special flood hazard area may be revised by the City of Richwood where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
- B. A City of Richwood's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information becomes available, the City of Richwood shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
- C. The City of Richwood may identify and regulate new local flood hazard or ponding areas, These areas may be delineated on a 'Local Flood Hazard Map' using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

Section 19-11. Boundary Disputes

Should a dispute concerning the location of proposed development relative to a special flood hazard area arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the City of Richwood. The burden of proof shall be on the appellant/applicant.

Section 19-12. Elevations Prevail

Elevation data certified by a Licensed Professional Surveyor or Registered Professional Engineer shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

- A. The proposed development will automatically conform to the flood damage reduction requirements of this ordinance if the natural lowest adjacent grade (LAG) to the proposed development is at or above the closest applicable base flood elevation (BFE) specified in the flood insurance study. The applicant shall be advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the special flood hazard area designation removed from the structure or specific area. If the difference between LAG and BFE is modest the applicant will also be advised to use caution during site preparation or excavation and information concerning the Preferred Risk Policy should be provided.
- B. The proposed development shall be considered to be within the special flood hazard area if the natural LAG to the proposed development is below either; 1. The closest applicable BFE specified in the flood insurance study, or 2. The reasonably safe from flooding elevation determined by the City of Richwood in approximate floodplains. The proposed development shall then be required to conform to all appropriate flood damage reduction provisions of this ordinance.

Article IV: Utilization of the Special Flood Hazard Area

Section 19-13. Floodway

Within any floodway, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the City of Richwood during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator

- A. 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.
- a. 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.
 - b. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
 - c. 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.
 - d. In special flood hazard areas for which no regulatory floodway has been designated, the regulatory floodway for small, single lot development not incorporating significant amounts of fill can, at the discretion of the City of Richwood, be determined to be the channel of the stream and the adjacent land rseas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

Section 19-14. Floodway Fringe

Within any Floodway Fringe area any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

Section 19-15. AE without Floodway

Within any AE without Floodway area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway where determined.

Section 19-16. Approximated Floodplain (Zone A)

- A. Within any Approximated Floodplain;

- a. The Floodplain Administrator shall use elevation and floodway information from Federal, State, or other acceptable sources when available to determine the elevation above which development will be reasonably safe from flooding.
- b. When data from an acceptable source is not available, the Floodplain Administrator shall review, or shall cause to be reviewed; all proposed development to determine; 1. The amount being invested and, 2. The specific flood risk at the site, The Floodplain Administrator shall then require the applicant to determine if the elevation above which the development will be reasonably safe from flooding using elevation data, hydrologic and hydraulic analyses or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
- c. 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.

Section 19-17. Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate, a stream within the special flood hazard area the developer shall notify in writing, by certified mail, the City of Richwood, the Floodplain Administrator, the State Coordinating Office, any adjacent communities and any adjacent property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Emergency Management Agency (FEMA). In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
- B. The developer shall also assure the City of Richwood in writing that the flood carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer, who shall certify that the methods used correctly reflect

currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- C. 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.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the City of Richwood 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 19-36 of this ordinance.
- F. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.

Article V: Criteria for Building and Site Plan Approval

Section 19-18. General

Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Located in an identified Floodplain, Floodway or other special flood hazard area.
- B. 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.

- C. Constructed with material and utility equipment resistant to flood damage as outlined in [FEMA Technical Bulletin 2](#) or the most recent revision thereof.
- D. Constructed by methods and practices that minimize flood damage.
- E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are desired and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. To comply with [WV State Code 11-3-3a](#). concerning County Assessor “Building or real property improvement notice”
- G. Approved by County Health Department for Water and Sewer to assure facilities are designed or located in compliance with the flood damage reduction requirements of this ordinance.

Section 19-19. Basic Format

The basic format of the permit shall include the following:

- A. Name and address of applicant.
- B. Name and address of owner of land on which proposed development is to occur.
- C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits slating 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.
- D. A description of Site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number,
- E. 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.
- F. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 19-32 hereof.
- G. An acknowledgement that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
- H. The contract required by [WV Code of State Regulations, Title 28, Series 4](#), and all addendums to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The City of Richwood does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate

value of less than ten thousand dollars (\$10,000) including materials and labor, a brief written description of proposed work and the estimated value will suffice.

