



**The Code of the City of Hinton  
As adopted in full in 1989  
Amended as shown and dated by City Manager Cris Meadows**

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**PART II**

**THE CODE**

**CHAPTER 1. GENERAL PROVISIONS**

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**Sec. 1. How Code Designated and Cited.**

The ordinances embraced in the following chapters and sections shall constitute and be designated “The Code of the City of Hinton, 1989,” and may be so cited. Said Code may also be cited as “Hinton City Code.”

**Sec. 2. Definitions and Rules of Construction.**

In the construction of this Code and of all ordinances, the following definitions and rules should be observed, unless the context clearly requires otherwise:

- (a) “City” shall mean the City of Hinton, in the County of Summers and State of West Virginia, except as otherwise provided.
- (b) The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be Sunday or a legal holiday that shall be excluded.
- (c) “The Council” shall mean the City Council of the City of Hinton.
- (d) Words used in the masculine shall include the feminine and neuter.
- (e) “Month” shall mean a calendar month.
- (f) Words used in the singular include the plural and the plural includes the singular number.
- (g) “Person” shall include a corporation, firm, partnership, association, organization or any other group acting as a legal entity, as well as an individual.
- (h) “Personal Property” includes every species of property except real property, as herein defined.
- (i) “Preceding” and “following” mean next before and next after, respectively.

- (j) “Property” shall include real and personal property.
- (k) “Real Property” shall include lands, tenements and hereditaments.
- (l) “Sidewalk” shall mean that portion of a street along the curb line intended for the use of pedestrians.
- (m) “Signature” or “subscription” includes a mark when the person cannot write.
- (n) “Street” shall mean and include any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct, bridge and the approaches thereto within the limits of the City and shall include state roads.
- (o) Words used in the past or present tense include the future as well as the past and present.
- (p) “Writing” and “written” shall include printing.
- (q) “Year” shall mean a calendar year, and the word “year” alone shall be equivalent to the expression “year of our Lord.”

**Sec. 3. Catchlines of Sections.**

The catchlines of the several sections of this Code printed in bold face type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

**Sec. 4. General Penalty; Continuing Violations.**

Wherever in this Code or in any ordinance of the City heretofore or hereafter adopted, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefore, the violation of any such provision of this Code or of any such ordinance is hereby made a misdemeanor, and the same shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the City jail not exceeding thirty (30) days or by both, such fine and imprisonment at the discretion of the court. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. (1989)

**Sec. 5. Severability of Parts of Code.**

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

**Sec. 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 offense committed, or penalty or punishment incurred, before the repeal took effect, or the ordinance expired, save only that the proceedings thereafter shall conform as far as practicable to the ordinances in force at the time such proceedings take place, unless otherwise expressly provided.

**Sec. 7. Adoption of Charter.**

The Charter of the City of Hinton passed by the Legislature of the State of West Virginia, on the 19<sup>th</sup> day of January, 1927, and in effect from its passage, known as chapter one of the Municipal Charter Volume of the Acts of 1927 of the Legislature of the State of West Virginia, shall be and the same is hereby adopted and ratified by the Council of the City of Hinton and enacted as an ordinance of the City, by the Council of the City of Hinton, so far as the power of the Council of the City of Hinton extends. (1927, Ord. No. 1.)

**CHAPTER 2. ADMINISTRATION****Article I. Council**

- Sec. 1. Meeting Day.
- Sec. 2. Hours of Meeting.
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- Sec. 4. Attendance at Meetings.
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- Sec. 6. Order of Proceedings.
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**Article II. City Manager**

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### **Article I. Council**

#### **Sec. 1. Meeting Day.**

The regular meeting of the Council shall be fixed by the council at its organizational meeting in the month of July following an election, except that the organizational meeting itself will be on the first regular business day of July at 7:30 P.M. If not changed or considered by the new Council, the meeting date(s) shall be the same as for the preceding Council. In no event shall regular meetings be less frequent than monthly. (1989).

#### **Sec. 2. Hours of Meeting.**

The meeting hour for regular meetings shall be 7:30 P.M. (1989).

#### **Sec. 3. Special Meetings.**

Special meetings may be called by the Mayor, the City Manager, or two members of the Council signing the notice of the call. Notice thereof shall be given to each member of the Council, by service on him of such notice as legal notices are required to be served or by personal communication to him and his agreement to attend or his acceptance of such notice being obtained or such notice may be mailed to him at his post office address at least two days before such meeting. At such special meeting, as to the members not present, either their acknowledgement in writing of the notice, the return of an officer that the notice was served, or a statement of the City official or employee serving the notice on him, that it was served, shall be noted on the minutes of the meeting. The notices mailed as aforesaid shall be by regular mail. (1989)

#### **Sec. 4. Attendance at Meetings.**

It shall be the duty of the Mayor and of each member of the Council to attend each meeting, regular or special. (1927, Ord. No. 2.)

#### **Sec. 5. Duty of Presiding Officer.**

The presiding officer shall call the Council to order at the appointed hour, or as soon thereafter as a quorum is present, and shall preserve order and decorum. (1927, Ord. No. 2.)

**Sec. 6. Order of Proceedings. (1989)**

The order of proceedings of each meeting of Council shall be as follows:

- I. Roll Call
- II. Devotions
- III. Delegations
- IV. Approval of Minutes
- V. Citizen Input
- VI. New Business
- VII. Reports
- VIII. Discussions
- IX. Personnel Actions
- X. Adjournment

(1989)

**Sec. 7. Parliamentary Practice.**

The ordinary rules of standard parliamentary practice shall govern the Council, when not inconsistent with the Charter of the City, the rules in this chapter adopted, or any ordinances of the City. (1927, Ord. No.2.)

**Sec. 8. Suspension of Rules.**

The Council may temporarily suspend any of its rules by a majority vote. (1927, Ord. No. 2)

**Sec. 9. Points of Order.**

All points of order shall be decided by the presiding officer, subject to an appeal to the Council, which appeal shall be allowed only upon the demand of two members of Council. (1927, Ord. No. 2)

**Sec. 10. Addressing the Chair; Recognition by the Chair.**

When a member is about to speak, he shall address the chair in a respectful manner. In case more than one member is demanding attention from the chair at the same time, the chair shall designate which one he recognizes. (1989)

**Sec. 11. Committee reports.**

All reports of committees may be made in writing and properly signed, or may be made orally at a Council meeting if so authorized by the presiding officer, but if made orally, the substance of the report shall be set forth in detail in the minutes of the meeting. (1989).

**Sec. 12. Violation of Rules by Member.**

If any member transgresses any of the rules of Council in session, he may be called to order by the presiding officer, in which case, the member called to order shall obey, subject to an appeal to the Council. (1927, Ord. No. 2.)

**Sec. 13. Reduction to Writing of Motion or Resolution.**

Every motion or resolution shall be reduced to writing, if the Mayor or any other member of Council shall demand it. (1927, Ord. No. 2.)

**Sec. 14. Objection to Motion or Resolution.**

Any member may object to any motion or resolutions offered, and have his protest entered of record, and his reasons therefore. (1989)

**Article II. City Manager**

**Sec. 15. Duties as Treasurer.**

The City Manager shall, ex officio, be and shall be charged with a performance of the duties of the Treasurer of the City and shall have charge of the departments of finance and taxation of the City government. He shall keep an accurate set of books and records, showing all receipts for money coming into his hands by virtue of his offices and duties, keeping the funds properly separated. (Vol. 4, p. 20, 9-5-35.)

**Sec. 16. Collection of Claims.**

The City Manager shall collect any and all claims due and owing to the City for any purpose, when required so to do by the Council, giving receipts therefore to the parties paying the same. (1989)

**Sec. 17. Deposit of City Funds.**

The City Manager shall deposit all moneys coming into his hands by virtue of his office in the bank or banks designated by the Council as depositories of City funds in the corporate name of the City, to the credit of the proper funds. (Vol. 4, p. 20, 9-5-35.)

**Sec. 18. Inspection of Books.**

The books of the City Manager shall at all times during regular business hours be open for inspection by the Mayor, Council or any adult citizen in the City. (1989)

**Sec. 19. Monthly Statements.**

The City Manager shall make up monthly statements of the moneys received by him and the amount paid out during the month, by orders and drafts issued by him, countersigned by the Mayor, and paid out during such month, showing the previous month's unencumbered balance, the current month's revenues and expenditures and total unpaid obligation to reflect the current month's unencumbered balance and shall file the same with the Mayor of the City, or Council on or before the regular meeting day of the month succeeding. (1989)

**Sec. 20. Annual Statement.**

The City Manager, on or before the first regular meeting day of Council in August following the end of each fiscal year, shall prepare a financial statement for the year, showing in detail all receipts and disbursements of the City for such year, in each of the respective funds of the City, and the balances of each of such funds, and shall file therewith all orders, drafts and vouchers issued by him and paid during said fiscal year, which accounts shall be audited at the end of each fiscal year by the State Tax Department of West Virginia. (1989)

**Sec. 21. Duties as Recorder and Clerk of Council.**

The City Manager shall, ex officio, be the Recorder of the City, the Clerk of the Council, and perform all the duties lawfully pertaining to both such offices. As such Clerk and Recorder, he shall keep the books and records of the City and shall attend all meetings of the Council for the purpose of preparing and keeping the records and minutes of the Council. (Vol. 4, p. 20, 9-5-35.)

**Sec. 22. Duties as Budget Manager.**

The City Manager shall propose and manage an operating budget inclusive of all funds and recommend any necessary budget revisions for the approval of Council. (1989)

**Sec. 23. Supervision of Streets, Sidewalks, Public Buildings and Grounds.**

The City Manager shall have general supervision of the construction and maintenance of all streets, sidewalks, public buildings and public grounds and all the work done thereon. (Vol. 4., p. 20, 9-5-35.)

**Sec. 24. Street Planning.**

The City Manager shall determine and recommend to the Council, plans and programs for paving, relocating, regarding, widening or otherwise improving the streets of the City.

**Sec. 25. Supervision of Departments.**

The City Manager shall have general supervision of any and all departments. (1989)

**Sec. 26. Issuance of and Collection for Licenses and Permits.**

The City Manager shall issue and collect for all City licenses and permits on behalf of the City except where otherwise expressly provided. (Vol. 4, p. 20, 9-5-35.)

**Sec. 27. Purchase of Supplies.**

The City Manager shall act as purchasing agent but he shall not make any contract or purchase involving an expenditure in excess of five hundred dollars, without first obtaining the assent of the Council so to do. All supplies to be used by the City, and all materials purchased by the City for construction of any public improvement shall be purchased at the lowest cost obtainable, considering quality and grade. When required by an order of the Council, supplies and materials shall be purchased on competitive bids. Precise specifications and notice of the requirements of the City shall, in such case, be given to dealers in supplies and materials of the kind required doing business in the

City and to those outside of the City who by reason of location are best able to furnish the same at the lowest price. (1989)

**Sec. 28. Enforcement of Public Utility Franchise.**

The City Manager shall enforce all terms and conditions in favor of the inhabitants of the City contained in any public utility franchises and shall require the faithful discharge of obligations by all public utilities. (Vol. 4, p. 20, 9-5-35.)

**Article III. Finance**

**Sec. 29. Report of Officer Handling or Collecting Money.**

It shall be the duty of each and every officer of this City handling or collecting money, to make his report at the first stated meeting of the Council in each month, of all moneys and credits coming into his hands as such officer for the last preceding month, or since his last report to the Council, and what disposition or disbursement he has made of the same. (1927, Ord. No. 8.)

**Sec. 30. Annual Statement of City Manager or Treasurer.**

The City Manager, or person occupying the position of Treasurer, shall annually submit to the Council his annual statement of all the money and funds collected by him for such a year, or in any way coming to his hands by virtue of his office, including all money, funds and credits of every kind in his hands, or coming to him in any manner belonging to the City. This report shall be in writing, exhibiting each fund separately, with the several items of credits and debits kept in such manner as to render the condition of each fund readily observable, together with the vouchers and receipts, certified delinquencies for taxes and all other matters on account, of which he claims credit in his official business with the City, including all orders paid to him, the name of the payee thereof, date, amount and when paid. (1927, Ord. No. 8.)

**Sec. 31. Publication of Annual Financial Statement of City.**

It shall be the duty of the City Manager or person performing the duties of Recorder immediately upon approval of the annual report and settlement, officers by the Council in each year, to make up and publish the annual financial statement of this City in manner and form as prescribed by the Code of West Virginia. (1927, Ord. No. 8.)

**Article IV. Ordinances and Records**

**Sec. 32. Who Shall Sign Ordinances, Resolutions, Etc.; Certified Copies.**

The City Manager, as City Recorder, shall sign all ordinances, resolutions, and orders passed by the Council upon the records of the minutes of the Council, which shall also be signed by the Mayor and shall issue certified copies of the same when required for any legal proceedings or other purposes. (Vol. 4, p. 20, 9-5-35.)

**Sec. 33. Preservation in Vault or Safe.**

The copy of the ordinances as set out in this Chapter and all other records of the City of a permanent nature, including the tax records for each and all years, the original copies of the monthly reports made

to the Council, the ledgers, check books, drafts, minutes of the meetings, receipted bills, or plans, properly filed, shall be preserved in proper vaults or safes under lock and key by the City Manager or other person holding the position of Recorder, without access being had thereto by outsiders except proper Auditor from the State Tax Commissioner's office or a person authorized by the Council who shall be responsible to the City Manager for the same, and including one of the original copies of the code adopted in 1989. (1989)

**Sec. 34. Ordinances Bound for Record.**

One copy of each ordinance passed after the Code of 1989 shall be inserted in a book or be written or securely pasted therein with the date of the passage of such ordinance and the signature of the City Manager or other Recorder subscribed thereto. This book shall be preserved by the City Manager and his successors, and not allowed to be taken out, nor used for any purpose except for the purpose of securing copies. (1989)

**Sec. 35. Custody to Pass to Successor.**

Whenever there is a change in the office of the City Manger or other person holding the position of Recorder, the person passing out of office shall deliver to his successor in office all the ordinances and records mentioned in this Chapter. The successor shall give a receipt for such books, which receipt shall indicate the books by name. This receipt shall be turned over to the Council and a record made of it. The person passing out of such office shall preserve a copy of such receipt. (1989)

**Sec. 36. Penalty.**

Any violation of this Chapter shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars and by confinement in jail not exceeding thirty days, which jail sentence shall be at the discretion of the court.

**CHAPTER 3. ANIMALS AND FOWL**

**Article I. In General**

- Sec. 1. Special Permit for Animals.
- Sec. 2. Fees for Special Permits.

**Article II. Dogs**

- Sec. 3. License and Tax.
- Sec. 4. Amount of Tax.
- Sec. 5. Application for License.
- Sec. 6. Contents of Certificate of License.
- Sec. 7. Term of License.
- Sec. 8. Record of Licenses.
- Sec. 9. Running at Large Prohibited.
- Sec. 10. Impounding.
- Sec. 11. Disposition of Proceeds of Sale.
- Sec. 12. Interference with Impounding or Officers.
- Sec. 13. Keeping Vicious Dogs.
- Sec. 14. Barking or Howling Dogs.

- Sec. 15. Animal Defecation.
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- Sec. 17. Penalties.
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### **Article III. Bird Sanctuary**

- Sec. 20. Bird Sanctuary.
- Sec. 21. Protection from Danger.
- Sec. 22. Penalty.

### **Article I. In General**

#### **Sec. 1. Special Permit for Animals.**

No horse, mule, donkey, pony, cow, goat, sheep, hog, pig, fowl or feral animal or animal raised for furbearing purposes shall be kept within the City limits unless a special written permit therefore is issued for the County Health Officer or the City Council or its designated representative after an inspection of the premises and a finding of fact to the effect that no nuisance will be created thereby. Such special permit shall be issued for the keeping of any of such animals only where such animals were being lawfully kept on such lot prior to the enactment of the ordinance, or where, due to the conditions, size of the lot or acreage involved and distances from other premises, no nuisance will be created thereby. A permit shall be for the term of one year, and no renewal shall be issued without a reinspection. (1989)

#### **Sec. 2. Fees for Special Permits.**

The City Council may, from time to time, establish reasonable fees for special permits as set forth in Section 1.

### **Article II. Dogs**

#### **Sec. 3. License and Tax.**

Every person owing or harboring a dog over the age of eight months within the corporate limits of the City shall procure a certificate of license and shall pay to the Summers County Assessor the amount of tax fixed and levied by this article for each dog he owns or harbors. No dog shall be permitted to be and remain in the City unless the owner or keeper shall pay the tax imposed by this article. The provisions of this article with reference to license tax shall not apply to dogs owned by non-residents temporarily in or passing through the City, nor to dogs entered for exhibition at any dog show in the City. (1989)

#### **Sec. 4. Amount of Tax.**

Such city tax shall be one dollar upon all male dogs over the age of eight months and two dollars upon all female dogs over the age of eight months. (Vol. 5, p. 101, 4-24-44)

#### **Sec. 5. Application for License.**

In applying for such license the applicant shall state in writing the name and address of the owner or keeper of the dog, the age, sex, breed and color of the dog for which the license is to be procured. (Vol. 5, p. 101, 4-24-44.)

**Sec. 6. Contents of Certificate of License.**

Every certificate of license shall state the name and address of the owner or keeper of the dog, the age, sex, breed and color of the dog, and also the number of such license. (Vol. 5, p. 101, 4-24-44.)

**Sec. 7. Term of License.**

All licenses granted under the provisions of this article shall be effective from the date of issuance for the remainder of the municipal fiscal year, or until the following 30<sup>th</sup> day of June. (Vol. 5, p. 101, 4-24-44.)

**Sec. 8. Record of License.**

The City Manager shall keep a record of all licenses issued under this article. (Vol. 5, p. 101, 4-24-44.)

**Sec. 9. Running at Large Prohibited.**

It shall be unlawful for the owner or keeper of any dog to permit or allow such dog to run at large within the corporate limits of the city. (Vol. 5, p. 101, 4-24-44.)

**Sec. 10. Impounding.**

The members of the Police Department or the animal warden shall take up and impound any dog found running at large in the City or any dog owned or harbored in the City upon which the tax provided for in this article has not been paid. If, within ten days, such dog is not redeemed by the owner or keeper thereof, by payment to the Summers County Assessor of a License tax as provided for in Section 4, of this Article and costs, or the payment of the fine provided for in Section 17 of this Article and costs, as the case may be, such dog shall be sold or destroyed as the animal warden may deem advisable. If the dog is destroyed this shall be accomplished in the speediest and least painful manner, provided that whenever the name of any person appear on the collar of any dog so seized such person or owner shall be forthwith notified of such seizure in writing by post card addressed to him and deposited in the United States Mail.

Costs under this section shall include a redemption fee of \$5.00 for a licensed dog, plus \$1.00 for each day or fraction thereof that said dog is impounded. For an unlicensed dog the redemption fee shall be \$10.00 plus \$1.00 for each day or fraction thereof that said dog is impounded. (1989)

**Sec. 11. Disposition of Proceeds of Sale.**

If any such dog be sold, such sale shall be made and such costs taxed and the money derived there from shall be deposited to the general fund of the city. (Vol. 5, p. 101, 4-24-44.)

**Sec. 12. Interference with Impounding or Officers.**

No person shall take from the City pound, without the consent of the Officer in charge thereof, or release or cause to be released from the City pound, any dog taken up or impounded and in charge of any officer of the City. No person shall hinder, molest, obstruct or interfere with the animal warden or members of the Police Department of the City in performing any duty imposed by any of the provisions of this article. (1989)

**Sec. 13. Keeping Vicious Dogs.**

No person shall own, keep or harbor any dog, known by him to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dog wears a tag or muzzle, and upon satisfactory proof that such dog is vicious, dangerous or in the habit of biting or attacking persons, the Chief of Police or any other Police Officer may cause such dog to be destroyed. (1989)

**Sec. 14. Barking or Howling Dogs.**

It is declared a nuisance for any person to keep or harbor any dog which howls or barks to the annoyance of the inhabitants of the City, and it is unlawful for any person to create, continue, contribute to, or suffer such nuisance to exist. (1-20-70.)

**Sec. 15. Animal Defecation.**

An owner or person having custody of any dog or any other animal shall not permit said dog or any other animal to defecate on any school ground, public street, alley, sidewalk, tree, bank, park or any other public grounds or any private property within the city, other than the premises of the owner or person having custody of said dog or other animal, unless said defecation is removed immediately. (1989)

**Sec. 16. Animal Warden.**

The City shall employ an animal warden, to be compensated on a contract or on a salary or on a commission basis. Such a commission would be based on the number of dogs impounded. (1989)

**Sec. 17. Penalties.**

Whoever violates this article shall be deemed guilty of a misdemeanor and for the first offense shall be fined not more than one hundred (\$100.00) dollars and for any subsequent offense shall be fined not more than three hundred (\$300.00) dollars. Each day's violation shall constitute a separate offense. (1-20-70.)

**Sec. 18. Written Complaint Required.**

Any individual or group of individuals having cause to register a complaint against any person violating this article must file same in writing under oath, with the Chief of Police. (1989)

**Sec. 18.1. Supplemental Regulations.**

Kennels, catteries or structures and enclosures of a similar nature for domestic pets shall be subject to the following.