Section 19-20. 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 Special flood hazard area:

- A. 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 finished construction elevation certificate shall be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate shall confirm that the structure in question, together with attendant utilities is elevated in compliance with permit conditions.
 - g. A non-conversion agreement shall be signed by the applicant whenever the City of Richwood 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:

- 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 19-36 of this ordinance.
- B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum floodproofing 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 a. above, stating that the finished structure, 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 demerit 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.
- C. For Appurtenant structures constructed of flood resistant materials used solely for parking of vehicles or limited storage, (Appurtenant 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 part when a floodway is present on the site.

- b. An elevation certificate, based on finished construction, must be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate confirm that the structure in question, together with attendant utilities is designed so that:
 - i. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 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 threes on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- 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 19-10 of this ordinance.

Section 19-21. Site Plan Criteria

Site plans are required for all development, new construction and substantial improvements determined to be located in a special flood hazard area and all proposed Subdivisions and Manufactured Home Parks. These proposals shall be reviewed by the

Floodplain Administrator to assure that they are consistent with the need to minimize flood damage.

The owner or developer shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- A. A map showing the location of the proposed subdivision and/or development with respect to special flood hazard areas, proposed lot sites, and fills.
- B. Name of Registered Professional Engineer, Licensed Professional Surveyor or other qualified person responsible for providing the information required in this section.
- C. Where the subdivision or manufactured home park lies partially or completely in the special flood hazard areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the special flood hazard areas. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.
- D. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway when directed to do so by the Floodplain Administrator.
 - a. When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study shall be used to substantiate the base flood.
 - b. If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
 - c. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.
- E. Where the subdivision or other development site lies partially in the special Flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the approximated floodplain (Zone "A") boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan or the proposed development must show contours at intervals of two (2) or five (5) feet, depending on the slope, and clearly delineate the area to be developed and (the

location of the special flood hazard area boundary as sealed from the ERMA map. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.

Section 19-22. Restrictions to Subdivision of land in special flood hazard areas.

Subdivision of land in the special flood hazard area shall result in lots that include a buildable portion outside of the special flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the special flood hazard area limits. All new structures shall be sited on the portion of the subdivided lot that is located outside of the special flood hazard area.

Article VI: Specific Requirements

Section 19-23. 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 Special flood hazard area.

A. Basements and Lowest Floors

- a. Residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures shall have the lowest floor, including basement ductwork and utilities elevated to two feet above the Base Flood Elevation.
- b. Non-residential Structures - All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
- 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 shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:

- i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - ii. The bottom of all openings shall be no higher than one foot above grade.
 - iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- d. A non-conversion agreement shall be signed by the applicant on all floodproofed structures and any elevated structures when the City of Richwood 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:
- 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 19-36 of this ordinance.

B. Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in special flood hazard areas pose an elevated risk to safety and substantial damage to property. Therefore;

- a. All manufactured homes to be sited within the special flood hazard areas of City of Richwood shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The Licensed Manufactured Home Installer shall use an installation design engineered to withstand flood hazards specific to the particular home sites. Manufactured homes to be placed or substantially improved within the special flood hazard areas shall be installed in accordance with the following standards:

- i. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation
 - ii. Elevation shall be on reinforced piers on a permanent foundation, or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area installation design incorporating dry stacked block piers shall not be used in special flood hazard areas.
 - iii. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by [West Virginia Code § 21-9-4](#) or the most recent revisions thereof. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
 - iv. Permanently attached rigid skirts and/or perimeter wall skirts of brick or block shall have openings to prevent collapse and damage to supporting piers. The openings shall be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 1. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 2. The bottom of all openings shall be no higher than one foot above grade.
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - v. Any additions to a manufactured home shall be similarly anchored and vented.
- b. The licensed WV Manufactured Home installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this ordinance.

- c. The Building Permit Officer shall issue one window sticker for all new or replacement Manufactured Homes being permitted to be placed within the special flood hazard area. The sticker must be prominently displayed on a window pane facing the street and must remain permanently unobstructed and visible from the street. The sticker shall show the number of the permit, the date of its issuance, and be signed by the Floodplain Administrator. Any manufactured home that secures a permit but fails to have the permit or the sticker properly displayed will be subject to an on-site inspection fee of \$25.
- C. Appurtenant Structures
- a. Except as provided in subsection b below, appurtenant structures shall be located out of the special flood hazard area or elevated to two feet above the Base Flood Elevation.
 - b. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - i. Use of the structure shall be restricted to parking or limited storage.
 - ii. Structures shall be no more than 200 square feet in size and valued at less than \$5,000.00.
 - iii. Floors shall be at or above grade on at least one side.
 - iv. Structures shall be located, oriented and constructed to minimize flood damage.
 - v. 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.
 - vi. Flood resistant materials as detailed in FEMA Technical Bulletin 2-93 shall be used in the portions of the structure below
 - vii. Machinery, electric devices or appliances and all utilities shall be located at least two feet above the Base Flood Elevation.
 - viii. The venting requirements contained in Section 19-23A are applicable and shall be strictly adhered to.
 - c. A non-conversion agreement shall be signed by the applicant stating that the use of the apartment 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 the 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 19-36 of this ordinance.

D. Recreational Vehicle Placement

- a. Recreational vehicles to be placed within any special flood hazard area shall either:
 - i. Be on site for fewer than 180 consecutive days. Or,
 - ii. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or pick log system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
 - iii. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E. Fill

The City of Richwood officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Therefore;

- a. Placement of fill in the special flood hazard area is discouraged and should be minimized.
- b. No fill shall be permitted in the floodway.
- c. Placement of fill in other areas of the special flood hazard area shall be restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill.
- d. No fill shall be permitted unless it meets the requirements of Section 19-13 of this ordinance. All fill placed in the special flood hazard area shall meet or exceed the following standards:
 - i. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The City of Richwood may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by Registered Professional Engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a

statement of findings in basic terms. In addition, studies, analyses, computations. etc.. shall be submitted in sufficient detail to allow a thorough technical review by the City of Richwood. During permit review the City of Richwood shall consider the following issues that have the potential to cause adverse impact to adjacent properties:

1. Unacceptable increases in flood heights.
 2. Blocking drainage from adjacent property.
 3. Deflection of floodwaters onto adjacent existing structures.
 4. Increases to stream velocity initiating or exacerbating erosion problems.
 5. Other unique site conditions may be considered when determining whether fill will cause adverse impacts to adjacent property including, but not limited to, subsidence areas, Karst topography. stream blockages, and steep topography adjacent to the channel.
- ii. 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.
 - iii. Filled site shall be contoured to drain properly (avoid ponding)
 - iv. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
 - v. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
 - vi. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards shall be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
 - vii. 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.
 - viii. Fill site and fill shall be protected from erosion.

1. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 2. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second will be protected from erosion by armoring them with stone or rock slope protection.
- ix. All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.
 - x. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and for Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.

F. Placement of Structures and other development

- a. 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.
 - i. Whenever possible, structures and other developments shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - ii. So far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.

G. Anchoring

- 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.

H. 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.
- b. Necessary public works and temporary construction may be exempted from this subsection.
- c. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.

I. Storage

- 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 easily 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.

J. 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.

K. Drainage

- a. Adequate drainage shall be provided to reduce exposure to flood hazard.
- b. Adequate drainage paths are required around structures or slopes within zones AH and AO to guide floodwaters around and away from proposed structures.

L. Backflow Preventers

Backflow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the special flood hazard area.

Article VII: Administration

Section 19-24. Designation of Floodplain Administrator

The City Recorder is hereby appointed as Floodplain Administrator and is vested with the responsibility, authority and means to implement the commitments made in the agreement with the Federal Government to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning the City of Richwood's participation in the National Flood Insurance Program.

Section 19-25. Development Permits and Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within City of Richwood, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

Section 19-26. Approval of Permits and Plan

- A. 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.

- B. 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.
- C. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.
- D. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
- E. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
- F. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
- G. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
- H. The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- I. The City of Richwood 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.

Section 19-27. Application Procedures

Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the City of Richwood, and shall include all information stipulated under Article V of this ordinance.