- (1) Four or more pet dogs or a kennel, four or more pet cats or a cattery, are prohibited from the exterior yard areas, or accessory buildings, in any residential zoned district or within fifty feet of such district.
- (2) All kennels, catteries and structures of similar nature used for domestic pets shall be fenced and screened. Such fence shall be a solid fence of at least six feet in height, maintained in sound condition, painted or otherwise protected from decay or signs of wear.
- (3) It shall be unlawful to own, possess or keep any cat or dog in the city limits that has not been spayed or neutered, except:
  - (a) The dog or cat is less than six months old; or
  - (b) The owner has obtained an unaltered animal permit at a fee of \$15.00 for the life of each animal; or
  - (c) A WV licensed veterinarian states in writing the dog or cat is medically unable to undergo the spay or neuter procedure; or
  - (d) The dog or cat is kept in the city limits less than 30 days in any one year; or
  - (e) The dog or cat otherwise qualifies for an unaltered animal permit or a breeding permit.
- (4) To qualify for an unaltered animal permit or breeding permit the owner must:
  - (a) Have the dog or cat examined not less than annually by a West Virginia licensed veterinarian;
  - (b) Have the dog or cat vaccinated in accordance with WV State Code 19-20A-2;
  - (c) Have the dog or cat properly housed or fed and maintained.
- (5) It shall be unlawful to cause or allow any dog or cat owned or harbored in the City to breed without first obtaining a breeding permit, written authorization issued by the City of Hinton, giving its lawful owner permission to breed the dog or cat.
  - (a) Each breeding permit shall be valid for a period of one year and may be renewed prior to its expiration date at an annual fee of \$15.00 per dog or cat.
  - (b) No female dog or cat shall be permitted the breeding of more than one litter in any one permit year, except if that litter must be euthanized for medical reasons, in that event one additional litter shall be authorized in that permit year.
- (6) Conviction of a violation of any provision of this City of Hinton Code Section shall be grounds to confiscate the animal, rescind all licenses and permits, and impound and/or dispose of the animals, as provided for in Chapter 3 of City of Hinton code.(2006)CCM

**AN ORDINANCE ADDING A NEW SECTION PROHIBITING THE POSSESSION OF DANGEROUS DOGS WITHIN THE CORPORATE LIMITS OF THE CITY OF HINTON AND MAKING SUCH PROHIBITED POSSESSION OF SUCH DOGS A CRIMINAL OFFENSE AND PROVIDING SPECIFIC PENALTIES THEREFORE**

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (23) of the West Virginia Code, as amended municipal corporations have plenary power and authority to provide for the elimination of hazards to public health and safety and to abate anything which in the opinion of the majority of the governing body is a public nuisance; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (26) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to regulate the keeping of animals; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and

WHEREAS, numerous incidents have been observed by, or otherwise reported to, municipal authorities, and particularly the City of Hinton Police Department, involving the possession of dangerous dogs within the corporate limits of the City of Hinton; and

WHEREAS, these incidents frequently have posed concerns for the safety and well-being of (1) individuals owning such dangerous dogs, (2) individuals coming in contact with those individuals who own dangerous dogs, and (3) unaware individuals who come in contact with individuals who own dangerous dogs; and

WHEREAS, the Council of the City of Hinton has determined that, in order to best protect the safety, health, and general well-being of all those individuals described within (1), (2), and (3) of the immediately foregoing paragraph, i.e., individuals owning dangerous dogs, individuals in contact with those individuals owning such dangerous dogs, and unaware individuals who come in contact with those individuals who own dangerous dogs situated within the corporate limits of the City of Hinton should be banned and prohibited altogether, and further state that such activity should be criminalized with the imposition of progressive fines against those individuals owning or in possession of such dangerous dogs within the corporate limits of the City of Hinton.

**Sec. 19. When and Where Applicable. Prohibition. Enforcement. Penalties. Exceptions.**

- (a) Notwithstanding any other provision in this Code Section, no person shall own, keep or harbor any dog known by him to be vicious, dangerous or in the habit of biting or attacking persons, whether or not such dog wears a tag or muzzle.
- (b) Upon satisfactory proof before a circuit court or magistrate that such dog is vicious, dangerous or in the habit of biting or attacking persons or other dogs or animals, the judge may authorize the humane officer to cause such dog to be killed.

- (c) Any violation of Paragraph “a” above shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Hinton or any other officer is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Paragraph “a” established hereunder shall be fined not more than one hundred (\$100.00) dollars or imprisoned in the county jail not more than thirty (30) days, or both fined and imprisoned.
- (d) The Municipal Court Judge shall have concurrent jurisdiction with the circuit courts to enforce the penalties prescribed by this Code Section.
- (e) For the purpose of this Code Section, the term “dangerous dogs” shall be defined Rottweiler, Pit Bull, and any other breed of dog that is known to be dangerous and have violent tendencies.
- (f) Nothing contained within this Code Section is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City of Hinton or any of its officers, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City of Hinton related, in any manner, to the enforcement or non-enforcement of this Code Section by the City’s officers, officials, employees, or agents.
- (g) The provisions of this Code Section are severable and, in the event that any provision or part hereof 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 of this Code Section not specifically held to be invalid. It is hereby declared to be the intent of the City of Hinton that this Code Section would have been adopted if any such invalid provision or part hereof had not been included herein.

This Ordinance shall become effective upon passage.

### **Article III. Bird Sanctuary**

#### **Sec. 20. Bird Sanctuary.**

The entire area embraced within the corporate limits of the City of Hinton shall be, and the same is hereby designated as, a Bird Sanctuary. (3-14-61.)

#### **Sec. 21. Protection from Danger.**

It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests. Provided, however, if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities of the City of Hinton, when in such event said health authorities shall meet with representatives of the Audubon Society, Bird Club, Garden Club, or Humane Society, or as many of said clubs as are found to exist in the City of Hinton after having given at least three days of actual notice of the time and place of said meeting to the representatives of said clubs. If as a result of said meetings no satisfactory alternative is found to abate such nuisance, then said birds may be destroyed in such numbers and in such manner as is deemed

advisable by said health authorities under the supervision of the Chief of Police, of the City of Hinton. (3-14-61.)

**Sec. 22. Penalty.**

Anyone violating the provisions of this Ordinance shall be punishable by a fine of not more than one hundred (\$100.00) dollars or imprisonment not exceeding thirty (30) days. (3-14-61.)

**CHAPTER 4. BOARD OF HEALTH - SMOKING**

**Smoking Restrictions**

- Section 1.** Definitions
- Section 2.** Smoking prohibited except in permitted areas
- Section 3.** Exceptions
- Section 4.** Designation of smoking areas
- Section 5.** Signs
- Section 6.** Areas where smoking is prohibited
- Section 7.** Responsibilities of properties
- Section 8.** Inspection of premises; violation notices
- Section 9.** Penalty

**SECTION 1. DEFINITIONS**

As used in this article, the following terms shall have the meanings indicated:

- (a)** "Public meeting" includes all meetings open to the public.
- (b)** "Public places" means any enclosed, indoor area open to and frequented by public or serving as a place of work, including but not limited to:
  - (1)** Restaurants
  - (2)** Retail stores
  - (3)** Theaters
  - (4)** Banks
  - (5)** Commercial establishments
  - (6)** Public conveyances
  - (7)** Educational facilities
  - (8)** Recreational facilities
  - (9)** Hospitals
  - (10)** Nursing homes
  - (11)** Auditoriums
  - (12)** Arenas
  - (13)** Meeting rooms
  - (14)** Grocery stores
  - (15)** Public buildings
  - (16)** Governmental buildings
- (c)** "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment

**SECTION 2. SMOKING PROHIBITED EXCEPT IN PERMITTED AREAS.**

No person shall smoke or carry any lighted smoking instrument in a public place or at a public meeting except in permitted smoking areas.

### **SECTION 3. EXCEPTIONS**

- (a)** Places, gatherings, or functions which are not open to the public, or any portion of any public place which is not open to the public.
- (b)** Places which are not enclosed.
- (c)** Any activity done by a performer; performer shall mean any person engaged in a formal artistic exhibition before an audience, such as a play, dance or musical program.
- (d)** Establishments in which malt, vinous, and/or spirituous liquors are sold for consumption on the premises pursuant to a license other than an arts license except for those areas within such establishment which are utilized primarily for restaurant purposes.
- (e)** Retail businesses primarily engaged in the sale of tobacco or tobacco products.
- (f)** Restaurants with a seating capacity of thirty or fewer persons.
- (g)** Smoking areas designated by the proprietor or person in charge of a public place or public meeting pursuant to Section 4.
- (h)** Any owner or manager of a business or other establishment subject to this article may apply to Council for an exemption or modification of the provisions of this article due to unique circumstances or conditions. Such exemption or modification may be granted by four votes in the affirmative of Council.

### **SECTION 4. DESIGNATION OF SMOKING AREAS**

The proprietor or person in charge may designate no more than fifty percent (50%) of a public place or public meeting as a smoking area except as follows:

- (a)** Designated smoking rooms or areas shall be reasonably separate from rooms or areas entered by the public in the normal course of business or use of the facility; and
- (b)** In designated smoking areas, existing physical barriers and ventilation systems shall be used when possible to minimize the toxic effect of smoke in adjacent non-smoking areas.
- (c)** In the places of work in which smokers and non-smokers work in the same office or room, it shall be the responsibility of the employers to provide smoke-free work areas to accommodate employees who request the same.
- (d)** In no event shall lobbies, hallways, or other common areas typically shared by smokers and non-smokers be designated as smoking areas, except that lobbies, hallways, or other common areas which exceed 5,000.00 square feet in area may have within them designated smoking areas provided that no more than twenty-five percent (25%) of the total area of such lobby, hallway, or other common areas is so designated and further providing that such designated smoking areas are located such that it is not necessary for non-smokers to pass through such areas to reach other non-smoking areas.
- (e)** In restaurants with a seating capacity of over thirty persons, the proprietor or person in charge shall provide a non-smoking area of such sufficient size to accommodate patrons who request to be seated in such an area. Patrons must be advised orally and through signs that no-smoking areas are available.
- (f)** In no event shall public restrooms be designated as smoking areas.

### **SECTION 5. SIGNS**

To advise persons of the existence of “No Smoking” or “Smoking Permitted” Areas, signs shall be posted as follows:

- (a) In public places where the proprietor or person in charge prohibits smoking in the entire establishment, a sign using the words “No Smoking” and/or the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
- (b) In public places where areas are designated as smoking areas pursuant to this chapter, the statement, “No Smoking Except in Designated Areas” shall be conspicuously posted on all public entrances or in a position clearly visible on entry into the establishment.
- (c) In public places where smoking is permitted in the entire establishment, a sign using the words “Smoking Permitted” and/or the international smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.

#### **SECTION 6. AREAS WHERE SMOKING IS PERMITTED.**

Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the Fire Chief, state statute, ordinances, or regulations of the City of Hinton or other applicable laws.

#### **SECTION 7. RESPONSIBILITIES OF PROPRIETORS**

The proprietor or person in charge of a public place or public meeting shall make reasonable efforts to obtain compliance with this chapter in such places by:

- (a) Posting appropriate signs
- (b) Arranging seating and work areas to provide smoke-free area
- (c) Asking smokers to refrain from smoking upon request of a client or an employee or any other person suffering discomfort from the smoke
- (d) Affirmatively directing smokers to a designated smoking place
- (e) Using existing physical barriers and ventilation systems to minimize the toxic effects to transient smoke in adjacent non-smoking areas

#### **SECTION 8. INSPECTION OF PREMISES; VIOLATION NOTICES**

- (a) The City Manager or his designated representative is authorized to make such inspections as may be necessary to enforce this article, and no person shall impede or interfere with inspections made hereunder. The City Manager or his designated representative, after proper identification, shall be permitted to enter, at any reasonable time, any premises covered by this article within the City, for the purpose of making inspections to determine compliance with Section 5.
- (b) Whenever the City Manager or his designated representative makes an inspection of a premise and discovers that the requirements of Section 5 have been violated, he shall notify the person in charge of such premise of such violations
  - (1) Set forth the specific violations found
  - (2) Establish a specific and reasonable period of time for the correction of the violations found, such period to be no longer than thirty days.
  - (3) State that opportunity for appeal from any notice will be provided if a written request for a hearing is filed with the City Manager within the period of time established in the notice for correction
  - (4) State that the re-inspection shall be made within ten working days after the period of time for correction of the violation has elapsed. If the re-inspection shows that

the establishment is not in compliance with this article, the establishments may be charged with a violation under Section 5.

- (c) Notices provided for under this section shall be deemed to have been properly served when the original of the notice has been delivered personally to the person in charge of the premises or such notice has been sent by the registered or certified mail, return receipt requested, to the last known address of the person in charge. A copy of such notice shall be filed with the records of the City Clerk.

**SECTION 9. PENALTY**

Any person who violates Section 2 at a place or a location where signs are located pursuant to Section 5 shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of ten dollars (\$10.00). Any person who violates Section 5 and/or Section 7 shall be deemed guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding three hundred dollars (\$300.00). Each time this article is violated shall be considered a separate offense.

**CHAPTER 5. BUILDINGS, BILLBOARDS, SIGNS AND FIRE ESCAPES**

**Article I. Buildings Generally**

- Sec. 1. Building Code.
- Sec. 2. Building Inspector.
- Sec. 3. City Manager as Building Inspector.
- Sec. 4. Permit Required for Construction.
- Sec. 5. Plan of Work; Statement of Materials.
- Sec. 6. Permit for Moving Buildings.
- Sec. 7. Demolition of Buildings.
- Sec. 8. Permit Fees.
- Sec. 9. Appeal.
- Sec. 10. Structures Not Conforming or Erected Without Permit.
- Sec. 11. Set Back of Building Lines.
- Sec. 12. Loads; Safety of Design.
- Sec. 13. Theater Exits.
- Sec. 14. Exit Doors of Public Buildings.
- Sec. 15. Stairways.
- Sec. 16. Open Flame Heating Devices.
- Sec. 17. Penalty.

**Article II. Billboards and Signs.**

- Sec. 18. Permit Required.
- Sec. 19. Construction.
- Sec. 20. Rules and Regulations of Hinton Historic Landmark Commission.

**Article III. Fire Escapes.**

- Sec. 21. When Required.
- Sec. 22. Definition of Owner; Tenement House.

- Sec. 23. Duty of Owner.
- Sec. 24. Inspection.
- Sec. 25. Correction of Inadequate Condition.
- Sec. 26. Penalties.

## **Article I. Buildings Generally**

### **Sec. 1. Building Code.**

There is hereby adopted by reference, insofar as not inconsistent with the laws of the State, for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition, equipment, use and occupancy, location and maintenance of buildings and structures, including permits and penalties, that certain Building Code known as the Standard Building Code, 1979 Edition as amended and updated, save and except such portions thereof as are hereinafter in this division deleted, modified or amended; and the Standard Building Code is hereby incorporated in and made a part of this division as fully as if set out at length herein, and from the date on which “The Code of the City of Hinton, West Virginia” shall take effect, the provisions thereof so adopted shall be controlling in that construction of all buildings and other structures within the City; provided, that:

- (a) Wherever the word “municipality” is used in the Standard Building Code, 1979 Edition adopted by this Section, it shall be taken to mean the City of Hinton, West Virginia.
- (b) Wherever the term “corporation counsel” is used in the Standard Building Code, 1979 Edition adopted by this Section, it shall be taken to mean the City Attorney.
- (c) Wherever the term “Building Official” is used in the Standard Building Code, 1979 Edition adopted by this Section, it shall be taken to mean Building Inspector in this City Code. (1989)

### **AN ORDINANCE ADOPTING REVISIONS TO THE CITY OF HINTON BUILDING CODE AND AMENDING “CHAPTER 5-BUILDING; CONSTRUCTION AND RELATED ACITIVITIES” OF THE CODE OF THE CITY OF HINTON**

WHEREAS, this Ordinance establishes the standards considered necessary by the City of Hinton for the safeguarding of life and property and to ensure the quality of construction of all structures erected or renovated throughout the City.

WHEREAS, the State Fire Commission, pursuant to WV Code 29-3-5(b), revised and amended the State Building Code.

WHEREAS, the Ordinance adopts the State Building Code as promulgated by the State Fire Commission and repels all other ordinances and parts of ordinances in conflict therewith.

Now therefore, be it ordained by the City of Hinton as follows:

- (1) That certain documents, a copy of which is on file in the office of the Code Enforcement Department of the City of Hinton, designated as the State Building Code, as promulgated by WV CSR 87-4-1 is hereby adopted as the City of Hinton Building Codes for regulating the design, construction, quality of materials, erection, installation,

alteration, repair, location, relocation, replacement, addition to, use, or maintenance of all structures in the City of Hinton.

- (2) Be it further ordained that the following Hinton City Code Sections are hereby revised:
- (a) The mayor shall appoint a qualified individual as chief and code official as is qualified under such rules and regulations as the State Fire Commission or the common council may adopt. The chief shall serve at the will and pleasure of the mayor and the common council.
  - (b) The mayor shall appoint such number of inspectors, technical assistants, plans examiners, or other employees as shall be necessary for the administration of the code enforcement department as authorized by common council.

Sec. 5-9. Purpose.

Sec. 5-9.1 Same – Definitions.

Sec. 5-10. Same – Amendments.

Sec. 5-11. Same – Unlawful Acts; Penalty; Injunctive Relief Upon Violation.

Sec. 5-12. Same – Conflicts.

**Sec. 5-9. Purpose.**

- (a) There is adopted by reference for the purpose of establishing rules and regulations, the State Building code as promulgated by the West Virginia State Fire Commission pursuant to West Virginia code 29-3-5(b) and the provisions thereof shall be controlling within the corporate limits of the City. One (1) copy of the code, certified by the mayor, shall be maintained on file in the office of the recorder-treasurer and shall be available to the public for inspection and use during all regular business hours.
- (b) Any existing municipal ordinance that is more stringent or imposes a higher standard than is required by the above-referenced Code shall govern, provided such ordinance is not inconsistent with the laws of West Virginia and is not contrary to recognized standards and good engineering practices.
- (c) Any existing municipal Ordinance that is less stringent or imposes a lower standard than is required by the above-referenced codes is hereby amended to comply therewith.
- (d) The standards and requirements as set out and as published by the International Code Council and American Standards Institute, as listed below, shall have the same force and effect as if set out verbatim in this section, except that any and all references to CC Electrical Code mean NFPA 70, National Electric Code/1999:
  - (1) The International Building Code, First Edition, 2000, with the following exceptions:
    - (I) Provided; that the section entitled “Fire Prevention” and identified as Section 101.4.6 is deleted and not considered to be a part of this code.
    - (II) Further provided that the section entitled “Duties and Powers of Building Official” and identified as Section 104.1 General is modified to read as follows: “The building official shall enforce the provisions of this Code.

The building official may render interpretations of this code and adopt policies and procedures in order to clarify the application of its provisions. The interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. The policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

- (III) Further provided that the entire section entitled “Board of Appeals” and identified as Section 112 is deleted and replaced with the following:
- (i) The Board of Appeals (Hinton Building Code Appeal Board) shall consist of five individuals, one from each of the following professions or disciplines, with three forming a quorum at any appeal hearing.
  - (ii) A registered design professional who is a registered architect or a builder or superintendent of building construction with at least ten years experience, five of which shall have been in responsible charge of work;
  - (iii) A registered design professional with structural engineering or architectural experience;
  - (iv) A registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten years experience, five of which shall have been in responsible charge of work;
  - (v) A registered design professional with electrical engineering experience; or an electrical contractor with at least ten years experience, five of which shall have been in responsible charge of work; and
  - (vi) A registered design professional with fire protection engineering experience; or a fire protection contractor with at least ten years experience, five of which have been in responsible charge of work.
  - (vii) The Hinton Building Code Appeal Board shall consist of five (5) members nominated by the mayor and appointed by the common council and shall be appointed as follows: one for five (5) years, one for four (4) years, one for three (3) years, one for two (2) years and one for one (1) year. Thereafter, all appointments shall be for five (5) years or until a successor is appointed.
  - (viii) The mayor shall nominate and the common council shall appoint two (2) alternate members who shall be called to hear appeals during the absence or disqualification of a member. Alternates shall possess the same qualifications as members and shall sever five year terms or until a successor is appointed.

- (ix) Time of Appeal: The Hinton Building Code Appeal Board shall render a decision within 30 days from receipt of the appeal.
  - (x) The Hinton Building Code Appeal Board shall serve as the appeal board for each of the national codes adopted herein and shall serve as a single appeals board for the entire building code.
- (2) The International Plumbing Code, First Edition, 2000.
  - (3) The International Mechanical Code, First Edition, 2000.
  - (4) International Fuel Gas Code, First Edition, 2000, with the following exception:  

Section 404.9 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) The International Property Maintenance Code, First Edition, 2000.
  - (6) The International Energy Conservation Code, First Edition, 2000.
  - (7) International Residential Code, First Edition, 2000 subject to the exceptions contained in WV CSR 87.4.1.7. A copy of the WV CSR 87-4-1 shall be kept on file in the Code Enforcement Department Office.
  - (8) ICC/ANSI A1.1 Standards for Accessibility & Usable Building and Facilities First Edition, 1998.
  - (9) International Existing Building Code, 2003 with the following exception:  

Omit reference to International Fire Code and substitute NEPA Life Safety Code 2000 Edition.
- (e) The following structures are not subject to inspection by the City of Hinton;
- Group U utility structures and storage sheds comprising an area not more than 150 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 lawn mowers, tools, bicycles or furniture.) Not included are those utility structures and storage sheds which have plumbing or electrical connections, are non-residential use, or are for the storage of explosives or other hazardous or explosive materials.
- (f) A copy of the codes listed herein is on file with the Secretary of State and the City of Hinton. These code books, collectively or separately, may be obtained by contacting the publisher.

Cross references: Fire Prevention Code, 7-200; National Fire Codes, 7-202.

**Sec. 5-9.1. Same – Definitions.**

For the purpose of this chapter, the following words, terms, and phrases shall have the meanings herein set out:

- (1) BOCA refers to the Building Officials and Code Administrators International, 4051 Flossmoor Road, Country Club Hills, Illinois 60477-5795.
- (2) CABO refers to the Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.
- (3) Fire Marshall means the West Virginia State Fire Marshall and/or his designated representative.
- (4) City of Hinton Building Code means the entire contents of Chapter 4, the referenced Codes as adopted in section 4-9 of the Code of the City of Hinton, the State Building Code as promulgated and codified in WV CSR 87-4-1, and all the referenced national codes.
- (5) ANSI means “American National Standards Institute”, 11 West 42<sup>nd</sup> Street, New York, New York 10036.
- (6) ASTM means “American Society of Testing and Materials.”
- (7) Building Code means all aspects of safe building construction and mechanical operations and all safety aspects related to building construction and mechanical operations.
- (8) ICC or “International” means “International Code Council”, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.
- (9) NFPA means “National Fire Protection Association”, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts, 02269-9101.
- (10) City of “Local Jurisdiction” means City of Hinton.
- (11) Board of Appeals, the Board of Appeals (Hinton Building Code Appeal Board) shall consist of five individuals, one from each of the following professions or disciplines, with three forming a quorum at any appeal hearing.