Section 19-28. Changes

After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or any of the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

Section 19-29. Permit Placards

The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

Section 19-30. Start of Construction

Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development shall be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- A. Has the developer diligently pursued the completion of the proposed development during the 18 months?
- B. Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

Section 19-31. Stop-Work Orders, Violation Notice and Revocations

- A. Inspections
 - a. Upon learning of a potential violation of this ordinance, the Floodplain Administrator or staff shall investigate to determine whether a violation has occurred.
 - b. During the construction period, the Floodplain Administrator or other authorized officer may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances,
 - c. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in noncompliance with the requirements of this ordinance.
- B. Stop-Work Orders
 - a. The Floodplain Administrator shall immediately issue, or cause to be issued, a "Stop-Work Order" for any development found ongoing without having obtained a floodplain determination or a permit. Disregard of a stop

work order shall subject the violator to the penalties described in Section 19-36 of this local law.

C. Violation Notice and Revocations

- a. When it appears after investigation that a permitted development is non-compliant with the provisions of this law and/or the conditions of the permit, the Floodplain Administrator shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation be corrected within fifteen (15) days from the date appearing on the notice. Failure to correct the violation within this time period shall be cause for revocation of the permit and the governing body, or authorized employee or agent to:
 - i. Seek an injunction in the Circuit Court of Nicholas County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
 - ii. Seek a misdemeanor conviction in magistrate court or circuit court.

Section 19-32. Certificate of Compliance

- A. In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises. or both, or part thereof hereafter created, erected, installed, changed. converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the 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 19-36 of this local law.
- B. In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or promises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the 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 19-36 of this local law.
- C. In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 19-36 of this local law.

- D. A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- E. 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.

Section 19-33. Fees

- A. A Floodplain Determination fee shall be assessed on all proposed development. This shall be a flat fee approved by the City of Richwood.
- B. Proposed development determined to be occurring in a special flood hazard area regulated by this ordinance shall be assessed an additional fee payable to the City of Richwood based upon a set schedule approved by the City of Richwood using the estimated value of the proposed construction as determined by the Floodplain Administrator.
- C. Government Related agencies and nonprofit organizations shall obtain a permit, but shall be exempt from the above fees.
- D. In addition, the applicant shall be responsible for reimbursing the City of Richwood 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.
- E. Due to the increased cost of processing, when any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.
- F. There is created in the City of Richwood a special revenue fund, administered by Recorder, designated the "floodplain development fund". This fund is not part of the general revenue fund of the City of Richwood. All fees collected pursuant to this ordinance shall be deposited into the floodplain development fund. The floodplain development fund shall contain all fees or penalties collected pursuant to this ordinance, any appropriations to the fund; and any gifts, grants or contributions received.

- G. The City of Richwood is restricted to, and shall distribute funds from, the floodplain development fund only for administrative costs associated with management of floodplain development, the maintenance or creation of maps and studies used to administer floodplain development and other activities which will promote and enhance floodplain management issues generally.
- H. Application for a building permit shall be accompanied by a fee, payable to the City of Richwood, based upon the estimated cost of the proposed construction as determined by the City Recorder at the following rates:

Estimated Cost	Fees
<u>\$0.01 to \$200</u>	<u>\$0.00</u>
<u>\$201 to \$20,000</u>	<u>\$5.00 per thousand.</u>
<u>\$20,001 to \$100,000</u>	<u>\$3.00 per thousand for \$20,001 to \$100,000.</u>
<u>\$100,001 or more</u>	<u>\$2.00 per thousand in excess of \$100,000.</u>

Article VIII: Appeals and Penalties

Section 19-34. Appeals

Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the City of Richwood which shall be known as the Appeals Board. Such appeal shall be filed with the City of Richwood Common Council, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and place not less than ten (10) nor more than sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

Section 19-35. Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- B. 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 Appeals Board 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 local laws or ordinance.
- b. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
- c. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- d. The Appeals Board shall notify the applicant in writing over the signature of a City of Richwood official that (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 (d) of this section; and
- e. The Appeals Board 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 Emergency Management Agency (FEMA).
- f. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 19-36. Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the City of Richwood, shall be unlawful and shall be referred to the municipal attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the City of Richwood of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. Each day during which any violation of this ordinance continues shall constitute a separate offense, In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such

persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the City of Richwood to be a public nuisance and abatable as such.