**Sec. 5-10. Same Amendments.**

The State Building Code is hereby amended as follows:

- (1) International Building Code 2000.  
Section 1612.3        Insert “City of Hinton dated 1984”  
Section 3409.2        Insert “April 1, 2003”
- (2) International Residential Code 2000  
Section R101.1        Insert “The City of Hinton”

Table R301.2(1)      Insert “Roof Snow Load” – 30 psf  
 Wind Speed – 90 mph  
 Seismic Design Category – B  
 Weathering – Severe  
 Frost Line Depth – 24”  
 Termite – Moderate to Heavy  
 Decay – Slight to Moderate  
 Winter Design Temp – 11 degrees  
 Flood Hazards – as noted in the Flood Plain  
 District Ordinance, September 11, 1984 and FIRM 1984

- (3)      International Plumbing Code 2000  
 Section 101.1      Insert “The City of Hinton”  
 Section 106.6.2      Insert “In City of Hinton Code, Chapter 4, Art. II., Section 4-200 et seq.”  
 Section 101.6.3      Insert “100%...100%”  
 Section 108.4      Insert “Misdemeanor... \$1,000.00”  
 Section 108.5      Insert “\$100.00... \$1,000.00”  
 Section 305.6      Insert “24 inches”  
 Section 904.1      Insert “12 inches”
- (4)      International Mechanical Code 2000  
 Section 101.1      Insert “The City of Hinton”  
 Section 106.5.2      Insert “In City of Hinton Code, Chapter 4, Article II, Section 4-200 et seq.”

**Sec. 5-11.      Same – Unlawful Acts; Penalty; Injunctive Relief Upon Violation.**

- (a)      Unlawful Acts. 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 to occupy or permit another person to occupy any premises, property, structure, or equipment regulated by the City of Hinton Building Code, or cause same to be done, contrary to or in conflict with or in violation of any of the provisions of the Code, or fail to obey a lawful order of the Code Official, or to remove or deface a placard or notice posted under the provisions of the Code.
- (b)      Penalty. Any person who shall violate a provision of the City of Hinton Building Code, upon conviction thereof, be subject to a fine of not less than one hundred (\$100.00) dollars nor more than one thousand (1,000.00) dollars at the discretion of the court. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
- (c)      Induction. In the case of any unlawful acts the mayor or such person as the mayor may designate is hereby authorized and empowered to institute and maintain a suit to restrain by injunction the violation of the building code notwithstanding the penalty for the violation thereof.  
 (Code 1971, 5-20; Ord. of 11-8-94)

**Sec. 5-12.      Same – Conflicts.**

- (a) Whenever there arises a conflict between the State Fire Code and the State Building Code, the State Fire Code shall take precedence.
- (b) Whenever there arises a conflict between the International Plumbing Code portion 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 shall take precedence.
- (c) Whenever there arises a conflict between the State Building Code and statutory laws of the State of West Virginia, the West Virginia Code shall take precedence.
- (d) In the event that any provision of the State Building Code conflicts with any provision of the Electrical Code adopted in this Chapter, and such conflicting provisions relate to electrical work, the applicable provisions of the electrical code shall prevail.
- (e) It is further ordained that all other ordinances or parts of ordinances in conflict herewith are hereby repealed.
- (f) It is further ordained that if any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity or the remaining portions of this Ordinance. The Common Council hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that nay one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.
- (g) That the Recorder-Treasurer Office is hereby ordered and directed to cause this Ordinance to be published in accordance with state law.
- (h) That this Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect from and after the date of its final passage and adoption. (2004)CCM

**Sec. 2. Building Inspector.**

The City Council may hire a full or part-time Building Inspector to enforce the provisions of this Chapter and the Standard Building Code, 2000 Edition adopted by this Section and the International Property Maintenance Code, and the City Council may provide for compensation for a Building Inspector. (2010CCM)

**Sec. 3. City Manager as Building Inspector.**

The City Manager shall be the Building Inspector of the City if there is a vacancy in said office and shall have the duties and exercise the functions delegated to the Building Inspector by the Standard Building Code, 1979 Edition adopted by this Section. If there is also a vacancy in the Office of City Manager, then the Mayor of the City shall have the authority to exercise the power of the Building Inspector. Whoever performs these duties shall be required to review the code and attend trainings as needed for completion of these duties and be compensated for such (2010CCM)

**Sec. 4. Permit Required for Construction.**

Any owner, authorized agent, or contractor who desires to construct, install, enlarge, alter, repair, move, demolish, or change a building, mobile home or structure, or to erect, or construct a sign of any description, or to install or alter fire-extinguishing apparatus, elevators, engines, or to install a steam boiler, furnace, heater, incinerator, or other heat producing apparatus, or the appurtenances, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the Building Inspector and obtain the required permit. The application shall be on a form prepared by the City Manager and shall include the following together with such other information as the City Manager deems pertinent:

- (a) Name and address of applicant.
- (b) Name and address of property owner (if different from applicant).
- (c) Exact street location of property for which permit is requested.
- (d) Description of work to be done.
- (e) Value, cost of work to be done.
- (f) Name and address of contractor.
- (g) Worker’s Compensation Account Number and/or Liability Carrier.
- (h) Signature of applicant.
- (i) (To be completed by City Manager). A determination of the tax status of the contractor.

(If there is a general contractor, it is the responsibility of the general contractor to obtain the permit. If there is no general contractor, then it is the responsibility of the owner of the building to obtain the permit.)

If the tax status is delinquent, the City Manager may refuse to process the application any further or require security to assure that the tax status will be brought current.

Once the application has been approved by the City Manager and the Building Inspector, the Building Permit shall be in the following form:

This permit is hereby approved by the City of Hinton allowing \_\_\_\_\_ to construct, build, place mobile home, or perform any construction or demolition within the City of Hinton, with the explicit understanding that the permit is used to \_\_\_\_\_ with the understanding that the person or persons receiving the permit shall be legally responsible to any adjacent property owners for any and all damages that may result from said permit and the City hereby issues said permit with the understanding that the City will not be liable as a result of any damages resulting from construction or demolition work of the person or persons receiving the permit.

Description of work to be done: \_\_\_\_\_

Date: \_\_\_\_\_

This permit shall expire one year from date of issuance.

\_\_\_\_\_  
Signature

Said permit shall be signed by the Building Inspector or City Manager. If there is no Building Inspector or City Manager, then it shall be signed by the Mayor. (Nothing herein however, shall be construed to require an owner who is doing work of a value of less than \$500.00 to obtain a permit.) (2010CCM)

**Sec. 5. Plan of Work; Statement of Materials**

An applicant for a building permit shall file with the Building Inspector a plan of the proposed work together with a statement of the materials to be used therein. The materials and the plan must be in accordance with the provisions of this chapter. (Vol. 2. p. 5, 8-27-29.)

**Sec. 6. Permit for Moving Buildings**

No building shall be moved until a permit has been obtained from the Building Inspector who shall not issue such permit if in his judgment the proposed new location of the building would increase the fire hazard of the surrounding buildings. (Vol. 2, p. 5, 8-27-29.)

**Sec. 7. Demolition of Buildings**

No person may demolish a building in the City of Hinton without obtaining a permit for the same from the Building Inspector at least thirty (30) days in advance of the demolition; provided, however, that where safety so requires, the Building Inspector and/or Fire Chief may waive the thirty (30) day requirement.

**Sec. 8. Permit Fees.**

The building permit fee schedule for the City of Hinton shall be:

- (a) The fee shall be \$5.00 per thousand dollars or fraction thereof.
- (b) For the moving of any building or structure, the fee shall be \$100.00.
- (c) For the demolition of any building or structure, the fee shall be \$25.00. (1989)
- (d) All residents will be allowed a permit free of charge for up to \$1,000.00 dollars of work on their residence or any other structure owned by them in the city limits each year. (2010CCM)

**Sec. 9. Appeal.**

An applicant for a building permit may appeal from the decision of the Building Inspector to the City Council, who may order a permit issued if the proposed work complies with the provisions of this Code. Notice of appeal shall be in writing and filed with the City Council within 30 days of the decision of the Building Inspector. (1989)

**Sec. 10. Structures Not Conforming or Erected Without Permit.**

Structures hereafter erected without permit, or not in conformity with this chapter, shall be ordered removed by the Building Inspector, if, after receiving written notice from the Building Inspector, the

owner fails to bring his structure in conformity, obtain a permit and pay a penalty three times the normal permit fee. In the case of removal, the owner shall bear all costs associated therewith. (1989)

**Sec. 11. Set Back of Building Lines.**

The setback of the building lines already established shall govern new construction or alterations throughout the city. No permit shall be issued and no proposed work begun which would alter the prevailing line of the buildings in the neighborhood, without the express consent of the City Council upon the recommendation of the Building Inspector upon a showing of good cause as to why the setback line should be altered. No building shall be built closer than three feet to a property line and no fence shall be placed closer than one foot to a property line without written approval of both owners.(2010CCM)

**Sec. 12. Loads; Safety of Design.**

All parts of every building shall be designed to carry safely the loads to be imposed thereon, and shall in all other respects conform to good engineering practice. (Vol. 2, p. 5., 8-27-29.)

**Sec. 13. Theater Exits.**

It shall be unlawful for any person in the City to erect, or to use, lease, sublet, or otherwise permit any building under his control or management, to be used for the giving or exhibition of any theatrical performance or public show, to which admission is obtained for money or other reward, unless the building shall be so constructed or supplied with the following exits from the room occupied by the persons assembled to witness the performance:

- (a) In every house or building used for such purposes having a seating capacity of five hundred or less there shall be three direct openings or exits, one of which shall not be less than five feet wide, and the remaining two shall be at least three feet wide, all so constructed as to permit easy exit from the audience room.
- (b) In every house or building having a seating capacity of from five hundred and one to seven hundred fifty there shall be at least five direct openings, one of which shall not be less than ten feet wide, the remaining four not less than five feet wide, all so constructed as to permit easy exit from the audience room.
- (c) In every house or building having a seating capacity of more than seven hundred fifty there shall be at least seven direct exits from the audience room, two of which shall be ten feet wide, the remaining five shall be 5 or more feet in width, and all of them easy access to persons desiring to escape, all so constructed as to permit easy exit from the audience room.

The construction of such exits shall be of fire-proof material where it is not a doorway opening direct upon the streets.

Any person who violates any of the provisions of this section shall, upon conviction thereof, be fined a sum of not less than twenty nor more than one hundred dollars, and may be imprisoned in jail not more than thirty days for each offense. Each performance given or permitted to be given shall constitute a distinct and separate offense. (1989)

**Sec. 14. Exit Doors of Pubic Buildings.**

All the exit doors of all schoolhouses, churches, theaters, and all other buildings used for public assemblages, shall swing outward; all the exit doors of all other buildings which are open to the general public and to which the general public have access may, in the discretion of the Chief of the Fire Department be required to swing outward, if, in the judgment of the Chief of the Fire Department, the public welfare and safety, so requires. Any owner of such property, his agent, leasee, or trustee, or any other person who shall violate any of the provisions of this paragraph, or any other of the said by the Chief of the Fire Department shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than fifty dollars, and every day such violation continues, after notice from said Chief of the Fire Department, shall constitute a separate offense. (1989)

**Sec. 15. Stairways.**

Every school, hospital and theater, over one story high, shall have at least two stairways constructed entirely of incombustible material, remote from each other and continuous from grade line to the topmost story. (Vol. 2, p. 5, 8-27-29.)

**Sec. 16. Open Flame Heating Devices.**

All gas, gasoline, kerosene, oil or charcoal burning stoves or heating devices shall be placed on non-combustible stands at least six inches above combustible supports, unless the burners are at least five inches above the base with non-combustible guard places four inches below the burners. (1989)

**Sec. 17. Penalty.**

Any person who shall violate any of the provisions of the first two Articles of this Chapter or fails to comply therewith, or who shall violate or fails to comply with any order or regulation made hereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved hereunder, or of any certificate or permit issued hereunder, shall, for each such violation and non-compliance, forfeit and pay a penalty in the sum of one hundred dollars. The imposition of one penalty for any violation of this Chapter shall not excuse the violation or permit it to continue. All such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified, each ten days that prohibited conditions are maintained shall constitute a separate offense. The application of this penalty shall not be held to prevent the enforced removal of prohibited conditions, as provided in Section 11 of this Chapter. (1989)

**Article II. Billboards and Signs****Sec. 18. Permit Required.**

No billboard, sign or other structure for advertising purposes shall be erected in the City until a permit shall have been granted so to do by the City Council, for which the City Manager shall collect a fee at the time of issuance. The fee for a sign permit shall be based on the fee schedule for a building permit being \$5.00 per each thousand dollars of costs of construction. Any person who shall violate this section shall be fined not less than \$10.00 nor more than \$100.00. Each and every day the violation remains shall constitute a separate offense. (2010CCM)

**Sec. 19. Construction.**

No sign board or other advertising device of like kind shall be hung with the bottom thereof nearer than eight feet vertically to the sidewalk nor ten feet horizontally from the curb nor hung without being suspended by wire ropes and guy wires. Any person violating this section shall be fined not less than two dollars nor more than one hundred dollars for each twenty-four hours such sign shall remain in position. (1989)

**Sec. 20. Rules and Regulations of Hinton Historic Landmark Commission.**

Nothing in this Article shall be construed to supercede the rules and regulations of the Hinton Historic Landmark Commission.

**Article III. Fire Escapes**

**Sec. 21. When Required.**

Every building or structure of three or more stories in height in the City, used as a factory or workshop, and in which ten or more persons are employed above the first story, or any hotel or boarding house three or more stories in height, or any hospital, theater or other public building of three or more stories in height, occupied or used as a tenement house, shall be provided with one or more suitable and substantial non-combustible fire escapes, or ladders, reaching from the top of the first story to the cornice. At each story above the first there shall be one or more non-combustible balconies substantially attached to the building and to the fire escapes. Such fire escapes and balconies shall be in number, size and capacity, design and location, as shall be necessary to furnish reasonable means of escape to all persons employed in the building in case of fire. (1989)

**Sec. 22. Definition of Owner; Tenement House.**

The word "owner" as used in this Article shall include the person in whom is vested the legal title to the premises, and the words "tenement house" as so used shall be construed to include all buildings in which ten or more persons usually reside or sleep at night. (1927, Ord. No. 25.)

**Sec. 23. Duty of Owner.**

It shall be the duty of the owner of every such building to equip the same as required in this Article. (1927)

**Sec. 24. Inspection.**

It shall be the duty of the City Manager, Building Inspector or the Chief of the Fire Department of this City, annually, to inspect every such building therein as described in this Article, or whenever complaint may be made in writing to them by any person. (1989)

**Sec. 25. Correction of Inadequate Condition.**

Written notices shall be served upon the owner, or his agent, of any such building not so provided with adequate fire escapes, to provide the same within thirty days thereafter. It shall be the duty of the owner of such building to comply with such notice and to provide such adequate fire escapes within thirty days thereafter. (1927, Ord. No. 25.)

**Sec. 26. Penalties.**

Any owner violating any of the provisions of this article shall be subject to a fine of not less than fifty dollars, nor more than two hundred dollars. Each week of failure to comply with the notice mentioned in the above section shall be deemed a separate and distinct offense, and, in addition, if any such owner shall fail within the space of sixty days after the receipt of such notice, to provide adequate fire escapes, the building may be declared a nuisance in the manner prescribed by this code and the Code of West Virginia. If any officer shall fail to perform any of the duties required of him under this Article or shall violate any of these provisions, he shall be fined no less than twenty-five dollars, nor more than fifty dollars. (1989)

## CHAPTER 7. ELECTIONS

- Sec. 1. Elections Subject to Permanent Registration Law; Procurement and Return of Registration Records.
- Sec. 2. Voting Places.
- Sec. 3. Neglect or Nonperformance of Duties by Officials.
- Sec. 4. Connivance with Officials.

### **Sec. 1. Elections Subject to Permanent Registration Law; Procurement and Return of Registration Records.**

All elections of the city shall be held in accordance with the subject to the provisions of the permanent registration law of this state.

At least three days prior to each primary or other election of the City, it shall be the duty of the City Manager to procure from the Office of the Clerk of the County Court of Summers County the municipal registration records necessary for the conduct of such election. Such records shall, within ten days after the date of the municipal election, be returned to the Office of the Clerk of the County Court by the City Manager.

In case of a contested election, the registration record of any challenged voter may be obtained from the Clerk of the County Court by the Council to determine the contest. Such records shall be returned by the city Manager to the Office of the Clerk of the County Court within a reasonable time after the contest shall have been finally decided. (1989)

### **Sec. 2. Voting Places.**

The voting places in the City shall conform with the Summers County precincts as follows: Fourth Precinct at West End School building (former Riverview School); Fifth Precinct at Vass Residence; 8<sup>th</sup> Ave; Sixth Precinct, at Carnegie Library; Seventh Precinct at City Hall; Ninth Precinct at Hinton Area Elementary School building; Tenth Precinct at Avis School building; and Eleventh Precinct at Bellepoint School Building. City residents who in general elections vote at the Thirteenth Precinct, the Armory, shall vote at the Eleventh Precinct, Bellepoint School, in City elections. Should the Summers County Commission in the future change, consolidate, or eliminate precincts, the City shall, without necessity of further action by the Council, conform, unless the Council specifically adopts an ordinance contrary to the delineation by the Summers County Commission. (1989)

### **Sec. 3. Neglect or Nonperformance of Duties by Officials.**

No election official, clerk or other person having official duties in the carrying out of primaries or elections shall willfully neglect or refuse to perform his duties. (1927, Ord. No. 4.)

**Sec. 4. Connivance with Officials.**

No person shall connive with any election official, clerk or other person having official duties in carrying out of primaries or elections for the purpose of defeating or interfering with any of the provisions of the Charter relative to the hold of primaries or the election of officers or with orderly carrying out of such elections. (1927, Ord. No. 4.)

**AN ORDINANCE AMENDING THE CHARTER OF THE CITY OF HINTON AND MODIFYING THE ELECTION CYCLES AND ELIMINATING PRIMARY ELECTIONS**

*WHEREAS*, the City Council of the City of Hinton desires to amend the existing Charter of the City of Hinton as previously adopted, as set out, hereinafter;

*WHEREAS*, the existing Charter of the City of Hinton requires two separate and distinct elections for the election of the Mayor and City Council, being a primary election as required by Section 9 (b) of the Charter of the City of Hinton that is to be held on the second Tuesday in May and the general election as required by Section 9 (c) of the Charter of the City of Hinton that is to be held on the second Tuesday in June;

*WHEREAS*, the City of Hinton pays from its general budget for the costs of each said election;

*WHEREAS*, the elimination of one of the two elections that are now required would result in a substantial cost savings for the City of Hinton;

*WHEREAS*, the election of the Mayor and Council would be on a non-partisan basis similar to the method in which candidates are elected to the Board of Education, with no party affiliation appearing on the ballot;

*WHEREAS*, the current election for City offices is scheduled every four years when there is no national or state election and, as a result, voter turnout and interest has historically been low;

*WHEREAS*, it is also the desire of the Mayor and City Council to change the election cycle so that the election for the City of Hinton corresponds with the primary election cycle for the Governor of the State of West Virginia and the President of the United States which will be held on the second Tuesday in May 2016 and every four years thereafter;

*WHEREAS*, in order to accomplish this change it is necessary that at the conclusion of the existing term of the Mayor and City Council which ends on June 30, 2013 that an election be held in May 2013 for a term of office of three years commencing July 1, 2013 and ending June 30, 2016 followed by subsequent four year terms commencing on July 1, 2016 with elections every four years thereafter.

***NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HINTON*** that this ordinance to amend the existing Charter of the City of Hinton and to modify the election cycle and eliminate primary elections to be adopted.

***IT IS FURTHER ORDAINED***, that from this date forward, that the election process for election of City Offices be modified and that City elections be held the second Tuesday in May every four years commencing in May of 2016, after completion of the election in May of 2013 and that those elections be non-partisan and that the currently existing primary election be abolished.

***IT IS FURTHER ORDAINED***, that no City primary election be held in the election year of 2013 and that the Mayor and the City Council be elected in a non-partisan election in May 2013 for a term of office of three years which will commence on July 1, 2013 and end on June 30, 2016 and thereafter an election will be held to coincide with the primary election for the Governor of the State of West Virginia and the President of the United States in May of 2016 and every four years thereafter

with the Mayor and Council elected for terms of four years with the initial term commencing on July 1, 2016 and concluding on June 30, 2020 and for terms of four years thereafter.

This ordinance shall be effective upon passage

First Reading \_\_\_\_\_ July 21, 2010

Second Reading \_\_\_\_\_ September 21, 2010

## CHAPTER 9. FIRE DEPARTMENT

- Sec. 1. Organization.
- Sec. 2. Command at Scene of Fire.
- Sec. 3. Interference with Fire Fighting.
- Sec. 4. False Alarm of Fire.
- Sec. 5. Police Powers and Duties of Fireman.
- Sec. 6. Inspection of Premises.
- Sec. 7. Order for Correction of Fire Hazard.
- Sec. 8. Compliance with Such Order.
- Sec. 9. Fire as Result of Noncompliance.
- Sec. 10. Penalty.

### **Sec. 1. Organization.**

The “Hinton Fire Department” shall be the Fire Department of the City. It shall be kept, organized and continued, as at present constituted and conducted, as to election of officers, organizations, payment and related matters in all respects. (1989)

### **Sec. 2. Command at Scene of Fire.**

At any time in case of fire within the City, or when the Department has responded to an alarm of fire and is in attendance thereon, or when any properly authorized official or employee of the City or any volunteers fighting such fire on behalf of the City, are in attendance to fight such fire, the Fire Chief of such Department, or, in his absence, any such official of the City, or the party in charge of such volunteer forces, shall have charge of the vicinity of such fire, including the territory occupied by the fire hose, fireplugs or fire equipment, and shall have the right and authority to prescribe regulations to keep persons and vehicles away from such vicinity of such fire or the streets in the vicinity thereof, when in his opinion it is advisable to do so. (1927, Ord. No. 32.)

### **Sec. 3. Interference with Fire Fighting.**

It shall be unlawful for anyone to violate any such regulations or disobey any such command, or to interfere in any way with the person so having charge or any such person fighting such fire, or to encroach on the territory in the vicinity of such fire, or any street, in such vicinity, after having been instructed to the contrary by the person so having charge thereof, or to walk on or tamper in any way with the fire hose or other equipment. (1927, Ord. No. 32.)

### **Sec. 4. False Alarm of Fire.**

No person shall send in, or cause to be sent in, any false alarm of fire, to the Fire Department. (1927, Ord. No. 32.)

**Sec. 5. Police Powers and Duties of Firemen.**

The Fire Chief and such assistance as he may from time to time designate, shall have and perform all the duties and privileges of policemen, for the purpose of enforcing this chapter and for making arrests of any violators thereof. (1989)

**Sec. 6. Inspection of Premises.**

The Fire Chief of the City shall have authority to enter at all reasonable hours any building or premises in the City for the purpose of making an examination of such premises for fire hazards. (Vol. 3, p. 102, 5-8-34.)

**Sec. 7. Order for Correction of Fire Hazard.**

In the event the Fire Chief should find any collection of inflammable, combustible and explosive material on, in or about any such building or premises or any condition existing, which in his judgment would constitute a fire hazard, he shall order, in writing, the removal thereof or the correction of said condition, constituting such hazard. (Vol. 3, p. 102, 5-8-34.)

**Sec. 8. Compliance with Such Order.**

If the owner, tenant or occupant of such building or premises fails within five days from the time such written order shall be given him, to comply with the requirements of such order, he shall be fined not less than twenty dollars nor more than five hundred dollars. Each day's failure to comply with the requirements of the order shall constitute a separate offense. (Vol. 3, p. 102, 5-8-34.)

**Sec. 9. Fire as Result of Noncompliance.**

If a fire occurs, directly or indirectly, as a result of the failure of such owner, tenant or occupant of such building or premises to comply with the requirements of such order, he shall be liable to the City for all costs incurred in putting out such fire. (Vol. 3, p. 102, 5-8-34.)

**Sec. 10. Penalty.**

Any violation of this chapter shall be punished, upon conviction, by a fine of not less than one hundred dollars nor more than five hundred dollars, and, in the discretion of the Court trying the case, in addition, imprisonment for not more than ten days. (1989)

**CHAPTER 11. FRANCHISES**

- Sec. 1. Exclusive Right of Council.
- Sec. 2. Application.
- Sec. 3. Hearing.
- Sec. 4. Notice of Application.
- Sec. 5. Record of Franchise to be on Minutes of Council; Certified Copies.
- Sec. 6. Term.
- Sec. 7. Renewal.
- Sec. 8. Mandamus.
- Sec. 9. Fees.

**Sec. 1. Exclusive Right of Council.**

No application for any franchise for any easement in the City streets and sidewalks or like thing whatever shall be granted except by the Council. (1989)

**Sec. 2. Application.**

An application for such franchise shall be filed with the City Manger at least thirty days prior to the date of the meeting at which it is to be considered by the Council. (1927, Ord. No. 17.)

**Sec. 3. Hearing.**

No such franchise shall be granted until an opportunity has been given any person interested in the granting or refusing of such franchise to be heard. (1927, Ord. No. 17.)

**Sec. 4. Notice of Application.**

Notice of such application, stating the time and place of the hearing and the purpose for which such franchise is sought shall be published once a week for two consecutive weeks in some newspaper of general circulation published in the City. (1989)

**Sec. 5. Record of Franchise to be on Minutes of Council; Certified Copies.**

The City Manager, as City Recorder, shall record upon the records of the minutes of the Council all franchises. These shall also be signed by the Mayor. The City Manger shall issue certified copies of franchises when required for legal proceedings or for any other purpose. (Vol. 4. P. 20 9-5-35.)

**Sec. 6. Term.**

No franchise shall hereafter be granted for a longer term than fifty years. No franchise hereafter granted for any longer term than fifty years shall be of any force or validity. (1927, Ord. No. 17.)

**Sec. 7. Renewal.**

When such franchise shall have expired, it may be renewed for a term not exceeding fifty years upon the same proceedings being had as for an original franchise. (1927, Ord. No. 17.)

**Sec. 8. Mandamus.**

In all cases where any person has obtained or shall obtain any rights, license, privilege or franchise to operate streetcar lines or cars in whole or in part upon the public roads of the City; or to furnish to the City or the inhabitants thereof, water, gas or electricity; or to construct or operate a telephone system or other communication system in the City, and the terms, conditions or manner of exercising such rights, license, privilege or franchise are embodied in the order of the Council conferring the same, or are otherwise, either voluntarily or by law, imposed upon or assumed by such person, application may be made for a writ of mandamus to the Circuit Court of Summers County on behalf of the City, to compel such person to use and exercise such rights, privileges, license or franchise, in accordance with the terms and conditions, and in the manner prescribed in the resolution, order or ordinance, or

otherwise lawfully so defined or assumed, and to do and perform each and every obligation and duty attached to such rights, privilege, license or franchise whether such obligation and duty be voluntarily assumed or by law attached thereto or imposed thereby. Nothing in this Chapter contained shall be construed to deprive the City or any inhabitants thereof of any other remedy to compel any such person to comply with the terms, conditions and agreements of such rights, privileges, license or franchise, or the right to recover damages for the failure so to do, or to affect, remove or lessen the liability of such person to forfeiture of such rights, license, privilege, franchise or charter for failure so to use and exercise such rights, privilege, license or franchise. (1989).

**Sec. 9. Fees.**

As franchises are granted or come up for renewal, the City Council may set such fees as are reasonable and allowable under the West Virginia Code, or, in the alternative negotiate with the franchise applicant for benefits for the City.

1. The effective date of the original ordinance was April 8, 1927.
2. As to the enforcement of public utility franchises by the City Manger, see Ch. 2, Sec. 28.

**CHAPTER 13. GARBAGE AND REFUSE**

- Sec. 1. Definitions.
- Sec. 2. Department of Refuse.
- Sec. 3. Sanitation Inspector – Appointment and Duties.
- Sec. 4. Collection by Unlicensed Private Scavengers.
- Sec. 5. Standard Containers; Storage.
- Sec. 6. Garbage, Refuse, Trash and Ash Containers.
- Sec. 7. Containers Required.
- Sec. 8. Scattering or Accumulating Refuse, Garbage, Trash, Ashes, etc.
- Sec. 9. Domestic Incineration.
- Sec. 10. Minimum Charges for Weekly Collection of Refuse.
- Sec. 11. Special Handling.
- Sec. 12. Special Collections; Charges Therefore.
- Sec. 13. Revision of Charges.
- Sec. 14. Disposition of Funds Derived from Charges.
- Sec. 15. Dumping.
- Sec. 16. Accumulation of Refuse.
- Sec. 17. Contracts.

**Sec. 1. Definitions.**

- (a) “Refuse” shall be construed to include ashes, garbage, animal waste, rubbish, trash or any material of any kind that has been discarded, rejected, cast aside or thrown away as worthless.
- (b) “Refuse removal”. The hauling and transportation of refuse from point of collection to point of disposal.
- (c) “Refuse disposal”. The disposition of refuse in accordance with rules and regulations promulgated by the West Virginia State Department of Health.

**Sec. 2. Department of Refuse.**

There shall be a Department of Refuse under the Mayor and City Council, which shall be adequately supplied with personnel and equipment to carry out properly and satisfactorily the essential public service of collection, removing and disposing of refuse produced in the households and places of business in the City. (1989)

**Sec. 3. Sanitation Inspector – Appointment and Duties.**

The Mayor shall designate a qualified person as Sanitation Inspector who shall have the right, and whose duty it shall be, to examine regularly the equipment and manner in which private scavengers conduct their business, prescribe rules and the regulations to be followed by them, and supervise their operations so as to protect the public health and prevent the spread of disease. (1989)

**Sec. 4. Collection by Unlicensed Private Scavengers.**

It shall be unlawful to deliver refuse to or to permit unlicensed private scavengers to collect refuse from private property. (Vol. 4, p. 5, 8-6-35.)

**Sec. 5. Standard Containers; Storage.**

No municipal employee shall collect or remove, at City expense, any refuse from any premises unless such premises are equipped with standard containers referred to herein, and unless such refuse is kept stored in such containers. (Vol. 4, p. 5, 8-6-35.)

**Sec. 6. Garbage, Refuse, Trash and Ash Containers.**

The standard refuse containers shall be substantially made of metal or other suitable material and have a capacity of not less than ten nor more than thirty gallons. The containers shall be equipped with at least two carrying handles and a tight-fitting cover. (1989)

**Sec. 7. Containers Required.**

It shall be unlawful for any person to store or permit the storage of refuse on or about premises, or the premises occupied by him unless such refuse is kept separately in standard refuse containers as specified in this chapter. (1989)

**Sec. 8. Scattering or Accumulating Refuse.**

It shall be unlawful for any person to throw, place or scatter any refuse over or upon any premises or street, without the intent to later remove or burn, or to suffer or permit any premises owned, occupied or controlled by such person to become or remain offensive, unsanitary, unsightly, unsafe to public health by reason of the accumulation of refuse. Such material so scattered or accumulated shall constitute a nuisance. (1989).

**Sec. 9. Domestic Incineration.**

It shall be unlawful for any person to dispose of refuse within the corporate limits of the City by means of incineration without a permit from the Hinton Fire Chief. (1989)

**Sec. 10. Minimum Charges for Weekly Collection of Refuse.**

Refuse as defined in Section 1 of this Chapter, will be collected once a week, fifty-two collections a year, upon the payment in advance of the fees as set by the Council from time to time. (1989)

**Sec. 11. Special Handling.**

The City shall have the right to regulate refuse service to any person whose refuse requirements are sufficiently abnormal or different, in the opinion of the municipal official in charge, as to justify special handling. This shall include those buildings, dwellings or establishments, requiring carry-out service, or removal from premises locked, barred or fastened or from property not readily accessible to refuse collectors, or in cases where refuse is not found in standard containers. In such cases an independent contract may be entered into based upon rates and service mutually agreed upon. (1989)

**Sec. 12. Special Collections; Charges Therefore.**

The following types of refuse: Raw garbage, offal, toxic waste, medical waster, animal excreta, the carcasses of animals, tree or shrub trimmings, or materials resulting from the demolition, repair, alteration or erection of buildings or structures shall be collected upon special collection for which a charge shall be added as to adequately compensate the city for extra refuse volume or weight involved. (1989)

**Sec. 13. Revision of Charges.**

Refuse service under this Chapter is intended to be operated on a self-supporting basis for public benefit. To that end, the Council shall revise from time to time as they deem appropriate the schedule of rates and so adjust them that costs will be distributed as equitably as possible among all citizens on the basis of benefit received. At no time, however, shall rates be continued which are disclosed to be producing less revenue than is required to meet all obligations and costs involved in rendering refuse service to the public. (1989)

**Sec. 14. Disposition of Funds Derived from Charges.**

The revenues derived from these charges shall be placed in the General Operating Fund of the City but shall be earmarked and used only for the purpose of:

- (a) Amortizing debts contracts for capital outlay in providing plant and equipment necessary to perform the service efficiently.
- (b) Establishing a revolving fund adequate to replace obsolete or worn-out plant and equipment and to maintain same in good repair.
- (c) Paying the cost of materials and labor, including overhead and administration, necessary to operate the service to public satisfaction.
- (d) Paying the cost of the landfill dumping fees. (1989)

**Sec. 15. Dumping.**

It shall be unlawful for any person to deposit or dump refuse material of any character on any land within the City limits. (1989)

**Sec. 16. Accumulation of Refuse.**

Refuse may not be accumulated or stored in the City limits for a period of more than one week. (1989)

**Sec. 17. Contracts.**

The Mayor, with the approval of Council, may enter into a contract with any properly licensed individual or corporation, for the completion of any service or duty required under this Chapter. This authority would include, but not be limited to the authority to lease any City owned equipment to any properly licensed individual or corporation for the purpose of providing garbage or refuse removal or other similar or related services.

**CHAPTER 15. LICENSES**

- Sec. 1. Required; Fees Levied.
- Sec. 2. Certain Licenses—Application for and Grant Of.
- Sec. 3. Fees for Issuance, Alteration or Assignment of License Certificate.
- Sec. 4. Penal Fee for Period Business Conducted Without License.
- Sec. 5. Term.
- Sec. 6. Specific Activities and Fees.
- Sec. 7. When Not Required.
- Sec. 8. Revocation.
- Sec. 9. Denial by Resolution of Council.
- Sec. 10. Display of License.
- Sec. 11. No More than One License Required.

**Sec. 1. Required; Fees Levied.**

No person shall, without a City license, engage in or prosecute, within the City, any of the businesses, activities, trades or employments named in the following Sections of this Chapter. The license fees hereinafter specified are hereby levied on every person engaging in or prosecuting, within the City, any such businesses, activities, trades or employments.

**Sec. 2. Certain Licenses—Application for and Grant Of.**

In case any person desires to obtain a City license under the provisions of this Article he shall apply to the City Manager therefore in writing and shall specify the exact place and business for which the license is desired. The City Manager shall have power to issue the same, or he may submit such application to the council in his discretion. In case the City Manager fails or refuses to issue such license, the application therefore may then be made to the Council, and no such license shall be granted except by the vote of two-thirds of all the members elected to the Council. When granted by the Council, such license shall be issued by the City Manger. (1989)

**Sec. 3. Fee for Issuance, Alteration or Assignment of License Certificate.**

There shall be paid to the City an administrative fee of one dollar over and above the license fee for the issuance of a license certificate or for the alteration or assignment thereof. This fee shall be paid by the applicant for the license, the alteration or assignment. (1989)

**Sec. 4. Penal Fee for Period Business Conducted Without License.**

If any person shall conduct any business or occupation or exercise any right or privilege without the license required by this article, he shall, in addition to paying the fee required, pay a penalty of ten percent of the annual fee for each month or fractional part thereof for such time as he was in default. Such penalty shall be deemed part of the license fee and shall be assessed and collected in the manner prescribed in this article as to other license fees, except that the license certificate issued therefore and the report thereof made to the City Manager shall state separately the amount of the license proper and the amount of the penalty. It shall be the duty of the officer who issues the certificates of license to state therein the amount of the fee and of the penalty separately. It shall be the duty of the officer charged with the collection of the fee on such license to collect the full amount thereof and of the penalty. It shall be the duty of the City Manger to charge the officer with the full amount of such tax and penalty. (1989)

**Sec. 5. Term.**

The term for all annual licenses shall begin on and with the first day of July of each year and shall end on the thirtieth day of the following June. Every license issued under this article, except where otherwise specifically provided, shall expire on the thirtieth day of June. (1927, Ord. No. 15.)

**Sec. 6. Specific Activities and Fees.**

<u>Activity</u>	<u>Rate</u>
Amusement of Musical Devices	
Less than 20:	
\$00.01 Device	\$ 2.00 Each Device
\$00.05 Device	\$ 5.00 Each Device
\$00.10 Device	\$10.00 Each Device
\$00.10 Plus Device	\$12.50 Each Device
More than 20:	\$15.00
Baggage or parcel checking device	
Vibrator machines and toilet lockers,	
Sanitary napkins	\$00.50
Bagatelle (tables), each	\$ 15.00
Billiard or pool (tables), each	\$ 15.00
Bowling (Alleys), each	\$ 15.00
Carnivals (Street or Other):	
For each performance, exhibit	
Or entertainment	\$ 5.00
Riding Devices	\$ 10.00 per week
Concessions selling services, goods	
Ware, merchandise and food	\$ 5.00 per week per concession

Games of Skills	\$ 10.00 per week per concession
Candy or Merchandise Wheels	\$ 5.00 per day
Circuses and other Shows:	
For each railroad car used to transport property or equipment	\$ 4.00 per day for each day a performance is given
For each truck used to transport property or equipment	\$ 3.00 per day for each day a performance is given
Collection Agency	\$15.00
Employment Agency	\$15.00
Fortune Teller, Palmist	
Phrenologist, Spiritualist, Clairvoyant	
Mind Reader,	
Medium	\$15.00
Hawker and Peddler:	
Foot	\$ 10.00
Vehicle	\$ 15.00
More than 2 tons	\$150.00 plus \$100.00 for each Additional ton or fraction thereof
Itinerant Vendors	\$15.00
Junk Dealers:	
Resident junk dealer within the City limits	\$ 15.00
Resident junk dealer (No yard for storing)	\$ 15.00
Resident junk dealer's agent	\$ 10.00
Itinerant junk collector	\$ 2.00
Non-resident junk dealer	\$15.00
Non-resident junk dealer's agent	\$15.00
Laundromats – Car Wash:	
1-5 Devices	\$ 15.00
6-9 Devices	\$ 3.00 each
10 or more Devices	\$ 15.00
Pawnbrokers	\$15.00
Theatres and Public Shows:	
Over 2,000 but less than 5,000 population	\$ 15.00
Less than 2,000 population	\$ 10.00
Trading Stamps	\$15.00
Vending Machines, Merchandise or Service Devices:	
Less than 20:	
\$00.01 Device	\$ 2.00 Each Device
\$00.05 Device	\$ 5.00 Each Device
\$00.10 Device	\$ 10.00 Each Device
\$00.10 Plus Device	\$ 12.50 Each Device
More than 20:	\$15.00

General Stores: (The term “General Store” shall be construed to mean and include any store or stores or any mercantile establishment or establishments, in which goods, wares, or merchandise of any kind are purchased, ordered, sold or offered for sale either at retail or wholesale.)

1 to 5 stores \$ 15.00

Special Stores:(The term “Special Store” shall be construed to mean and include any store or stores or any mercantile establishment or establishments, in which goods, wares or merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin operated device, or devices owned or operated by the store proprietor.)

1 to 5 stores \$5.00

#### Alcoholic Beverages

##### Alcoholic Liquors:

Fraternal or veterans organizations or  
nonprofit social clubs \$ 15.00  
Private club \$15.00

##### Non-intoxicating Beer:

Retail Dealer – Class A (Restaurants  
Bars and fraternal organizations) \$15.00  
Class B (Grocery Stores)  
(Chilled and Unchilled) \$15.00  
Class B (Unchilled only) \$15.00  
Distributor \$15.00  
Brewer \$15.00

##### Wine:

Retailers (Grocer) \$15.00  
Distributors (Wholesale) \$15.00  
Wine Tasting \$15.00  
Wine Sales Representative \$15.00

Architects \$15.00

Attorneys \$5.00

Auctioneers \$15.00

Barbers, Beauticians or Manicurists \$15.00

Barber and Beautician Schools \$15.00

Chiropractors \$15.00

Dental Corporation \$15.00

Dentists \$15.00

Embalmers & Funeral Directors \$15.00

Engineers \$15.00

Foresters \$5.00

Funeral Establishments \$15.00

Hearing Aid Fitters and Dealers \$15.00

Hospitals: \$15.00

Hotels, motels and boarding houses \$2.00

Each bedroom in excess of 7 \$00 .25 each up to \$10.00

Insurance Brokers \$10.00

Insurance Company \$15.00

Landscape Architects \$15.00

Land Surveyors	\$15.00
Nursing Home Administrators	\$15.00
Nursing Homes	\$ 4.00 per Bed (maximum \$15.00)
Occupational Therapists	\$ 5.00
Osteopathic Physicians and Surgeons	\$ 10.00
Personal Care Homes	\$ 2.00 per Bed (maximum \$15.00)
Physical Therapists	\$15.00
Physicians, Surgeons & Podiatrists	\$15.00
Practical Nurses	\$5.00
Private Detectives & Investigators	\$15.00
Psychologists	\$15.00
Radiologic Technologists	\$10.00
Real Estate Brokers	\$15.00
Real Estate Salesman	\$15.00
Registered Professional Nurses	\$5.00
Restaurants	\$ 2.00
Each five chairs or spaces where persons are fed in excess of ten	\$00 .25 per Sec. Up to \$10.00
Social Workers	\$5.00
Veterinarians (1989)	\$5.00

**Sec. 7. When Not Required.**

This article shall not be construed to require:

- (a) Any incorporated bank, savings bank or savings institution or trust company to obtain a license as broker or private banker;
- (b) A license for any school exhibition, literary or scientific lecture or musical concert;
- (c) A license for furnishing refreshments at any public dinner, fair, festival or celebration by a non-profit organization;
- (d) Any trustee selling trust property, or any personal representative or committee selling property belonging to the estate, under his charge, or any officer or commissioner selling property under the order, decree or execution of process of any Court of Justice of this State or of the United States, to obtain a license to make such sale. (1989)

**Sec. 8. Revocation.**

The City Council shall have authority to revoke any license issued under authority of this article, for good cause shown, upon a properly verified petition in writing of any inhabitant of the City. The license shall have ten days notice of the proposed revocation, and the privilege of being heard in person or by counsel. Such notice shall be served as writs of summons are served in civil cases. After such revocation the license shall have no effect to protect him from any penalty imposed by law. (1989)

**Sec. 9. Denial by Resolution of Council.**

Nothing contained in this article shall deprive the Council of the City of the authority to prohibit by resolution the issuance of a license in any particular case in which it shall appear to the Council to be proper to refuse to issue such license. (1927, Ord. No. 15.)

**Sec. 10. Display of License.**

Any person, business or amusement device required to have a license under this Chapter shall display the same in a prominent place in the business or on the amusement device.

**Sec. 11. No More than One License Required.**

No business in the City shall be required to obtain more than one license for activities conducted at a single business location. In the event that a business engages in more than one of the activities enumerated herein, that business will pay the highest applicable fee. (1989)

**CHAPTER 16. MARKET**

- Sec. 1. Establishment; Location.
- Sec. 2. Market Master.
- Sec. 3. Hours.
- Sec. 4. Holidays.
- Sec. 5. Who May Use Facilities.
- Sec. 6. Fee.
- Sec. 7. Determination of Stall or Space.
- Sec. 8. Parking Space.
- Sec. 9. Arbitration of Disputes.
- Sec. 10. Permanent Stall or Space.
- Sec. 11. Choice of Stall or Space.
- Sec. 12. Occupation of More Than One Stall or Space.
- Sec. 13. Tables or Booth in Street.
- Sec. 14. Sale of Produce on Market Days.
- Sec. 15. Signs, etc., on Stalls and Booths.
- Sec. 16. Hawking and Outcry.
- Sec. 17. Traffic.
- Sec. 18. Sanitation.
- Sec. 19. Compliance with Regulations.
- Sec. 20. Penalties.