Article IX: Government Actions

Section 19-37. Jurisdictional Boundary changes

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets or exceeds the requirements for participation in the National Flood Insurance Program
- B. 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.
- C. All plans or maps of annexation shall show the special flood hazard area boundaries, Base Flood Elevation and location of the floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities will notify the Federal Emergency Management Agency (FEMA) and the State Coordinating Office in writing whenever the boundaries of the City of Richwood have been modified by annexation or the City of Richwood 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 Rate Maps accurately represent the City of Richwood's boundaries, a copy of a map of the City of Richwood suitable for reproduction, clearly delineating the new corporate limits or new area for which the City of Richwood has assumed or relinquished floodplain management regulatory authority shall be included with the notification.

Section 19-38. Permits for Government Entities

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance shall provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

Article X: Severability and Municipal Liability

Section 19-39. 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.

Section 19-40. Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the City of Richwood or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City of Richwood.

Chapter 20: Prohibited Activities During Emergency

Note: Original ordinance called for adoption of a “chapter 27” to the Code; however, such adoption was deemed inapplicable to the Code in its current condition by compiler. The ordinance is positioned as such, with other necessary revisions, amendments and addendums included with appropriate notation. Adopted 2003.

Section 20-1. Definitions

For the purpose of this ordinance, the following terms shall apply:

1. Disaster or Other Emergency. The terms “disaster or other emergency” shall mean the events and subsequent or resulting situation of service interruption in public utility or other systems arising from enemy attack, or fire, or wildfire, flood, winter storm, tornado, or other natural causes
2. Alcoholic liquors and nonintoxicating beer. The terms “Alcoholic liquors and nonintoxicating beer” shall have the meaning as defined in [section three, article sixteen, chapter eleven §11-3-16, of West Virginia Code](#).
3. Person. The word ‘person’ shall extend and be applied to firms, partnerships, associations, bodies political and corporate or any other group acting as a unit, as well as to individuals

Section 20-2. Declaration of Emergency by Executive Order

- (A) The Mayor, City of Richwood, Nicholas County, West Virginia (hereinafter ‘Mayor’) is the chief elected municipal official and is empowered to provide for the good order of the City of Richwood, as well as the general welfare of the citizenry, and to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome.
- (B) The Mayor may declare a state of emergency within the corporate limits of the City of Richwood (herein after “City”), in instances of natural or other disaster, or imminent threat of disaster, by Executive Order, thereby activating provisions of this or other pertinent ordinance during the course of the disaster period.
- (C) The Mayor may incorporate the provisions of sections 20-3, 20-4 and/or 20-5, below at his discretion in the interest of preserving good order and minimizing impact of disaster event(s) upon the citizenry of the City.

Section 20-3. Restriction and/or Prohibition of Operation and Use of Private Motor Vehicles

- (A) The operation of vehicles, save for emergency response and related vehicles, within or upon the streets within the corporate limits of the City of Richwood shall be restricted or prohibited in time of municipal emergency.
- (B) Notwithstanding any other provision of this ordinance, it shall not be an offense for any person to lawfully operate a private vehicle upon his own private property located within the corporate limits of the City.

Section 20-4. Extension of Hours on Curfew Restrictions for Minors and Broad Interpretation of Miscellaneous Offenses

- (A) The Mayor may extend hours of curfew for minor children in time of emergency from those contained in Chapter 14 — Offenses — Miscellaneous, at § 14-2, Richwood Municipal Code, from thirty (30) minutes before dusk until 7:00 AM the next following day, when such additional restriction is considered necessary to help minimize or prevent injury to minor children during periods of darkness, including but not limited to unnecessary exposure to inclement weather or other hazardous condition.
- (B) The Mayor may cause the provision of Chapter 14 — Offenses — Miscellaneous, Richwood Municipal Code, to be broadly applied to prevent public congregations during a state of emergency, particularly where such congregation may hamper the activity of law enforcement personnel or vehicles, or authorized emergency-services responders or vehicles.