**Sec. 1. Establishment; Location.**

There shall be a City Market in and for the City which shall be held on James Street between First Avenue and Second Avenue or at such locations as may from time to time be fixed by the City Council. (Vol. 3, p. 44, 6-30-31.)

**Sec. 2. Market Master.**

The City Market shall be operated and conducted under the supervision of the City Manager, who will act as Market Master, and as such shall have the power to make such regulations for the conduct of the market as he may deem necessary. (Vol. 3., p. 44, 6-30-31.)

**Sec. 3. Hours.**

The market shall be held twice a week between the hours of 6:30 a.m. and 11:00 a.m. on Tuesdays, and between the hours of 6:30 a.m. and 11:30 a.m. on Saturdays. (Vol. 3, p. 44, 6-30-61.)

**Sec. 4. Holidays.**

When the regular market day falls upon a holiday, the day proceeding the regular market day shall be the market day. (Vol. 3, p. 44, 6-30-31.)

**Sec. 5. Who May Use Facilities.**

Any producer of food products, being a resident of the State of West Virginia may offer such products for sale at the market. No person not a producer of food or not a resident of the State of West Virginia may offer food products for sale at the market. (Vol. 3, p. 44, 6-30-31.)

**Sec. 6. Fee.**

There shall be no fee or charge to farmers or producers of food products for a place or stall in the City Market for the purpose of offering for sale at retail to consumers of the City their food products. (Vol. 3, p. 44, 6-30-31.)

**Sec. 7. Determination of Stall or Space.**

The Market Master shall mark off stalls or other places on the street or curb for selling on the market and fix and determine the space to be occupied by such persons. (Vol. 3, p. 44, 6-30-31.)

**Sec. 8. Parking Space.**

The Market Master shall arrange and supervise parking space for the teams and automobiles of persons selling on the market. (Vol. 3, p. 44, 6-30-31.)

**Sec. 9. Arbitration of Disputes.**

The Market Master shall arbitrate disputes between persons selling on the market and the public. (Vol. 3, p. 44, 6-30-31.)

**Sec. 10. Permanent Stall or Space.**

No permanent stall or reserved space shall be allotted to any person selling food at the market. (Vol. 3, p. 44, 6-30-31.)

**Sec. 11. Choice of Stall or Space.**

Precedence as to choice of stall or space at the market is given to food producers in the order of arrival at the market. (Vol. 3, p. 44, 6-30-31.)

**Sec. 12. Occupation of More Than One Stall or Space.**

No persons selling on the market shall occupy more than one stall or space unless by special permission of the Market Master. (Vol. 3, p. 44, 6-30-31.)

**Sec. 13. Tables or Booth in Street.**

No person shall set up tables or booths for the sale of produce in any street, except in the location designated as the market. (Vol. 3, p. 44, 6-30-31.)

**Sec. 14. Sale of Produce on Market Days.**

During the time of the holding of the market, all persons bringing produce to the City to be sold directly to the consumer shall sell such produce at the market. Should any person be not entirely sold out at the closing of the market hours, such person may then sell his produce at retail to the consumers at any place. No person shall offer produce for sale by house to house canvass during market hours. (Vol 3. p. 44, 6-30-31.)

**Sec. 15. Signs, etc., On Stalls and Booths.**

No person shall post any signs or cards over stalls and booths except in accordance with regulations of the Market Master. The Market Master shall have power to prohibit such signs or cards. (Vol. 3, p. 44, 6-30-31.)

**Sec. 16. Hawking and Outcry.**

No person selling on the market shall hawk or make any outcry to attract attention. (Vol. 3, p. 44, 6-30-31.)

**Sec. 17. Traffic.**

During market hours no vehicle of any kind or character except the vehicles of the producers shall be parked within the limits of the City Market. Other traffic shall be permitted and controlled under such regulations as the Market Master may from time to time establish. (Vol. 3, p. 44, 6-30-31.)

**Sec. 18. Sanitation.**

All persons selling on the market must keep their premises clean and sanitary during market hours. The Market Master shall see that this is done and shall keep the market place clean and sanitary during and after market house. (Vol. 3, p. 44, 6-30-31.)

**Sec. 19. Compliance with Regulations.**

No person shall refuse to obey or shall violate any of the regulations of the Market Master. (Vol. 3, p. 44, 6-30-31.)

**Sec. 20. Penalties.**

Any person violating any of the provisions of this Chapter shall, upon conviction, be fined not more than twenty dollars and may, in the discretion of the Market Master be excluded and prohibited from attending the market. (Vol. 3, p. 44, 6-30-31.)

## **CHAPTER 17. CITY COURT**

### **Article I. In General**

- Sec. 1. City Court; Judge; Qualifications.
- Sec. 2. Term of Judge.
- Sec. 3. Salary of Judge.
- Sec. 4. Execution of Process.
- Sec. 5. Summoning Witnesses.
- Sec. 6. Proceedings Against Witness Failing to Appear to Testify.
- Sec. 7. Hearing on Contempt Charge Against Witness.
- Sec. 8. Judge's Power of Arrest.
- Sec. 9. Officer's Power to Arrest.
- Sec. 10. Warrant Prerequisite to Trial.
- Sec. 11. Complaint.
- Sec. 12. Taking Forfeit.
- Sec. 13. Sessions; Trial; Docket Entry.
- Sec. 14. Judgment.
- Sec. 15. Fines, Penalties and Costs – Execution or Immediate Payment.
- Sec. 16. Mittimus or Order of Commitment.
- Sec. 17. Return on Mittimus or Order of Commitment.
- Sec. 18. Appeal.
- Sec. 19. Appeal Bond.
- Sec. 20. Record Upon Appeal; Trial in Circuit Court.
- Sec. 21. Duties as to Prisoner of Person Having Custody.

### **Article II. Form**

- Sec. 22. Form of Complaint.
- Sec. 23. Form of Warrant.
- Sec. 24. Form of Subpoena for Witness.
- Sec. 25. Form of Warrant to Compel Attendance of Witness.
- Sec. 26. Form of Docket Entry.
- Sec. 27. Form of Mittimus or Order of Commitment.
- Sec. 28. Form of Appeal Bond.

### **Article I. In General**

- Sec. 1. City Court; Judge; Qualifications.**

There is hereby created City Court to have concurrent jurisdiction with the Courts of the State of West Virginia to enforce the provisions of this Code. The City Council shall, upon the nomination of the Mayor, appoint a Judge for said Court. The person so nominated by the Mayor must be either an attorney admitted by the Bar of West Virginia to practice law in the Courts of West Virginia, or a

person who has met the qualifications for training and education to serve as a Magistrate within the State of West Virginia. (1989)

**Sec. 2. Term of Judge.**

The City Judge shall serve as Judge for the same term as the members of the City Council unless said Judge resigns, dies, or is removed for cause by the City Council. (1989)

**Sec. 3. Salary of Judge.**

The City Council shall affix from time to time a salary for the Judge so appointed but the salary may not be reduced during the Judge's term. (1989)

**Sec. 4. Execution of Process.**

Any witness, properly summoned, pursuant to endorsement on the warrant or by subpoena, who shall fail or refuse to attend the trial or to testify, may be proceeded against as for a contempt. The City Judge may issue his warrant to compel the attendance of such witness. (1989)

**Sec. 5. Summoning Witnesses.**

The names of those desired as witnesses may in any case be endorsed upon the warrant. In lieu of such endorsement, the City Judge may issue his subpoena for any witness. (1989)

**Sec. 6. Proceedings Against Witness Failing to Appear to Testify.**

Any witness, properly summoned, pursuant to endorsement on the warrant or by subpoena, who shall fail or refuse to attend the trial or to testify, may be proceeded against as for contempt. The City Judge may issue his warrant to compel the attendance of such witness. (1989)

**Sec. 7. Hearing on Contempt Charge Against Witness.**

When such witness has been brought before the City Judge, he shall be informed of the default of which he is charged, and given an opportunity to show cause, if any he can, why he should not be punished as for a contempt. If, in the opinion of the City Judge, such witness has been guilty of a contempt, he may be punished as for a contempt committed before a Magistrate. (1989)

**Sec. 8. Judge's Power of Arrest.**

The City Judge may cause the arrest and detention of all riotous and disorderly persons and of those violating the peace and good order of the City by issuing his warrant for such persons. If it is impractical or inconvenient to issue his warrant before such arrest, he may cause such arrest before issuing his warrant therefore. (1989)

**Sec. 9. Officer's Power to Arrest.**

An Officer may arrest for offenses committed in his presence without warrant being first issued. Such arrest without warrant may be made in any case where it is apparent to the policeman that delay in obtaining a warrant would obstruct the ends of justice. (1989)

**Sec. 10. Warrant Prerequisite to Trial.**

Before trying such persons or any person who has been arrested by an officer, the City Judge shall issue his warrant, unless one shall have been already issued by a competent authority returnable before him, specifying the offense or violation charged. (1989)

**Sec. 11. Complaint.**

A warrant shall in any case be issued upon a sworn complaint. (1927, Ord. No. 9)

**Sec. 12. Taking Forfeit.**

In no case shall a forfeit be taken from a party arrested without giving him a receipt therefore at the time it is taken, and making a record thereof at the time, in a designated record, for the inspection of the City Judge. (1989)

**Sec. 13. Sessions; Trial; Docket Entry.**

It shall be the duty of the City Judge to have sessions of the City Court when necessary to try anyone or when anyone has been arrested, with or without warrant, at which time, defendant if not in custody shall have notice and, if in custody, shall be brought before the City Judge. If the defendant is in custody or appears at such time, he shall be required to plead to the warrant, and thereupon proper trial or other proceedings shall be had according to law, of all which proceedings proper docket entry shall be made and signed. (1989)

**Sec. 14. Judgment.**

The City Judge shall render such judgment in any case as the law of the State or the ordinance of the City thereto may require. (1989)

**Sec. 15. Fines, Penalties and Costs – Execution or Immediate Payment.**

The City Judge shall have power to issue executions for all fines, penalties and costs imposed by him. (1989)

**Sec. 16. Mittimus or Orders of Commitment.**

When the defendant is committed to jail, a mittimus or written order of commitment shall be signed and delivered to the proper officers, or the jailor, or both, as the case may require. (1989)

**Sec. 17. Return of Mittimus or Order of Commitment.**

Upon expiration of the time covered by such mittimus or order of commitment, there shall be a statement in writing returned to the Court showing the number of days or the time the defendant was confined in jail, either on the back of the said mittimus or commitment, or on a separate paper, which shall be signed by the jailor, the City Judge, the Chief of Police, or other party authorized; and when this report is received it shall be noted on the docket of the case briefly, and said report filed away and preserved with the papers of the case. (1989)

**Sec. 18. Appeal.**

In all cases where a person is sentenced to imprisonment or to the payment of a fine, such person shall be allowed an appeal from such decision to the Circuit Court of the County of Summers. (1989)

**Sec. 19. Appeal Bond.**

Such appellant shall execute an appeal bond, with security deemed sufficient by the City Judge to cover all the fine and costs, and the costs of the Circuit Court, in case said judgment be affirmed, which bond shall be with condition that the person proposing to appeal shall make his personal appearance before the Judge of the Circuit Court of Summers County on the first day of the next regular term thereof. (1989)

**Sec. 20. Record Upon Appeal; Trial in Circuit Court.**

Upon appeal, the warrant of arrest, if any, the transcript of the judgment, the appeal bond and other papers in the case shall forthwith be delivered to the Clerk of the Circuit Court. The Circuit Court shall proceed to try the case as upon an indictment or presentment and shall render such judgment including costs, as the law and evidence may require. (1927, Ord. No. 9)

**Sec. 21. Duties as to Prisoner of Person Having Custody.**

It shall be unlawful for the jailer, the Chief of Police, other officer, or any person to whom the prisoner is given under the provisions of this Chapter to fail, neglect or refuse to keep the prisoner confined, or to obey the lawful orders of the court, or to keep the record of the time and make the report as required. Any violation of this section shall be punished by a fine of not less than one dollar nor more than one hundred dollars, and in addition the Court may impose a jail sentence of not exceeding thirty days. (1989)

**Article II. Forms**

**Sec. 22. Form of Complaint.**

The form of the Complaint shall be in form or effect as follows:

STATE OF WEST VIRGINIA  
County of Summers,

The City of Hinton, to-wit:

\_\_\_\_\_ upon oath, complains and says that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the City aforesaid, in violation of an ordinance of the City of Hinton, in said County and State, (naming defendant) did unlawfully (here described the offense in the words of the ordinance violated in substance only).

The facts for supporting such allegations are as follows:  
(Enumerate facts)

And the said (naming affiant) therefore prays that the said (naming defendant) may be apprehended and held to answer the said complaint and be dealt with according to law.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Judge

\_\_\_\_\_  
Complainant

Taken, subscribed and sworn to before the undersigned Notary Public on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires \_\_\_\_\_.

(1989)

\_\_\_\_\_  
Notary Public

**Sec. 23. Form of Warrant.**

The form of Warrant shall be in effect, as follows:

THE STATE OF WEST VIRGINIA  
County of Summers

City of Hinton, to-wit:

To the Chief of Police, or any policeman of said City, or any officer to whom this Warrant may come:

Whereas, complaint has been made, on oath, by \_\_\_\_\_, before me, City Judge of the City of Hinton, that (naming defendant) has violated an ordinance of said City, in this, that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, he did unlawfully in the City and within the jurisdiction (naming offense in the words of the ordinance).

These are, therefore, to command you, in the name of the State of West Virginia, forthwith to apprehend and bring before the City Judge of the City of Hinton, the body of the said (naming defendant) in answer to said complaint, and to be dealt with according to said ordinance.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Judge

And summon as witnesses for defendant:

\_\_\_\_\_

And summon as witnesses for the Prosecutor:

\_\_\_\_\_

(1989)

**Sec. 24. Form of Subpoena for Witness.**

The City Court's subpoena for a witness may be in form and effect as follows:

STATE OF WEST VIRGINIA  
County of Summers, to-wit:

The City of Hinton to the Chief of Police (or any other officer), Greeting:

Whereas, information has been made before me, \_\_\_\_\_, City Judge of said city, that (naming defendant), has violated the ordinance of the City against (name the offense briefly); and that (naming witness) is a material witness to be examined concerning the same:

These are, therefore, in the name of the State of West Virginia, to require you to summon the said (naming witness) to appear before me at the City Court in the City of Hinton forthwith, or on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at the hour of \_\_\_\_\_ a.m. or p.m. to testify his (or her) knowledge concerning the premises.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Judge(1989)

**Sec. 25. Form of Warrant to Compel Attendance of Witness.**

The warrant to compel the attendance may be in form or effect as follows:

STATE OF WEST VIRGINIA  
County of Summers to-wit:

The City of Hinton to the Chief of Police of said City, or other officer to whom this may come, Greetings:

These are, in the name of the State of West Virginia, to command you, upon sight, to take and bring before me, the City Judge of said town, forthwith at the City court, the body of (naming witness) then and there to answer all such matters and things as on behalf of said town shall be objected against him by \_\_\_\_\_ for that he, the said (naming witness) being a material witness to prove a certain offense committed against the City’s law ordinance, and having been duly summoned to give evidence touching the same, neglected and refused to appear in pursuance of said summons.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
City Judge (1989)

**Sec. 26. Form of Docket Entry.**

The docket entry of any such judgment may be in form or effect as follows:

The City of Hinton

vs.

(Naming defendant)

(Name the offense briefly here)

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ was brought before me, \_\_\_\_\_, City Judge of said City, upon a warrant of arrest charging the said (naming defendant) did (here set out the offense in a general way consistent with the wording of the warrant) and the said defendant, for plea, says that he is not guilty; and after hearing all the evidence, on due trial, the said defendant was adjudged guilty as charged, and his punishment fixed at a fine of \$ \_\_\_\_\_, and all costs, (and if jail sentence is imposed, then say “and confinement for \_\_\_\_\_ days in jail”).

It is therefore adjudged that the said City of Hinton do recover of and from the said \_\_\_\_\_, the said sum of \$ \_\_\_\_\_, the amount of the costs incurred, (or if jail sentence at “and that he be confined in the jail of this City, or the jail of the County of Summers, as the case may be for a period of \_\_\_\_\_ days”).

\_\_\_\_\_  
City Judge

The City of Hinton

vs.

(Naming defendant)

(Name the offense briefly here)

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ was brought before me, \_\_\_\_\_, City Judge of said City, upon a warrant of arrest charging the said (naming defendant) did (here set out the offense in a general way consistent with the wording of the warrant) and the said defendant, for plea, says that he is guilty; and after hearing all the evidence, on due trial, the said defendant was adjudged guilty as charged, and his punishment fixed at a fine of \$ \_\_\_\_\_, and all costs, (and if jail sentence is imposed, then say "and confinement for \_\_\_\_\_ days in jail").

It is therefore adjudged that the said City of Hinton do recover of and from the said \_\_\_\_\_, the said sum of \$ \_\_\_\_\_, the amount of the costs incurred, (or if jail sentence at "and that he be confined in the jail of this City, or the jail of the County of Summers, as the case may be for a period of \_\_\_\_ days").

\_\_\_\_\_  
City Judge (1989)

**Sec. 27. Form of Mittimus or Order of Commitment.**

The mittimus or written order of commitment shall be in form or effect as follows:

STATE OF WEST VIRGINIA  
County of Summers, to-wit:

The City of Hinton:

To the City Manager and Chief of Police of said City, and to the Jailor of the County of Summers (if the County Jail is desired to be used):

Whereas, \_\_\_\_\_, stands convicted before me, \_\_\_\_\_, City Judge of said City, of the violation of a lawful ordinance of the said City; and I have fixed his fine in this case at \$ \_\_\_\_\_, and \$ \_\_\_\_\_ costs in addition; and have imposed a jail sentence of \_\_\_\_\_ days in addition; it has been adjudged that the said \_\_\_\_\_, be, and he is ordered to be confined to said period of \_\_\_\_\_ days.

These are therefore, in the name of the State of West Virginia, to command you, the said City Manager, and Chief of Police, to take him the said \_\_\_\_\_, and cause him to perform the said work, and you, the said Jailor, to receive into your jail and keeping, the said \_\_\_\_\_, at night and at such other times as it may be improper to work, until such fine and costs aforesaid be paid, and the said jail sentence served, or he be otherwise discharged according to law.

Given under my hand on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
City Judge(1989)

**Sec. 28. Form of Appeal Bond.**

The form of said appeal bond may be in effect as follows:

Know all men by these presents, that we, \_\_\_\_\_, as principal, and \_\_\_\_\_, as surety, are held and firmly bound unto the State of West Virginia, in the full sum of \$ \_\_\_\_\_, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The condition of the above obligation is such that, whereas, the above bound \_\_\_\_\_, has applied to the City Judge of the City of Hinton, in the County of Summers and State of West Virginia, for an appeal from a judgment rendered by said Judge on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in favor of said City, for the sum of \$ \_\_\_\_\_, with interest and costs amount to \$ \_\_\_\_\_, for the violation of an ordinance of said City. (Stating jail sentence also, if any).

Now, therefore, if the above bound \_\_\_\_\_, shall make his personal appearance before the Judge of the Circuit Court of Summers County on the first day of the next regular term thereof and shall perform and satisfy any judgment which may be rendered against him by said Circuit Court on said appeal, then this obligation to be void, otherwise to remain in full force and virtue.

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

Approved: \_\_\_\_\_  
City Judge (1989)

**CHAPTER 18. NUISANCES**

**Article I. Nuisances Generally**

- Sec. 1. Prohibited.
- Sec. 2. Notice to Abate Nuisance.
- Sec. 3. Same – Service.
- Sec. 4. Publication in Lieu of Personal Service.
- Sec. 5. Hearing by Council.
- Sec. 6. Order of Abatement.
- Sec. 7. Same – Penalty for Failure to Comply Therewith.
- Sec. 8. Entrance on Premises for Abatement or Removal.
- Sec. 9. Liability of Owner when Premises Leased to More than One Party.
- Sec. 10. Apportionment of Cost of Abating.
- Sec. 11. Enforcement in Circuit Court.

**Article II. Particular Nuisances**

- Sec. 12. Boarding or Lodging Houses.
- Sec. 13. Manufacture Injurious to Health or Emitting Offensive Odor.
- Sec. 14. Pipes, Tanks, Gutters, Cans, etc.
- Sec. 15. Operation of Engines, Furnaces or Boilers.
- Sec. 16. Junk, Automobiles, and Machinery.

**Article I. Nuisances Generally.**

- Sec. 1. Prohibited.**

Every nuisance as declared, mentioned or defined in this Code shall be prohibited. (1927, Ord. No. 34).

**Sec. 2. Notice to Abate Nuisance.**

Whenever the Mayor or the Chief of Police or the City Manager shall have knowledge of the existence of anything or condition constituting a nuisance dangerous to the public health or whenever the Mayor, City Manager or Chief of Police shall have knowledge of the existence of any thing or condition constituting a nuisance, the Mayor, City Manager or Chief of Police shall give notice to the person responsible for such nuisance to show cause before the Council, at a time and place to be specified in such notice, why such nuisance should not be abated, discontinued or removed. Such notice shall not be valid unless served on the party to whom it is directed at least ten days before the time specified in such notice for the hearing before the Council. This Notice shall be served as a Correction Notice to the party and they shall have 10 days to abate the nuisance or show cause before council. (2010)CCM

**Sec. 3. Same – Service.**

Such notice shall be served as writs of summons are served in civil cases. (1927, Ord. No. 34).

**Sec. 4. Publication in Lieu of Personal Service.**

In the event such notice cannot be personally served upon the person to whom directed for the reason that such person cannot be found in the City, the Mayor or Chief of Police shall cause such notice to be published for two consecutive weeks in a newspaper of general circulation published as required by the West Virginia Code. The return of “not to be found in City” made upon the notice by the officer attempting to serve the same shall be conclusive evidence that the person to whom the notice is directed cannot be found in the City. (1989).