Section 20-5. Restriction and/or Prohibition of Sale of Alcoholic Liquors and Nonintoxicating Beer

- (A) The Mayor may during periods of emergency, restrict hours of sale, or prohibit altogether sales of alcoholic liquors and nonintoxicating beer at any establishment which usually offers alcoholic liquors and nonintoxicating beer for public sale.
- (B) The Mayor shall cause to have strictly enforced the provisions of [WV Code §60-3-22](#), which prohibits sale of alcoholic liquors and nonintoxicating beer to any 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 any of the provisions of chapter sixty-a of the Code of West Virginia; or (5) Mentally incompetent.

Section 20-6. Penalties

- (A) Any violation of section(s) 20-3, 20-4 and/or 20-5, constitutes the commission of a misdemeanor criminal offense, and the police department of the City of Richwood, or any other officer of any other police agency exercising proper jurisdiction within the corporate limits of the City of Richwood, is hereby authorized and empowered to issue a citation and to charge any person who commits a violation of said section(s) 20-3, 20-4 and/or 20-5, jurisdiction thereof being in the Municipal Court of the City of Richwood.
- (B) 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 court costs.
- (C) Any person convicted of a second or subsequent 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,

Section 20-7. Declaration

Nothing contained within this ordinance 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 City of Richwood, 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 City of Richwood, relating in any manner to the enforcement or non-enforcement of this ordinance by the officers, officials, employees, or agents of the City of Richwood.

Section 20-8. Severability

The provisions of this ordinance 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 ordinance not specifically held to be invalid.

[portions of this chapter removed due to redundancy]

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Chapter 21: Airport Authority

Note: This chapter has been added to the Code at the compiler's discretion. Adopted 1990.

Article I: Purposes and Powers

1. Pursuant to [Chapter 8, Article 28, of the West Virginia Code](#), the City of Richwood has acquired and established an airport known as the Richwood City Airport.
2. As permitted by Chapter 8, Article 28, Section 4, of the West Virginia Code, the Governing Body of the City of Richwood has by resolution dated 9th day of January, 1990, established the Richwood City Airport Authority, and authorized it to exercise all powers permitted by Chapter 8, Article 28, of the West Virginia Code
3. The Richwood Airport Authority shall consist of a Commission of three members appointed and approved by the Governing Body of the City of Richwood.
4. The purposes of the Richwood City Airport Authority include, but are not limited to, the following:
 - a. To continuously evaluate the needs for air transportation service, and to make recommendations to the Governing Body about ways to improve the services of the Airport to the public.
 - b. To cooperate and coordinate with other transportation services in the area.
 - c. To receive donations of money or personal property from any legitimate source on behalf of the Richwood City Airport.
 - d. To equip, improve, maintain, operate and lease the Richwood City Airport, all subject, however, to approval of the Governing Body of the City of Richwood as required by statute.
 - e. To adopt rules and regulations and to establish fees and charges for the use of the airport, subject, however, to the approval of the Governing Body of the City of Richwood before they take effect, as required by statute.
 - f. To conduct public meetings, as it shall deem desirable about matters pertaining to the Richwood City Airport, or air transportation in the area.
5. The Governing Body of the City of Richwood has, by resolution dated the 9th day of January, 1990m authorized, empowered, and vested jurisdiction in the Richwood City Airport Authority, to perform the following acts, duties and functions:
 - a. To improve, maintain, operate, equip, lease, and make additions to the Richwood City Airport; provided, that the acts of the Richwood City Airport

Authority shall be subject to prior approval by the Governing Body the City of Richwood, as is required by Chapter 8, Article 28, Section 4, of the West Virginia Code.

- b. To adopt rules and regulations to establish fees and charges for the use of the Richwood City Airport; subject, however, to the approval of the Governing Body of the City of Richwood before they shall take effect, as is required by Chapter 8k, Article 28, Section 4 of the West Virginia Code.