**Sec. 5. Hearing by Municipal Judge**

At the time and place indicated in such notice for the hearing before the Council, the person to whom the notice is directed may appear before the Municipal Judge in person or by attorney or he may show cause by properly verified affidavit. (2010)CCM

**Sec. 6. Order of Abatement.**

If, in the opinion of the Municipal Judge after hearing all the facts in the case, no good and sufficient cause be shown why such nuisance should not be abated, discontinued or removed, the Municipal Judge shall order the person to whom the notice was directed to abate, discontinue or remove the same within such time as the Municipal Judge may deem reasonable. (2010)CCM

**Sec. 7. Same – Penalty for Failure to Comply Therewith.**

Any person failing or refusing to obey the order of the Municipal Judge relating to the abatement of nuisance, shall, upon conviction, be fined not less than one hundred dollars nor more than five hundred dollars, with costs, and such person shall be subject to like fine for each and every day such nuisance shall continue after the expiration of the time specified in such order. (2010)CCM

**Sec. 8. Entrance on Premises for Abatement or Removal.**

Whenever any nuisance has been ordered to be abated or removed under the provisions of this Chapter, the Chief of Police shall have the right to enter upon the property on which the nuisance exists, for the purpose of abating or removing the same in accordance with the order of the Council directing such removal or abatement. (1989).

**Sec. 9. Liability of Owner when Premises Leased to More than One Party.**

Whenever any owner or agent of any building in the City shall rent, lease or hire out to be occupied, any building or part thereof, as a home or residence of more than two families living independently of one another, or a building to different persons for stores and offices in said building, giving to each family or person the common right to halls, yards, water-closets, or some of them, then such owner or agent shall be liable for the condition of said halls, yards, and water-closets, and said owner or agent may also be made a defendant in a prosecution for the violation of any of the provisions of this Code and be subject to fine, the same as the occupant of the premises. Any prosecution for violation of this section may be maintained against the owner, occupants or agent of the premises, or either, or all of said parties. (1989).

**Sec. 10. Apportionment of Cost of Abating.**

The cost of abating nuisances on private property shall be apportioned to each lot in proportion to the amount of the work done and material used in abating the nuisance located on such lot, or, if this apportionment is impractical in any case, then such cost shall be apportioned upon such a basis as will be fair and equitable. (1927, Ord. No. 34).

**Sec. 11. Enforcement in Circuit Court.**

In addition to the jurisdiction granted in this Chapter to the City Council, the City may enforce the provisions of this Chapter through the Circuit Court of Summers County. (1989)

**Article II. Particular Nuisances.**

**Sec. 12. Boarding or Lodging Houses.**

Any boarding house, lodging house, or any building used for such purposes, or any part thereof, within the limits of the City, which shall be leased, let or rented, to be occupied by any person, in which to dwell or lodge, and which boarding house, lodging house or building, or any part thereof, is not sufficiently lighted or ventilated, and provided with water and not kept in a cleanly and sanitary manner, or which, any part whereof the strength, ventilation, light or sewerage is in any manner, shape or form, dangerous, insufficient or prejudicial to life or health, or which shall not be provided with adequate and properly constructed water closets, shall be deemed a nuisance. (1989).

**Sec. 13. Manufacture Injurious to Health or Emitting Offensive Odor.**

It shall not be lawful for any person to erect any building for the purpose of manufacturing or producing any article, or to manufacture or to product any article, the manufacture of which is injurious to public health, or which, in the manufacture thereof, emits an offensive odor or gas to the extent of creating a nuisance to the surrounding inhabitants. (1927, Ord. No. 34).

**Sec. 14. Pipes, Tanks, Gutters, Cans, etc.**

Any unclean, stinking, foul, defective or filthy drainpipes, tank, gutter, or any leaking, broken slop, garbage or manure boxes, or receptacle of like character, whenever or wherever found within the limits of the City shall be deemed a nuisance. (1927, Ord. No. 34).

**Sec. 15. Operation of Engines, Furnaces or Boilers.**

The owners, lessees, tenants, occupants and managers of every building, vessel, or place in or upon which a locomotive or stationary engine, furnace or boiler is used and when gas is not used, shall cause all ashes, cinders, rubbish, dirt and refuse to be removed to some proper place, so that the same shall not accumulate, nor shall any person cause, suffer or allow smoke, cinders, dust, gas, steam or offensive or noisome odors to escape or be discharged from any such building, vessel or place to the detriment or annoyance of any person not being therein or thereupon engaged. Any violation of this Section shall constitute a nuisance. (1927, Ord. No. 34).

**Sec. 16. Junk, Automobiles and Machinery.**

It shall be unlawful for any person to allow upon any lot or parcel of real estate or upon any City street within the City limits the unsheltered storage of old, unused, stripped, junked and other automobiles not in good and safe operating condition, or the unsheltered storage of other vehicles, machinery, implements or other equipment or personal property of any kind which is no longer safely usable for the purpose for which it was manufactured. Any violation of this section shall constitute a nuisance. (1989).

**CHAPTER 19-OFFENSES**

- Sec. 1. Air Gun, Bee-Bee Gun, etc.
- Sec. 2. Youth Protection.
- Sec. 3. Unnecessary and Loud; Boisterous Conduct.
- Sec. 4. Loitering.
- Sec. 5. Dust and Fragments from Buildings.
- Sec. 6. Prohibiting "Peeping Toms".
- Sec. 7. Drinking on the Public Street.
- Sec. 8. Property – Damage to Property and Damage to or Opening Fire Hydrants.
- Sec. 9. Sound-making Device.
- Sec. 10. Spitting.
- Sec. 11. Door to Door Solicitation.
- Sec. 12. Skateboards, Roller Skates, Bicycles and Scooters.
- Sec. 13. Registered Sex Offender Restrictions.

**Sec. 1. Air Gun, Bee-Bee Gun, etc.**

It shall be unlawful for any person to carry or discharge any air gun or bee-bee gun within the City. A bee-bee gun shall be taken to include any gun or rifle discharging shot either by compressed air, spring or by means of an explosive cap or cartridge. Any person who shall violate any of the provisions of this Section shall be fined not less than five dollars nor more than one hundred dollars and at the discretion of the Court shall be confined in jail for a period not to exceed thirty days. (1989)

**Sec. 2. Youth Protection.**

- (a) **Purpose**

The purpose of this ordinance is to protect juveniles from victimization and exposure to criminal activity by establishing a curfew for juveniles under the age of eighteen (18) years in the City of Hinton. The Youth Protection Ordinance is intended to reinforce and promote the role of the parent in raising and guiding children, and to promote the health, safety, and welfare of both juveniles and adults by creating an environment offering better protection and security for all concerned. In addition to the fines and penalties imposed herein individuals found guilty of violating this ordinance shall be reported to the Child Protective Services of the West Virginia Department of Health and Human Resources.

(b) **Definitions**

For the purpose of this ordinance, the following words and phrases shall have the following meaning:

- (1) Direct Route: The shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.
- (2) Emergency: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also shall include any action that is reasonably necessary in order to respond to the medical needs of a family member of the juvenile regardless of whether the juvenile's action is taken in order to prevent death or serious bodily injury.
- (3) Establishment: Any privately owned place of business operated for profit to which the public has access or is invited including, but not limited to, any place of amusement or entertainment.
- (4) Guardian: A person who is court-appointed to be the guardian of a juvenile.
- (5) Juvenile: Any person under eighteen (18) years of age.
- (6) Owner/Operator: Any individual, firm, association, partnership or corporation, operating, managing or conducting any establishment, including the employees, members or partners of any association or partnership, and the officers of a corporation.
- (7) Parent: A person who is a natural parent, adoptive parent, foster parent, or stepparent of another person, or a person to whom legal custody has been given by court order.
- (8) Public Place: Any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including but not limited to, streets, sidewalks, highways, alleys, rights-of-way, public vehicular areas, parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools, school grounds, places of business and amusement, playgrounds, parks, and/or similar areas that are open to or accessible to the public.

- (9) Remain: To linger or stay in a public place, or to fail to leave the premises when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or employee of the premises.
- (10) Restricted Hours: The time of night referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Savings Time, generally observed by the public in the City of Hinton, West Virginia.

Restricted Hours Shall Mean:

- (a) 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday, until 6:00 a.m. of the following day; and
- (b) 12:01 a.m. until 6:00 a.m. on any Friday and Saturday.

(c) **Offenses**

Except as provided by subsection (d), the following offenses constitute a violation of this ordinance.

- (1) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the city during the restricted hours.
- (2) A parent or guardian of a juvenile commits an offense if they knowingly permit, or by insufficient control, allow the juvenile to remain in any public place or on the premises of any establishment within the city during the restricted hours. The term “knowingly” includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in the parent’s legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall therefore be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- (3) The owner, operator, or an employee of an establishment commits an offense if he/she knowingly allows a juvenile to remain upon the premises of the establishment during the restricted hours. The term “knowingly” includes knowledge that an operator or employer should reasonably be expected to have concerning the patrons of any establishment. The standard for “knowingly” shall be applied through an objective test: whether a reasonable person in the operator’s or employee’s position should have known that the patron was a juvenile in violation of this ordinance.
- (4) It shall be a violation of this ordinance for any person eighteen (18) years or older to aid and abet a juvenile in the violation of subsection C (1).
- (5) It shall be a violation of this ordinance for a parent or guardian to refuse to take custody during the restricted hours of a juvenile for whom the parent or guardian is responsible.

(d) **Exceptions**

A juvenile who is in a public place or establishment during the restricted hours shall not be in violation of this ordinance if the juvenile is:

- (1) Accompanied by his/her parent or guardian.
- (2) Accompanied by an adult eighteen (18) years of age or older authorized by the parent or guardian of such juvenile to take the parent or guardian's place in accompanying the juvenile for a designated period of time and purpose within the specified area.
- (3) On an errand, using a direct route, at the direction of the juvenile's parent or guardian until the hour of 12:30 a.m.
- (4) In a motor vehicle with parental consent engaged in travel through the City, or originating in the City, or terminating in the City.
- (5) Traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult eighteen (18) years of age or older authorized by the parent or guardian of such juvenile to take the parent's or guardian's place in accompanying the juvenile for a designated period of time and purpose within a specified area.
- (6) Engaged in a lawful employment activity, or using a direct route to or from a place of employment.
- (7) Reacting or responding to an emergency.
- (8) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the City of Hinton, or other governmental entity, a civic organization, or another similar entity that accepts responsibility for the juvenile.
- (9) Exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly.
- (10) Married or emancipated.
- (11) When authorized, by special permit from the Chief of Police or his designee carried on the person of the juvenile thus authorized as follows: When necessary nighttime activities of a juvenile may be inadequately provided for by other provisions of this ordinance, then recourse may be had to the Chief of Police, or his designee, either for regulation as provided in subsection (d) (2) or for a special permit as the circumstances warrant. Upon the findings of reasonable necessity for the use of a public place to the extent warranted by a written application signed by a juvenile, and by a parent of the juvenile, if feasible, stating (1) the name, age, and address of the juvenile; (2) the name, address, and telephone number of a parent thereof; (3) the height, weight, sex, color of eyes

and hair, and other physical characteristics of the juvenile; (4) the necessity that requires the juvenile to remain upon a public place during the restricted hours otherwise applicable; (5) the public place, and the involved date and hour, the Chief of Police, or his designee, may grant a permit in writing for the juvenile's use of a public place at such hours as in the opinion of the Chief of Police may reasonably be necessary and consistent with the purposes of this ordinance.

- (12) When authorized, by regulation issued by the Chief of Police or his designee in other similar cases of reasonable necessity, similarly handled as set forth in subsection (d) (11) but adapted to reasonably necessary nighttime activities of more juveniles than can readily be dealt with on an individual special permit basis. Normally such regulation by the Chief of Police or his designee permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as schools, and shall define the activity, the scope of the use of the public places permitted, the period of time involved, not to extend more than one (1) hour beyond the time for termination of the activity, and the reason for finding that the regulation is reasonably necessary and is consistent with the purposes of this ordinance.

(e) **Defense**

It is a defense to prosecution under subsection C(3) that the owner, operator, or employee of an establishment promptly notified the police department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

(f) **Enforcement**

- (1) Before taking any enforcement action under this ordinance, a police officer shall ask the apparent offender's age and reason for being in the public place or establishment during the restricted hours.
- (2) The Officer shall not prepare a juvenile arrest report, issue a citation, or make an arrest under this ordinance unless the Officer reasonably believes that an offense has occurred and that based on any response and other circumstance, no exception or defense in subsection (d) or (e) is present.

(g) **Penalties**

- (1) A juvenile who violates any provision of this ordinance is subject to being adjudicated delinquent. The municipal court, may in its discretion, impose any disposition alternative(s) that is (are) provided by the West Virginia Code 49-5-2(d).
- (2) Any person other than a juvenile who violates any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$500.00, and/or up to ten (10) days imprisonment in the discretion of the court in accordance with the West Virginia Code 8-10-2. Further, if found guilty, said guilty party(ies) shall be reported to the Child Protective Services of the West Virginia Department of Health and Human Services.

(h) **Severability**

If any portion of this ordinance, or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not effect the remaining portions of this ordinance.(2010)CCM

**Sec. 3. Unnecessary and Loud: Boisterous Conduct.**

No person shall after a request to desist, make, continue or cause to be made by the use of any horn, bell, radio or loud speaker, or by the operation of any instrument or device, any unreasonable loud, disturbing and unnecessary noises of such a character, intensity or duration as to disturb the peace and quiet of the community or to be detrimental to the life and health of any individual, and no person shall willfully conduct himself in a noisy, boisterous or other disorderly manner by either words or acts which disturb the good order and quiet of the community.

Any violation of this Section shall be punished by a fine of not more than one hundred dollars. (8-14-79)

**Sec. 4. Loitering.**

It shall be unlawful for any person within the City to loiter and assemble on any street or sidewalk, on any vacant lot or around any public building or enclosure of any park or reservation or at the entrance of any private building and engage in loud and boisterous talking or other disorderly conduct, or insult or make rude or obscene gestures or comments or observations to persons passing by or in their hearing, or crowd, obstruct or incommode the free use of any such street, sidewalk, or the free entrance to any public or private building or enclosure.

Any violation of this Section shall be punished by a fine of not more than one hundred dollars. (8-14-79)

**Sec. 5. Dust and Fragments from Buildings.**

No person shall fail to take any usual and reasonable precautions to prevent fragments or substances from falling or dust or light material flying into any street, place or building from any building or erection. Any danger to health from a violation of this Section shall constitute a nuisance.

**Sec. 6. Prohibiting "Peeping Toms".**

It shall be unlawful for any person to peer or look inspectingly into any building for a lustful, lewd, wanton or lascivious purpose, or to annoy or molest the occupant thereof.

Any violation of this Section shall be punishable by a fine of not less than fifty dollars nor more than two hundred and fifty dollars with costs and imprisonment for not less than ten days or more than thirty days. (12-9-69)

**Sec. 7. Drinking on the Public Street.**

It is hereby expressly ordered that the consumption of or the possession of an open container of beer, ale, malt liquor or other alcoholic beverages, shall not be permitted upon the streets, sidewalks or other public places within the City of Hinton.

Anyone violating this ordinance shall be guilty of a misdemeanor and the penalty for violation of said ordinance shall be \$25.00 for each offense. (1989)

**Sec. 8. Property – Damage to Property and Damage to or Opening Fire Hydrants.**

No person shall tear down, deface or damage any building, fence, sidewalk, bridge, street, public property, sign, tree, telephone or telegraph pole, window, electric light, door, or any other property in the City by cutting, breaking, daubing with paint, marking with chalk, hitching horses or any other animals to such tree or poles, or in any other manner. No person shall destroy damage, break or unlawfully open any fire hydrant in said City.

Any violation of this Section shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars; and the violator may, in addition, be confined in jail not exceeding ten days.

**(2010)CCM**

**Sec. 9. Sound-making Device.**

No person shall, within the City, play or operate or permit to be played or operated any talking machine, radio, stereo or any other talking machine, or talking device of like kind or character in said City so that the noise from such playing or operation shall enter the dwelling, apartment or place of business of another person in such volume and intensity as to make concentration on work therein difficult or in any other manner to interfere materially with the conduct of business therein or render the occupation of any such dwelling house, apartment or place of business materially uncomfortable.

Any person who shall violate this Section shall be deemed guilty of maintaining a nuisance and shall, upon conviction for a first violation of this Section be punished by a fine of not less that twenty-five dollars nor more than five hundred dollars. Each day on which such playing or operation is done shall constitute a separate offense under this Section. Exceptions would be any event sponsored or approved by the City Council for a limited time examples would be festival, concert, parade, etc. **(2010)CCM**

**Sec. 10. Spitting.**

No person shall expectorate or spit in or upon any sidewalks or in or upon any taxicab or bus, railway car, or other public vehicle carrying passengers for hire in or upon any part of any public building or upon any public street, alley or other public place. Any violation of this Section shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. (1989)

**Sec. 11. Door to Door Solicitation.**

No person shall come from any place without this City and County to solicit money or engage in any fund raising activities of any kind for any group or organization. Any person who shall violate this Section shall be fined not less than twenty-five dollars nor more than five hundred dollars and costs, and be imprisoned at the discretion of the Court for any time not exceeding thirty days. (6-24-76)

**Sec. 12. Skateboards, Roller Skates, Bicycles and Scooters.**

- (a) No person shall roller skate or ride a skateboard in a reckless manner on any public sidewalk. No person shall ride a skateboard or roller skate on a sidewalk without exercising due care for the safety of other persons using the sidewalk.

- (b) No person shall roller skate or ride a skateboard on any street except for the purpose of crossing the street. The rules relating to pedestrians crossing streets shall apply to persons crossing a street on roller skates or a skateboard. No person crossing a street on roller skates or a skateboard shall travel too fast for safety under the conditions existing.
- (c) No person shall ride a bicycle or scooter on any public sidewalk. (1989)

**Sec. 13. Registered Sex Offender Restrictions.**

(1) Definitions

- (a) Registered Sex Offender- This Chapter shall apply to offenders who have been convicted of a crime or misdemeanor which requires them to be registered as a sexual offender.
- (b) School/Day Care- Any public or private educational facility that provides services to children in grades K-12 or licensed day care facility that is clearly marked.
- (c) Premises- Shall mean the building, structure, including area surrounding the building, playground area or playing field, or courts, which shall include playing fields or courts not adjacent to School or Day Care Center including a public park, public swimming pool, public library or multi-use recreational trail.
- (d) Radius- Distance shall be measured from the outer property lines.

(2) Restrictions

- (a) Any person who is a convicted sex offender and is required to register, shall not reside within a 1500 foot radius of the property line of a school or day care center, a public park, public swimming pool, public library or multi-use recreational trail.
- (b) Any person who is a convicted sex offender, and is required to register, is prohibited from entering upon the premises of a school or day care center, a public park, public swimming pool, public library or multi-use recreational trail.

(3) Exceptions

A registered sex offender residing within 1500 feet of a school or day care is not in violation if the residency was established prior to the date of passage.

(4) Penalties

Any person violating the provisions of this Ordinance shall be subject to a fine of no more than \$1,000.00 and may be sentenced to a definite term of imprisonment, for no more than 90 days for each offense in a facility as authorized by law and required to relocate to appropriate residence within a thirty (30) day period.

- (5) Takes Effect

This Ordinance shall take effect upon passage and publication. **(2007)CCM**

## **CHAPTER 20. SEWERS AND SEWAGE DISPOSAL**

### **Article I. Generally**

- Sec. 1. Definitions.
- Sec. 2. Rules of Public Service Commission Apply.
- Sec. 3. City not Liable for Damage.
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### **Article II. Sanitary Board**

- Sec. 5. Established; Composition; Eligibility of City Officer and Employees; Bond of Members.
- Sec. 6. Bond of Treasurer.
- Sec. 7. Term of Members, Vacancies.
- Sec. 8. Officers.
- Sec. 9. Cashier, Collection and Deposit of Funds; Liability upon Official Bonds; Additional Duties of Recorder-Treasurer.
- Sec. 10. Superintendent and Purchasing Agent.
- Sec. 11. Salaries of Officers and Members as Fixed.
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- Sec. 13. Construction, etc., of Works; Management of Works; Authority to Promulgate Rules and Regulations.
- Sec. 14. Advertisement for Bids; Acceptance and Rejection of Bids.
- Sec. 15. Sanitary Board Revenue Account.
- Sec. 16. Sewage Bond Interest and Redemption Fund – Continued; Purpose; Transfers to Any Payments from; Required Balance.
- Sec. 17. Sanitary Board Depreciation Fund.
- Sec. 18. Sanitary Board Reserve Fund.
- Sec. 19. Same – Method of Making Payments Therefore.
- Sec. 20. Funds of Board are City Funds; Deposit of Funds.

### **Article III. Rates and Charges**

- Sec. 21. Schedules for Service Inside City.
- Sec. 22. Industrial Waste Cost Recovery Charge Formula.
- Sec. 23. Industrial Waste Cost Recovery Charge Formula.
- Sec. 24. Charge Constitute Liens; Enforcement of Liens; Attorney Fees.
- Sec. 25. Free Service Prohibited.

### **Article IV. Connections**

- Sec. 26. Use of Sewer Facilities Mandatory – General; Failure to Connect Deemed Public Nuisances; Illegal Dumping of Sewage; Privy Prohibition.

- Sec. 27. Same – Authority and Procedure to Compel Properties to be Connected.  
 Sec. 28. Permit – Required to Tap or Connect to Public Sewers; Definition of Person.  
 Sec. 29. Same – Required to Tap or Connect to Private Sewer connected to Public Sewer.  
 Sec. 30. Same – Issuance upon Application and Payment of Fee; Separate Permit and Fee Required for Each Improvement; Garages; Expiration.  
 Sec. 31. Same – Misrepresentation of Cost of Building, etc., to be Connected to Public Sewer.  
 Sec. 32. Construction of New Lateral or Extension Line – Authorized; Determination of Fee.  
 Sec. 33. Same – How Advancements for New Construction Made, Recorded and Repaid.  
 Sec. 34. Collection of Tapping Fees.  
 Sec. 35. Procedure Required for Tapping; Compliance Mandatory.  
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### **Article V. Use of Sewers**

- Sec. 37. Right of City to Restrict Use of System During Emergency.  
 Sec. 38. Willful or Negligent Damage to Sewers, Appurtenances, etc. – Prohibited; Restoration by Offender.  
 Sec. 39. Same – Duty of Offender to Notify City Officers.  
 Sec. 40. Trespassing at Disposal Plants.  
 Sec. 41. Causing Vile Odors to Escape from Sewers.  
 Sec. 42. Substances Prohibited in Sanitary Sewers – Generally.  
 Sec. 43. Same – Prohibited Discharges Enumerated.  
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 Sec. 45. Interceptors.  
 Sec. 46. Pretreatment or Flow-equalization Facilities.  
 Sec. 47. Discharge Reports – Generally.  
 Sec. 48. Same – Information Which May be Required; Testing Standard.  
 Sec. 49. Wastewater Discharge Permits.  
 Sec. 50. Monitoring Facilities.  
 Sec. 51. Inspection and Sampling.  
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### **Article I. Generally**

#### **Sec. 1. Definitions.**

For the purpose of this Chapter, the following terms shall have the meanings respectfully ascribed to them by this section:

- a. Biochemical oxygen demand (BOD): The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in milligrams per liter.
- b. Building drain: That part of the lowest horizontal piping of a drainage system which receives the waster discharge from other drainage pipes inside the walls of the building

and conveys it to the building sewer, which begin five (5) feet (1.5 meters) outside the inner face of the building wall.

- c. Building sewer: The extension from the building drain to the public sewer or other place of disposal, also called house connection.
- d. Combined sewer: A sewer intended to receive both wastewater and storm or surface water.
- e. Easement: An acquired legal right for the specific use of land owned by others.
- f. Floatable oil: Oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.
- g. Garbage: The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.
- h. Industrial wastes: The wastewater from industrial processes trade or business as distinct from domestic or sanitary wastes.
- i. Major contributing industry: An industrial user whose flow exceeds fifty thousand (50,000) gallons per day or whose known five (5) day biochemical oxygen demand or concentration of suspended solids exceeds two hundred twenty (220) milligrams per liter of the effluent discharge by such user into sanitary board system.
- j. Minor contributing industry: An industrial user which is not a major industrial user.
- k. Natural outlet: Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.
- l. PH: The negative logarithm of the reciprocal of the hydrogen ion concentration. The hydrogen ion concentration shall be measured by an acceptable pH meter. Neutral water, for example, has a pH value of seven-point-zero (7.0); values higher than seven-point-zero (7.0) denote increasing alkalinity; and values lower than seven-point-zero (7.0) indicate increasing acidity of hydrogen ions.
- m. Properly shredded garbage: The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.
- n. Public sewer: A common sewer controlled by a governmental agency or public utility, including the City Sanitary Board.
- o. Sanitary Board: The Sanitary Board of the City established pursuant to Article 13 of Chapter 16 of the West Virginia Code.

- p. Sanitary sewer: A sewer that carries liquid and water carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- q. Sewage: The spent water of the community. The preferred term is wastewater.
- r. Sewer: A pipe or conduit that carries wastewater or drainage water.
- s. Sludge: Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation and which shall adversely affect the collection systems and/or performance of the wastewater treatment works.
- t. Store Drain: (sometimes termed “storm sewer”): A drain or sewer for conveying water, groundwater, subsurface water, or unpolluted water from any source.
- u. Superintendent: The superintendent of wastewater facilities, and/or of wastewater treatment works, and/or of water pollution control by the City, or such superintendent’s authorized deputy, agent, or representative, designated as provided by Section 10.
- v. Suspended solids: Total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in “Standard Methods for examination of Water and Wastewater” and referred to as non filterable residue.
- w. Unpolluted Water: Water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.
- x. Wastewater: The spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residence, commercial buildings, industrial plants and institutions, together with any ground water, surface water, and storm water that may be present.
- y. Wastewater facilities: The structures, equipment and processes required to collect, carry away, and treat domestic and industrial wastes and dispose of the effluent.
- z. Wastewater treatment works: An arrangement of devices and structures for treating wastewater, industrial wastes, and sludge. Sometimes used as synonymous with “waste treatment plans” or “wastewater treatment plants” or “water pollution control plants”.
- aa. Watercourse: A natural or artificial channel for the passage of water, either continuously or intermittently.

**Sec. 2. Rules of Public Service Commission Apply.**

In addition to the rules and regulations promulgated in this Chapter and the rules and regulations for sewer utilities prescribed by the Public Service Commission of the State apply to the operation and services of the sewer system of the City.

**Sec. 3. City not Liable for Damage.**

The City shall not be liable to any customer as such for any damage resulting from bursting or breakage of any line, main, pipe, valve, equipment or part of from discontinuance of the operation of any part of the system or from failure of any part thereof for any cause whatsoever.

**Sec. 4. Penalty: Liability in Damages for Negligence.**

- a) Whoever violates any provision of this Chapter shall, upon conviction, unless otherwise specified, be punished as provided by State Code and each day's continued violation or failure to comply with the provisions of this Article shall constitute a separate offense.
- b) In addition to any penalty imposed under this Chapter, violators shall be liable to the City for any damage to the sewer system or damage caused by reason of their negligence.
- c) It shall be the responsibility of the Sanitary Board to determine violators of this Chapter and any resulting fine or judgment for damages shall be a lien on the property so found in violation.

**Article II. Sanitary Board**

**Sec. 5. Established; Composition; Eligibility of City Officers and Employees; Bond of Members.**

Pursuant to the Code of West Virginia, Section 16-13-18, there is hereby established the Sanitary Board of the City, which shall be composed of the Mayor and two (2) persons appointed by the Council. Other than the Mayor, no officer or employee of the City, whether holding a paid or unpaid office, shall be eligible to appointment on the Sanitary Board until at least one year after the expiration of the term of such person's public office. No bond shall be required of the members of the Sanitary Board except the Treasurer, if the Treasurer is a member, in which case such Treasurer shall be bonded as provided in this Division.

**Sec. 6. Bond of Treasurer.**

The Treasurer of the Sanitary Board shall give a bond in the sum of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of the duties as such Treasurer and the faithful accounting for all moneys which may come into such Treasurer's hands as such Treasurer, and otherwise conditioned as required by law; with surety to be approved by the Council.

**Sec. 7. Term of Members; Vacancies.**

Members of the Sanitary Board who are appointed by the Council shall serve for a term of three (3) years and until their successors are duly appointed and qualified. Vacancies shall be filled by the Council for any unexpired term which may occur, in the same manner as the original appointment. By the month of June, 1989, and every three (3) years thereafter, one (1) member shall be appointed; and

by the month of June 1990, and every three (3) years thereafter, and (1) member shall be appointed. Members so appointed shall take office on the first day of July next succeeding their appointment.

**Sec. 8. Officers.**

The Mayor shall act as Chairman of the Sanitary Board, which shall elect a Vice Chairman from its members. The Sanitary Board shall also designate a Secretary and a Treasurer (but the secretary and the Treasurer may be one and the same), either of whom may or may not be a member of the Sanitary Board. The Vice-Chairman, Secretary and Treasurer shall hold office as such during the will and pleasure of the Sanitary Board.

**Sec. 9. Cashier; Collection and Deposit of Funds; Liability upon Official Bonds; Additional Duties of Recorder-Treasurer.**

The Office Manager of the Sanitary Board shall perform the duties of cashier for the Sanitary Board, and as such shall receive and be responsible for all collections for all moneys legally or properly collectible by the Sanitary Board, and shall deposit them in the appropriate accounts in the respective banks designated as depositories for funds of the City. The Recorder-Treasurer shall be liable under such officer's official bond as Recorder-Treasurer for all such collections; but this shall not be taken and considered as relieving the Treasurer of the Sanitary Board for any liability upon such Treasurer's official bond as such. The Recorder-Treasurer shall perform such other duties in connection with the operation of the office of the Sanitary Board as the Sanitary Board or its Chairman may from time to time require.

**Sec. 10. Superintendent and Purchasing Agent.**

The Sanitary Board shall designate a Superintendent who shall hold office as such during the will and pleasure of the Sanitary Board and whose duties shall consist of supervision of all other employees of the Board other than its officers, and supervision over all new construction authorized by the Board and all maintenance of existing facilities. The Superintendent shall also act as Purchasing Agent for the Sanitary Board, but such Superintendent's duties shall in no way include any duties set up in Section 9.

**Sec. 11. Salaries of Officers and Members as Fixed.**

The Council shall establish and may at its will and pleasure change the amount of the salary of the members of the Sanitary Board, or any one or more of its officers, except that it may not change the salary of a member during his or her term of office.

**Sec. 12. Powers, Duties, Limitation thereon; Obligation and Expenditures of Funds; Employees.**

- (a) The Sanitary Board shall have the supervision and control of the custody, administration, operation and maintenance of all works for the collection and treatment of sewage which are now owned or may hereafter be acquired by the City. The Sanitary Board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and execution of powers granted to such Sanitary Board under and by virtue of the Code of West Virginia, Chapter 16, Article 13, and shall be subject to all restrictions and limitations contained therein as well.

- (b) The Sanitary Board may employ engineers, architects, inspectors, superintendents, a manager, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board shall direct. All such compensation and all expenses incurred in carrying out the provisions of Article 13, Chapter 16 of the Code of West Virginia shall be paid solely from funds provided under the authority of that Article, and the Sanitary Board shall not exercise or carry out any authority or power given it so as to bind the Board or the City beyond the extent to which money shall have been or may be provided under the authority of the aforesaid Article 13.

**Sec. 13. Construction, etc., of Works; Management of Works; Authority to Promulgate Rules and Regulations.**

The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the Sanitary Board. After the construction, installation and completion of the works, the Sanitary Board shall operate, manage and control such works and may order and complete any extensions, betterments and improvements of and to the works that the Board may deem expedient if funds therefore be available as provided by law, and shall establish rules and regulations for the use and operation of the works and of other sewers and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation thereof.

**Sec. 14. Advertisement for Bids; Acceptance and Rejection of Bids.**

No contract or agreement with any contractor for labor or material exceeding in the amount the sum of one thousand dollars (\$1,000) shall be made without advertising for bids, which shall be publicly opened and award made to the best bidder, with power in the Sanitary Board to reject any and all bids.

**Sec. 15. Sanitary Board Revenue Account.**

There is created a fund to be designated as “City of Hinton Sanitary Board Revenue Account” into which shall be placed and deposited all funds derived from rates or charges for service to the users of the system under and by virtue of this Chapter, as well as all miscellaneous receipts from whatever source derived. All expenses of maintenance and operation of the system or works, including the salaries of all officers and employees of the Sanitary Board as such, shall be paid out of the fund, and the Sanitary Board may from time to time spend out of such funds so much thereof as it may deem proper for new construction and extensions of the sewer system or works; and the Sanitary Board shall from time to time make transfers from this fund to the fund designated as “City of Hinton Sewage Bond Interest and Redemption Fund”, as established in this Chapter.

**Sec. 16. Sewage Bond Interest and Redemption Fund – Continued; Purpose; Transfers to Any Payments from; Required Balance.**

The fund, designated as “City of Hinton Sewage Bond Interest and Redemption Fund”, is continued in existence. No payments shall be made from this fund except payments upon the interest of the sewer revenue bonds heretofore issued by the City and for the retirement of those bonds, or for the purchase of such bonds for retirement in advance of the time of their maturity. Transfers may be made from other funds under the supervision and control of the Sanitary Board to this fund, which shall be made

and kept to not less than the full amount required by law and by the ordinance authorizing and directing the issuance of said sewage revenue bonds.

**Sec. 17. Sanitary Board Depreciation Fund.**

There is created a fund to be designated Depreciation Fund into which there shall next be set apart and paid from the Sewer Revenue Fund each month, after making the payments hereinbefore specified into the operation and maintenance fund and the sewer revenue bond and sinking fund as set forth and required by the ordinance authorizing and directing the issuance of said sewer revenue bonds.

**Sec. 18. Sanitary Board Reserve Fund.**

There is created a fund to be designated Reserve Fund. Withdrawals and disbursements shall be made from the Reserve Fund to meet any deficiencies in the various special funds hereinbefore provided and if there are no such deficiencies in the various special funds hereinbefore provided and there are no such deficiencies then withdrawals and disbursements may be made from the Reserve Fund for the purchase or retirement prior to maturity of bonds issued by the City for account of said sewage system or for any other lawful purpose relating to the sewage system of the City.

**Sec. 19. Same – Method of Making Payments Therefore.**

No payment shall be made from the Sewage Bond Interest and Redemption Fund unless authorization shall be made for such payment by the Sanitary Board by an order made at a regular or special meeting and entered upon the minute book thereof; and unless made by a check or draft issued upon such fund, signed by the Mayor as Chairman of the Sanitary Board, and if the Mayor shall be Treasurer thereof, also as Treasurer, and signed by the Treasurer of the Sanitary Board if the Treasurer be other than the Mayor, and countersigned by the Office Manager of the Sanitary Board of the City as such.

**Sec. 20. Funds of Board are City Funds; Deposit of Funds.**

All of the funds under the supervision and control of the Sanitary Board shall be taken and considered as funds of the City, and shall be deposited in the respective funds designated in this Chapter, in such banks in the City as shall qualify from time to time as depository banks of the City.

**Article III. Rates and Charges**

**Sec. 21. Schedules for Service Inside City.(2011CCM)**

- a) Monthly rates: There is established a schedule of just and equitable rates or charges, exclusive of industrial waste charges, for the use of, and service rendered by, the municipal sewer system which shall be paid by the owner of each lot, parcel of real estate or building connected with or using such sewer system. Sewer charges, based upon water consumption shall be as follows:

For each 1,000 (one thousand) gallons of usage, the rate is \$7.65 Residential  
 For each 1,000 (one thousand) gallons of usage, the rate is \$9.25 Commercial

THE MINIMUM MONTHLY CHARGE IS \$15.30 Residential  
 THE MINIMUM MONTHLY CHARGE IS \$18.50 Commercial

- b) **Multiple Occupancy:** In apartment buildings, shopping centers, mobile homes, mobile home courts or other multiple occupancy situations, each until shall be required to pay not less than the minimum monthly charge.
- c) **Unmetered Users Residential:** In locations where the customer has no water meter, charges for sewer service shall be based upon one thousand (1,000) gallons for each occupant per month, but not less than the minimum monthly rate.
- d) **Sewer Connection Charges:** The sewer connection fee will be one hundred fifty dollars (\$150) or the actual cost of the connection if higher than one hundred fifty (\$150). Such actual costs will include payroll, materials and machine time.
- e) **Classification of Users:** All users are to be classified by the Sanitary Board or its duly authorized representative either by assigned each one a “user classification” category according to the principal activity conducted on the user’s premises, by the individual user analyzation, or by a combination thereof. The two (2) user classifications shall be:
  - (1) For residential and commercial service and
  - (2) For service to establishments producing industrial wastes.

The purpose of such collective and/or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control; and to establish a system of charges and fees which will insure an equitable recovery of the Sanitary Board’s cost.

- f) **Industrial User Charge:** All establishments producing industrial wastes shall pay charges determined as provided in this Chapter.
- g) **Delinquency Penalty:** On all accounts, not paid in full within twenty (20) days of the billing date; the penalty of ten (10) per cent will be added to the net amount shown.

#### **Sec. 22. Industrial Waste Cost Recovery Charge Formula.**

The rates set forth in this Chapter shall apply to all users of the municipal sewer system within the City, and the rates or charges for all users of the sewers located outside the City whose premises are connected with the interceptor liens of the system, or otherwise, shall be the same as the rates provided in such section, unless otherwise provided.

#### **Sec. 23. Industrial Waste Costs Recovery Charge Formula.**

All users heretofore classified by the Sanitary Board as producing industrial wastes, shall pay an industrial user’s industrial cost recovery charge for the treatment of industrial waste which shall be calculated on the basis of the following formula:

$$C_i = V_o V_i + B_o B_i + S_o S_i$$

$C_i$  - Charge to industrial users per year.

$V_o$  – Average unit cost of transport and treatment chargeable to volume, in dollars per gallon

Vi – Volume of wastewater from industrial users in gallons per year.

Bo – Average unit cost of treatment, chargeable to biochemical oxygen demand (BOD) in dollars per pound.

Bi- Weight of BOD from industrial users in pounds per year.

So - Average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound.

Si – Weight of total solids from industrial users in pounds per year.

#### **Section 24. Charges Constitute Liens; Enforcement of Liens; Attorney Fees.**

All rates or charges imposed by this Chapter, shall, as provided by law, constitute a lien upon the premises served by the sewer works of this City. If any such service rate or charge shall not be paid within thirty (30) days after due, the Sanitary Board shall proceed to collect the amount thereof; together with the penalty of ten (10) percent hereinbefore provided for in this Chapter, and a reasonable attorney's fee in a civil action in the name of the City, and in connection with such action such lien may be foreclosed against such lot, parcel of land and building, in accordance with the laws relating thereto.

#### **Sec. 25. Free Service Prohibited.**

The City will not render or cause to be rendered any free services of any nature by the system nor any of the facilities; and in the event that the City or any Department, Agency, Officer or Employee thereof should avail itself of the services or facilities of the system, the same fees, rates and charges applicable to other customers receiving like service under similar circumstances shall be charged; such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the system.

### **Article IV. Connections.**

#### **Sec. 26. Use of Sewer Facilities Mandatory – General: Failure to Connect Deemed Public Nuisance; Illegal Dumping of Sewage; Privy Prohibition.**

- a) The mandatory use of the sewage collection facilities is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare and the economy of the inhabitants of the City and in order to assure the rendering harmless sewage and waterborne facilities. Accordingly, every owner, tenant and occupant of every lot, parcel and tract of land which abuts on a street, alley or other public way in which any sewer line, main or facility is located, or which is located within a reasonable distance thereof, not exceeding three hundred (300) feet, and reasonably accessible thereto, and upon which lot, parcel or tract a building or other habitable structure has been or shall be erected for residential, commercial or industrial use, shall connect the waste or sewage lines of such building or structure with the sewer facilities of the system immediately upon completion of the sewer project if sewage will flow by gravity from such building or structure into such sewer facilities, and shall cease to use any other method for the disposal of sewage or water-borne waste matter and shall pay all charges, fees and rates as provided herein.
- b) Any such building or structure from which emanates sewage or water-borne waste matter and 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 City and a public

nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in the Circuit Court of the County or other court of competent jurisdiction.

- c) No person shall dump any sewage into streets or public grounds of the City, nor in or upon any private grounds or premises so that such sewage shall or may become unsanitary or dangerous to the health of any person. No person shall maintain any privy on any property in the City that is within three hundred (300) feet of a public sewer.

**Sec. 27. Same – Authority and Procedure to Compel Properties to be Connected.**

The Council may require the owner of any property abutting upon any street in which a public sewer belonging to the City has been laid or placed, to connect a sewer leading from such person's property or lot into such public sewer at the nearest practicable point of connection, provided such owner has erected or constructed a building or other improvement on such property or lot, and provided such nearest point of connection, shall be within three hundred (300) feet of such person's property line. If the Council shall require such owner to make such connection, it shall require at least ten (10) days notice to be served upon such owner, ordering such owner to make such connection, but such owner although so required, shall not be authorized to make such connection until such owner shall have first obtained a written permit to make such connection in accordance with this division. If the owner of such lot or property thereupon fails or refuses to apply for and obtain such written permit, or after having obtained such permit fails or refuses to make such connection in accordance with this Chapter, after having been given such notice, the Council may thereupon enter upon such lot and construct such sewer and may levy the actual cost thereof, including the tapping fee therefore, against the lot upon which the building or other improvement is built and collect such costs and fee from the owner of such lot in the same manner as City taxes are collected and as provided in the City Charter.

**Sec. 28 Permit – Required to Tap or Connect to Public Sewers; Definition of Person.**

- a) No person shall tap or connect a private sewer with any public sewer of the City, whether lying within or without the corporate limits, without first paying a tapping fee.
- b) The word "person" as used in this Section and Section 28, shall include the person performing the act therein prohibited and any contractor, subcontractor or manager or foreman directing such work to be done if the contractor or subcontractor is a corporation; and the owner who authorizes such work to be done, or, if the owner or one of the owners is a corporation, the office thereof directing such work to be done.

**Sec. 29 Same – Required to Tap or Connect to Private Sewer connected to Public Sewer.**

- a) Where there is a private drain or sewer connected with a public sewer of the City, whether within or without the corporate limits, no person shall connect therewith another private drain or sewer which serves or is to serve any building or other improvement, without first paying the tapping fee and obtaining the issuance of a written permit to do so, for each building or other improvement so connected thereto, as provided in this Chapter.
- b) If such private sewer or drain, already connected with the public sewer, shall serve or shall have served a building or other improvement which has been partially or wholly destroyed by fire, or which is partially or wholly dismantled or torn down preparatory to

the erection of a new building or improvement, or which is being remodeled or improved; before such remodeling or improving and thereafter, no person shall connect with such private drain or sewer, (already connected with a public sewer) any such building or improvement, without first obtaining the issuance of a written permit to do so provided in this Article and without first paying the tapping fee (if any) therefore.

- c) Upon the payment of the tapping fee therefore, the Office Manager of the Sanitary Board of the City of Hinton shall credit the tapping fee paid for the connection of the previous building or other improvement so partially or wholly destroyed by fire, or dismantled or torn down, or remodeled as aforesaid. Unless the applicant for such new written permit shall furnish the Office Manager of the Sanitary Board of the City of Hinton with documentary proof that such former tapping fee paid was for a different amount, exactly specified in such documentary proof, the credit so allowed upon such tapping fee shall conclusively be presumed to be twenty-five (\$25).