Article II: Membership

1. The members of the Richwood Airport Authority shall be nominated by the Mayor of the City of Richwood, and shall be approved and appointed by the Governing Body of the City of Richwood.
2. In addition to those persons nominated by the Mayor, individuals may also be nominated to become members of the Richwood City Airport Authority by any two (2) citizens of the City of Richwood, and the Governing Body shall choose the members of the Richwood City Airport Authority from among those so nominated and those nominated by the Mayor. Nominations by citizens shall be made in writing and presented to the Richwood City Council.
3. There shall be, at least, three (3) Regular members of the Richwood City Airport Authority.
4. Each of the three (3) regular members shall serve a 2 year term, or until his or her successor is nominated, approved, and appointed whichever is longer.
5. A member may be nominated by the Mayor and approved and appointed by the Governing Body of the City of Richwood to fill any vacancy on the Richwood City Airport Authority; and in such event, he or she shall serve the remainder of the unexpired term.
6. At least 3 members of the Richwood City Airport Authority shall be members of the Richwood City Council.
7. Any person residing within the Airport's service area in Nicholas County, West Virginia, is eligible to serve as a member of the Richwood City Airport Authority.
8. In addition to the above described regular members, at-large members may be appointed to the Richwood City Airport Authority by the Governing Body of the City of Richwood. These appointments may be made when it is deemed advisable to acquire special skills and advice, or input from consumers of air transportation services. The term of at-large members shall not exceed one (1) year, and may be for such shorter term as the Governing Body may designate. At-large members shall have the right to vote upon all matters at meetings of the Richwood City Airport Authority.
9. Any member who fails to attend any three (3) consecutive regular meetings of the Richwood City Airport Authority shall be deemed to have resigned; provided,

however, that within five (5) days, the secretary shall send a letter to such Director's last known address advising him or her of this By-Law, and advising that he or she is hereby deemed to have resigned, subject to the right to appear before the Richwood City Council at its next regular meeting and seek reinstatement for good cause. The vacancy due to such resignation shall be reported to the Mayor and to the Richwood City Council at its next regular meeting. The Governing Body may, in its sole discretion, reinstate any member absence [sic] for three (3) consecutive meetings if it finds that his or her absences were for good cause and should be excused.

10. A member's term of office shall terminate if he or she is convicted of a felony, or if he or she no longer resides in Nicholas County, West Virginia.
11. No member shall vote upon any motion or question in which he or she has a financial interest, directly or indirectly, or has affiliations or concerns in or about the matter from a standpoint other than as a member of the Richwood City Airport Authority.

Article III: Meetings

1. Place. All meetings of the Richwood City Airport Authority shall be held at the Richwood City Hall, provided that any regular or special meeting may be held at any place in Nicholas County, West Virginia, upon unanimous advance agreement of the members.
2. Quorum. No business shall be conducted at any meeting unless a majority of the members are present.
3. Parliamentary Procedure. Meetings shall be conducted in accordance with Robert's Rules of Order.
4. Proxy. There shall be no proxy votes in any meeting.
5. Regular Meetings. Members shall meet, at least, monthly to conduct business that may be brought before them; and the regular meetings shall occur on the 2nd Tuesday of each calendar month at 7 o'clock P.M.. No notice of regular meeting shall be required.
6. Special Meetings. Special meetings may be called by the President, or by any two (2) members. Except upon unanimous notice, no special meeting shall occur unless a written notice thereof shall be deposited in the United States Mail, postage prepaid, addressed to each member at his or her last known address at least five (5) days before the day and time of the special meeting. Each notice shall include: time, place, date, purpose, and agenda. There shall be no deviation from the agenda unless two-thirds (2/3) of the members vote to open the agenda.
7. Annual Meeting. The annual meeting for the Richwood Airport Authority shall be the regular monthly meeting in June of each year.

8. Open to the Public. All meetings of the Richwood City Airport Authority shall be open to the public. The Richwood City Airport Authority may hold executive sessions; however, all motions and persons voting for and against such motions shall be repeated in public.
9. Notification. Notification of all regular meetings shall be published in the local newspaper approximately one (1) week prior to the date of that meeting.

Article IV: Reporting

The Richwood City Airport Authority shall report to the Governing Body of the City of Richwood, at least, annually, and as often as the Governing Body of the City of Richwood requests.

Article V: Compensation

Members shall serve without compensation; however, travel pay at the rate of \$0.20 per mile is authorized, and meals and all other reasonable expenses may be reimbursed upon approval of them by the Governing Body of the City of Richwood.

Article VI: Officers

1. The officers of the Richwood City Airport Authority shall consist of a President, Vice-President and Secretary-Treasurer, who shall be elected by the members at the first meeting of the Authority, and thereafter at each annual meeting of the Authority; and shall hold office until the next annual meeting or until successors are elected. The President and Vice-President shall be members of the Richwood City Airport Authority. A person who is not a member of the Richwood City Airport Authority may be elected to serve as Secretary-Treasurer.
2. The President shall be the Chief Executive Officer of the Richwood City Airport Authority, and shall preside at all meetings, shall have general supervision of its business and affairs, and shall perform and exercise all duties and authority which may be conferred upon him from time to time. The President shall appoint all Committees of the Richwood City Airport Authority and their Chairpersons. The President shall serve as an ex-officio member of all standing and ad hoc committees. The President shall present the annual report of the Authority to the Governing Body of the City of Richwood. The President shall execute any and all legal documents or instruments on behalf of the Richwood City Airport Authority where authorized by the Governing Body of the City of Richwood to do so.
3. The Vice-President shall, in the absence or disability of the President, discharge the duties of the President.

4. The Secretary-Treasurer shall keep proper records of all proceedings, business and affairs of the Richwood City Airport Authority, and shall have custody and control of all records, documents and instruments belonging to it. He or she shall render such reports as may be required. The Secretary-Treasurer shall have general charge of the funds of the Authority, and keep proper and accurate books of accounts and proper receipts and vouchers of disbursements. Any and all funds of the Richwood City Airport Authority shall be deposited in one or more banking institutions and withdrawals or payments shall be made only upon signature approval of any two (2) officers. The Secretary-Treasurer shall exhibit at all reasonable times to members of the Authority, or of the Governing Body of the City of Richwood, or members of the general public, upon request therefor, the books of accounts and financial records to which the requester has the right by law to access.

Article VII: Executive Director

1. The Richwood City Airport Authority may, subject to approval of the individual by the Governing Body of the City of Richwood, employ an individual to serve as an Executive Director and to be the principal spokesman and manager for the Airport.
2. The Executive Director shall be subject to discharge for cause, or without cause, by either the Richwood City Airport Authority or the Governing Body of the City of Richwood.
3. Upon recommendation of the Richwood City Airport Authority, the Governing Body of the City of Richwood shall define the terms of employment of the Executive Director.
4. The Executive Director shall carry out the purposes of the Richwood City Airport Authority within the framework of these By-Laws, the policies and procedures of the Authority and of the Governing Body of the City of Richwood, and the general and specify [sic] assignments given by the Richwood City Airport Authority.
5. The functions of the Executive Director shall include, but not be limited to, the following:
 - a. Selection, employment, and supervision of necessary employees, provided that the position has previously been approved by both the Richwood City Airport Authority and the Governing Body of the City of Richwood.
 - b. Coordinate the planning of the activities of the Richwood City Airport Authority.
 - c. Attend the meetings of the Richwood City Airport Authority, except as directed otherwise by the President.

- d. Represent the Richwood City Airport Authority in dealing with the public and other agencies.
- e. Propose rules and regulations for operation of the Airport.
- f. Perform such other duties and responsibilities as may be delegated by the President.
- g. Report to the Board at every regular meeting about physical status, personnel, and any other matters of concern.

Article VIII: Committees

Such standing and ad hoc committees as are deemed useful, shall be appointed by the President with the approval of the majority of the members of the Richwood City Airport Authority. All committees shall keep minutes, and these minutes shall become a part of the public record open to public review.

Article IX: Amendments

These By-Laws may be amended may be amended [sic] or repealed, in whole or in part, so long as the amendment does not conflict with Chapter 8, Article 28, Section 1 of the West Virginia Code, or any other State or Federal statute or regulation, by vote of two-thirds (2/3) of the members of the Richwood City Airport Authority; and provided that any amendments to these By-Laws involving matters affecting appointment of members or affecting reports to the Governing Body of the City of Richwood, shall not take effect until and unless approved by the Governing Body of the City of Richwood. No proposed amendment shall be voted upon until thirty (30) days has passed from the time such proposed amendment has been filed with the Secretary-Treasurer, and copies thereof have been mailed to all members of the Richwood City Airport Authority.

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