**Sec. 30. Same – Issuance upon Application and Payment of Fee; Separate Permit and Fee Required for Each Improvement, Garages, and Expiration.**

- a) The Office Manager of the Sanitary Board of the City shall, upon application and upon the payment in cash of the proper tapping fee as set forth in this Chapter, issue to such applicant a written permit to tap or connect, either directly or indirectly, to the public sewers of the City a private drain or sewer from any building or other improvement. A separate written permit shall be issued and a separate fee shall be paid for each building or other improvement, so connected directly or indirectly with such public sewer.
- b) Any building or improvement not constituting an integral part of another building or improvement, although appurtenant thereto, whether located on the same or another lot, shall be considered a separate building or improvement for the purpose of this Chapter, requiring a separate permit and the payment of a separate fee. A garage apartment shall be considered such a separate building or improvement.
- c) A permit properly issued pursuant to this Chapter to tap or connect to a public sewer, unless revoked, shall be an authorization to the holder thereof to make the connection therein described within one year from the date of issuance thereof, but after the end of such year all rights of the holder to make such connection shall cease.

**Sec. 31. Same – Misrepresentation of Cost of Building, etc., to be Connected to Public Sewer.**

No person shall knowingly or fraudulently misrepresent to the Recorder-Treasurer the actual construction cost of any building or other improvement to be connected, directly or indirectly, to any public sewer of the City, nor obtain a written permit to connect such building or other improvements by virtue of such misrepresentation.

**Sec. 32. Construction of New Lateral or Extension Line – Authorized; Determination of Fee.**

The Sanitary Board may, by order duly entered on its records, determine that the proposed construction of an extension or lateral line of the public sewers of the City, whether within or without the City, will entail a cost beyond the revenues to be derived from fees for tap-ins made along such extension and in

such case the Sanitary Board may determine a special schedule of fees for tapings to be made along such extension or lateral line by order entered of record. After such special schedule of fees shall have been determined; if a majority of the owners of buildings or other improvements to be served thereby shall nevertheless file a written petition with the Sanitary Board containing such special schedule of fees and petitioning the Board to make such extension and charge such schedule of fees, then the Sanitary Board may make such extension and all tapping permits to such extension, or lateral line issued in accordance with this Article shall, as a prerequisite to the issuance thereof, require the payment of the tapping fee in accordance with such special schedule.

**Sec. 33. Same – How Advancements for New Construction Made, Recorded and Repaid.**

- a) If any person shall desire that a lateral or extension be made of a public sewer line belonging to the City, located in or out of the corporate limits, and if the Sanitary Board shall be of the opinion that funds cannot be spared for the building or extension of such line, the Sanitary Board is authorized in its discretion to enter into a written contract on behalf of the City with such person, whereby a part of all of the cost of constructing such extension or lateral line shall be advanced to the City without interest by such person, with the understanding and agreement that such funds advanced shall be repaid without interest from time to time to such person out of tapping fees in accordance with the general schedule of fees for tapping at such time in force, received from tapings or connections with such extension or lateral line from time to time, until such advancement to be repaid in full, but without interest. Such agreement to be effective shall be in writing, shall be submitted to and approved by the City Solicitor and the Council, and spread upon the record book of the Council at the time of such approval; and upon approval being given; the Mayor shall execute such agreement on behalf of the City. When the agreement is made, as aforesaid, the Office Manager of the City shall enter an account upon a ledger book of the City, which account shall show the persons making such an advance and shall describe the extension or lateral line constructed with reasonable accuracy; and the amount advanced, together with the repayment thereon, from time to time, shall be entered on such account. Such ledger accounts shall all be kept in a separate ledger book maintained for that purpose.
- b) Such contract may, in the discretion of the Sanitary Board, provide that such advancement shall be repaid only out of fees received from the advancement maker alone, for tapping permits along such extension or lateral line, or in the discretion of the Sanitary Board, from fees received from the advancement maker for tapings made on any of the City sewers; but in either case, no money shall actually be exchanged when a permit is issued to the advancement maker, but credit shall be made on the ledger, and the permit shall state that the “fee heretofore has been immediately returned to grantee hereof upon a contract of reimbursement for advancement, without deposit in City funds.”
- c) No contract for the future issuance of a sewer permit shall hereafter be made, and no contract for repayment of an advancement made hereafter shall be valid unless strictly in accordance with the terms of this ordinance.

**Sec. 34. Collection of Tapping Fees.**

In addition to the collection of the penalties for violating any of the provisions or requirements of this Chapter, the City may, in a civil action, collect the amount of tapping fees due the City prescribed in

this Chapter in case such person shall, without the written permit specified, make any of the connections described in this Article, and may in a civil action recover any additional amount due to the City under this Article after such amount shall have been determined by the Sanitary Board.

**Sec. 35. Procedure Required for Tapping; Compliance Mandatory.**

The holder of a tapping permit shall apply to the Sanitary Board or any authorized employee thereof for the tapping to be made, and the Sanitary Board, through its authorized employees, shall proceed to make the tapping or connection desired, and the employee making this tapping or connection shall sign such person's name to the owner's copy of the sewer permit issued by the Office Manager of the Sanitary Board of the City and to the copy furnished by the Office Manager of the Sanitary Board of the City as a work order at the time the tapping or connection is to be made, and shall return the copy furnished by the Office Manager of the Sanitary Board of the City as a work order to the office of the Office Manager of the Sanitary Board of the City immediately after completing the tapping or connection. It shall be unlawful for any tap or connection to be made by any person in any manner except as provided in this section.

**Sec. 36. Disconnection of Illegal Taps.**

If any person shall, without first obtaining a permit as provided in this Chapter, tap or connect a private drain, sewer or building, either directly or indirectly, or violate any provision of this Chapter, the Sanitary Board may, in addition to the other penalties or remedies herein provided for, disconnect such drain, sewer or building.

**Article V. Use of Sewers**

**Sec. 37. Right of City to Restrict Use of System During Emergency.**

In case of emergency, the City shall have the right to restrict the use of any part of the system in any reasonable manner for the protection of the system and the inhabitants of the City.

**Sec. 38. Willful or Negligent Damage to Sewers, Appurtenances, Etc. -- Prohibited; Restoration by Offender.**

- a) It shall be unlawful for any person willfully or negligently to damage, deface, mar, take away or destroy any part, portion, section or appurtenance of any public sewer or the sewer system or sewage disposal plant of the City, including sewer lines, sections, joints, or connections of a sewer line, manhole, or any part of appurtenance of a manhole or a sewer line, water line to or from a sewage disposal plant, or any structure, building, improvement or appurtenance thereto or constituting a part thereof, and including all tools, appliances, equipment for fixtures used in connection with such disposal plant, whether located within or without the City.
- b) If any person shall willfully, negligently or otherwise damage, deface, mar, take away or destroy any part, portion, section or appurtenance of any public sewer or the sewer system or sewage disposal plant of the City, including sewer lines, sections, joints, or connections of a sewer line, manhole, or any part of appurtenance of a manhole or a sewer line, water line, to or from a sewage disposal plant, or any structure, building, improvement or appurtenance thereto or constituting a part thereof, and including all tools, appliances, equipment or fixtures used in connection with such disposal plant,

whether the same be located within or without the City, such person shall at once repair, return, restore or replace the same in the same condition as before.

**Sec. 39. Same – Duty of Offender to Notify City Officers.**

Any person who shall, whether willfully, negligently or otherwise, damage, deface, mar, take away or destroy any part, portion, section or appurtenance of any public sewer or the sewer system or sewage disposal plant of the City, including sewer lines, manhole, or any part or appurtenance of a manhole or a sewer line, water line to or from a sewage disposal plant, or any part thereof, and including all tools, appliances, equipment or fixtures used in connection with such disposal plant, whether the same be located within or without the City, shall immediately notify the Mayor or Office Manager of the Sanitary Board of the City or the City Manager, of the nature and full extent of such damage or destruction.

**Sec. 40. Trespassing at Disposal Plants.**

No person shall trespass upon the enclosure or grounds of sewage disposal plants of the City.

**Sec. 41. Causing Vile Odors to Escape from Sewers.**

No person shall remove any sink, basin, stationary tub, commode or other sanitary equipment connected in any manner with any public sewer in the City so as to allow to escape from such public sewer, or any connection therewith, vile odors, gases or sewer gas to the annoyance, injury or inconvenience of any person in the City.

**Sec. 42. Substances Prohibited in Sanitary Sewers – Generally.**

No person shall wash, throw or place, or cause to be washed, thrown or placed in any sanitary sewer of the City, or in any private connection, opening or leading thereto, any storm water, ground water, roof run-off, subsurface drainage, surface or drain water, or any sand, mud or soil, rages, waste, oil, grease, gasoline, kerosene or other petroleum based substance, or other matter or substance other than ordinary sewage or any of the substances, materials, waters or wastes as provided in Section 43 following.

**Sec. 43. Same – Prohibited Discharge Enumerated.**

No person shall discharge or cause to be discharged to any public sewer any of the following described substances, materials, waters or wastes:

- a) Any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65 degrees Celsius).
- b) Any water or wastes which contain grease or oil or other substance that will solidify or become discernibly viscous at temperatures between thirty-two (32) degrees to one hundred fifty (150) degrees Fahrenheit.
- c) Any waste or wastes containing emulsified oil or grease exceeding, on analysis, an average of ten (10) parts per million (83.3 pounds per million gallons) of either soluble matter.

Note: The poundage permitted per day from any establishment may be subsequently limited depending upon soluble content of the sewage delivered to the wastewater treatment works.

- d) Any gasoline, benzene, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, "solid or gas".
- e) Any water or wastes that contain more than ten (10) parts per million by weight of the following gases: hydrogen sulfide, sulphur dioxide or nitrous oxide.
- f) Any garbage that has not been properly comminuted or triturated.
- g) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, manure, hair and fleshings, entrails, lime slurry, lime residues, beer or distillery slops, chemical residues, paint residues, cannery waste bulk solids, or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater works. (1989).
- h) Any water or wastes that contain phenols in excess of one-thousandth (0.001) part per million by weight. These limits may be modified if the aggregate of contributions throughout the metropolitan area of service create treatment difficulties, or produce a plant effluent discharge to the receiving waters which may be prohibitive.
- i) Any waters or wastes, acid or alkaline in reaction, and having corrosive properties capable of causing damage or hazard to structures, equipment and personnel of the wastewater works. Free acids and alkalis of such water and wastes must be neutralized, at all times, within a permissible range of pH, between six-point-zero (6.0) and nine-point-zero (9.0).
- j) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to damage or interfere with any sewage treatment process, constitute a hazard to humans or animals, to create any hazard in the receiving waters or storm water overflows or in the effluent of the wastewater treatment plant. Materials such as copper, zinc, chromium, and similar toxic substances shall be limited to the following average quantities in the sewage as it arrives at the treatment plant and at no time shall the hourly concentration at the wastewater treatment plant exceed three (3) times the average concentration.

Parts Per Million

Iron as Fe	.15
Chromium as Cr (hexavalent)	.05
Copper as Cu	.03
Arsenic	.01
Barium	.50
Cadmium	.01
Lead	.05
Silver	.05
Selenium	.01
Nitrates	.45

Chlorides	.100
Phenols	.001
Cyanides	.025
Fluorides	1.0

And with contributions from individual establishment subject to control in volume and concentration by wastewater treatment plan superintendent.

- k) Any cyanides, in excess of twenty-five thousandths (.025) part per million by weight as CN in the wastes from any outlet into the public sewers.
- l) Any water or wastes containing the discharge of strong acid iron pickling wastes, or concentrated plating solutions, whether neutralized or not.
- m) Any water containing suspended solids of such character and quantity that unusual provisions, attention or expense is required to handle such materials at the wastewater treatment plant.
- n) Any noxious or malodorous gas or substance, which either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or preventing entry into sewers for their maintenance or repair.
- o) Any wastewater that, for a duration of fifteen (15) minutes has a concentration greater than five (5) times that of "normal wastewater" as measured by suspended solids and BOD and/or which is discharged continuously at a rate exceeding one thousand (1,000) gallons per minute.

**Sec. 44. Same – Alternatives Available for Prohibited Substances.**

- a) If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 43, and which may have a deleterious effect upon the wastewater facilities, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, as determined by the Sanitary Board or its duly authorized representative, the Sanitary Board or duly authorized representative may:
  - i) Reject the wastes.
  - ii) Require the pretreatment to an acceptable condition for discharge to the public sewers.
  - iii) Require control over the quantities and rates of discharge; and/or
  - iv) Require payment to cover added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 21.
- b) When considering the above alternatives, the Sanitary Board or its duly authorized representatives shall give consideration to the economic impact of each alternative on the discharger. If the Sanitary Board or its duly authorized representatives permits the pretreatment or equalization of waste flows, the design and installation of the plants and

equipment shall be subject to the review and approval of the Sanitary Board or its duly authorized representative.

**Sec. 45. Interceptors.**

Grease, oil and sand interceptors shall be provided when, in the opinion of the Sanitary Board or its duly authorized representative, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Section 42, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owners shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of sand-collected materials not performed by owner's personnel must be performed by currently licensed waste disposal firms.

**Sec. 46. Pretreatment of Flow-equalization Facilities.**

- a) Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owners at their expense.
- b) When required by the Sanitary Board or its duly authorized representative, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structure, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the Sanitary Board or its duly authorized representative. The structure shall be installed by the owner at the owner's expense and shall be maintained by the owner so as to be safe and accessible at all times.

**Sec. 47. Discharge Reports-Generally.**

The Sanitary Board may require that any person discharging or proposing to discharge wastewater into a community sewer, file a periodic discharge report. The discharge report may include, but not be limited to, nature of process, volume, rates of flow, mass emission rate, production quantities, hours of operation, number and classification of employees, or other information which relates to the generation of waste including wastewater discharge. Such reports may also include the chemical constituents and quantity of liquid or gaseous materials stored on site even though they are not normally discharged. In addition to discharge reports, the Sanitary Board may require information in the form of Wastewater Discharge Permit applications and self- monitoring reports.

**Sec. 48. Same – Information Which may be Required; Testing Standard.**

- a) The Sanitary Board or its duly authorized representative may require a user of sewer services to provide information needed to determine compliance with this division. These requirements may include:

- i) Wastewater discharge peak rate and volume over a specified time period;
  - ii) Chemical analyses of wastewater;
  - iii) Information on raw materials, processes and products affecting wastewater volume and quality;
  - iv) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
  - v) A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
  - vi) Details of wastewater pretreatment facilities;
  - vii) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.
- b) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this Chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the Sanitary Board or its duly authorized representative.

**Sec. 49. Wastewater Discharge Permits.**

- a) Mandatory permits: Each "major contributing industry" as defined in Section 1, or other users with a discharge equivalent to the major contributing industry, if not connected to a community sewer, must obtain a Wastewater Discharge Permit before connecting to or discharging into a community sewer. Each currently connected "major contributing industry" or equivalent user must possess a current Wastewater Discharge Permit.
- b) Optional permits: The Superintendent may issue a Wastewater Discharge Permit to any user, upon application, in accordance with the terms of this section in the following categories:
  - i) A user who requests charges and fees to be based on an estimate of wastewater flow;
  - ii) Any user whose wastewater strength is less than the normal range for the user classification to which such user is assigned because of pretreatment, process changes or other reasons.
- c) Permit application: Users seeking a Wastewater Discharge Permit shall complete and file with the Superintendent, an application in the form as prescribed by the Superintendent, and accompanied by the applicable fees. The applicant may be

required to submit, in units and terms appropriate for evaluation, the following information:

- i) Name, address and standard industrial classification number of applicant;
- ii) Volume of wastewater to be discharged;
- iii) Wastewater constituents and characteristics including but not limited to those mentioned in section seven (7) as determined by a laboratory approved by an agency;
- iv) Time and duration of discharge;
- v) Average and thirty (30) minute peak wastewater flow rates; including daily, monthly and seasonal variations; if any;
- vi) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers appurtenances by size, location and evaluation;
- vii) Description of activities, facilities and plant processes on the premises including all materials, processes and types of materials which are or should be discharged;
- viii) Each product produced by type, amount and rate of production;
- ix) Number and type of employees and hours of work;
- x) Any other information as may be deemed by the Sanitary Board or its duly authorized representative to be necessary to evaluate the permit application.

The Sanitary Board or its duly authorized representative will evaluate the data furnished by the user and may require additional information. After evaluation and approval of all the data required, the Sanitary Board or its duly authorized representative may issue a Wastewater Discharge Permit subject to terms and conditions provided herein.

- d) Permit conditions: Wastewater Discharge Permits shall be expressly subject to all provisions of this Chapter and all other ordinances, regulations, charges and fees established by the Sanitary Board. The conditions of Wastewater Discharge Permits shall be uniformly enforced by the Sanitary Board or its duly authorized representative in accordance with this Chapter, and applicable state and federal regulations. Permits may contain the following:
  - i) The unit charge or schedule of charges and fees for the wastewater to be discharged to a community sewer;
  - ii) The average and maximum wastewater constituents and characteristics,
  - iii) Limits on rate and time of discharge or requirements for flow regulation and equalization;
  - iv) Requirements for installation of inspection and sampling facilities;

- v) Pretreatment requirements;
  - vi) Specifications for monitoring programs, which may include sampling locations, frequency and method of sampling, number, types and standards for tests and reporting schedule;
  - vii) Requirements for submission of technical reports or discharge reports;
  - viii) Requirements for maintaining plant records relating to wastewater discharge as specified by the Sanitary Board, affording Sanitary Board access thereto;
  - ix) Mean and maximum emission rates or other appropriate limits when compatible pollutants are proposed or present in the user's wastewater discharge;
  - x) Other conditions as deemed appropriate by the Sanitary Board to insure compliance with this Section.
- e) Duration of Permits: Wastewater Discharge Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. If the user is not notified by the Sanitary Board thirty (30) days prior to the expiration of the permit, the permit shall be extended in a period not to exceed one (1) additional year. The terms and conditions of the permit may be subject to modification and change by the Sanitary Board during the life of the permit as limitations and requirements as identified in subsection (d) of the Section are modified and changed. The user shall be informed of any proposed changes in the permit at least thirty (30) days prior to the effective date of the change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- f) Transfer of Permit: Wastewater Discharge Permits are issued to a specific user for a specific operation. A Wastewater Discharge Permit shall not be reassigned or transferred or sold to a new owner, new user, different premises or a new or changed operation.
- g) Revocation or Permit: Any user who violates the conditions of the Wastewater Discharge Permit, any provisions of this Chapter, applicable state and federal regulations, or any of the following, is subject to having such user's permit revoked:
- i) Failure of user to factually report the wastewater constituents and characteristics of such user's discharge.
  - ii) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics; or,
  - iii) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.

**Sec. 50. Monitoring Facilities.**

- a) Users who propose to discharge, or who the Sanitary Board or its duly authorized representative determine could discharge now or in the future, wastewater with constituents and characteristics different from that produced by a domestic premises will be required to install a monitoring facility.
- b) When one or more users can discharge into a common building, the Sanitary Board may require installation of a separate monitoring facility for each user. In addition, upon determination by the Sanitary Board, or its duly authorized representative that there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user, the Sanitary Board or its duly authorized representative may require that separate monitoring facilities be installed for each separate discharge.
- c) Monitoring facilities that are required to be installed shall be constructed, operated and maintained at the user's expense. The purpose of the facility is to enable inspection, sampling and flow measurement of Wastewater produced by a user. If sampling or metering equipment is also required by the Sanitary Board, it shall be provided, installed and operated at the user's expense. The monitoring facility will normally be required to be located on the user's premises outside of the building. The Sanitary Board may, however, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area, with the approval of the public agency having jurisdiction over that street or sidewalk, and located so that it will not be obstructed by landscaping or parked vehicles.
- d) If the monitoring facility is inside the user's fence, there shall be accommodations to allow safe and immediate access for Sanitary Board personnel, such as a gate secured with a Sanitary Board lock. There shall be ample room in or near such facility to allow accurate sampling and compositing of samples for analysis. The entire facility and the sampling measuring equipment shall be furnished and maintained at all times in a safe and proper operating condition by and at the expense of the user.
- e) Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the Sanitary Board's requirements and all applicable local agency construction standards and specifications. When, in the judgment of the Sanitary Board, an existing user requires a monitoring facility, the user will be so notified in writing. Construction must be completed within ninety (90) days following written notification unless a time extension is otherwise granted by the Sanitary Board.

**Sec. 51. Inspection and Sampling.**

The Sanitary Board may inspect the facilities of any user to ascertain whether the purpose of this Chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the Sanitary Board or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection or sampling or in the performance of any of their duties. The Sanitary Board shall have the right to set up on the user's property such devices as are necessary to conduct sampling or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the Sanitary Board will be permitted to enter without delay for the purposes of performing their specific responsibilities.

**Sec. 52. Pretreatment.**

Users shall make wastewater acceptable under the limitations established herein before discharging into any community sewer. Any facilities required to pretreat wastewater to a level acceptable to the Sanitary Board shall be provided and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Sanitary Board for review, and shall be approved by the Sanitary Board before construction of the facility. The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent complying with the provisions of this Chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the Sanitary Board.

**Sec. 53. Protection from Accidental Discharge.**

- a) Each user shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the user's expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the Sanitary Board for review, and shall be approved by the Sanitary Board before construction of the facility.
- b) The review and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to provide the protection necessary to meet the requirements of this Chapter.

**CHAPTER 21. DOOR-TO-DOOR SOLICITATION AND BEGGING**

- Sec. 1. Permit Required for Asking Alms.
- Sec. 2. Permit Required for Sale of Merchandise as Adjunct to Asking Alms.
- Sec. 3. Permit Required for Exhibition at Which Collection is taken up.
- Sec. 4. Contents of Application for Permit.
- Sec. 5. Qualification of Permittee.
- Sec. 6. Display of Permit.
- Sec. 7. Duration of Permit.
- Sec. 8. Time Limit on Soliciting.
- Sec. 9. Stopping of Traffic.
- Sec. 10. Solicitation by Minor.
- Sec. 11. Revocation of Permit.

**Sec. 1. Permit Required for Asking Alms.**

No person or organization shall beg for money, solicit funds, ask alms or secure money, either door-to-door or otherwise, within the corporate limits of the City, by any charitable pretext, unless a permit for such purposes has first been secured from the City Manager. No commercial door-to-door solicitation of any nature shall be allowed in the City of Hinton. (1989)

**Sec. 2. Permit Required for Sale of Merchandise as Adjunct to Asking Alms.**

No person or organization shall offer for sale upon the streets or public spaces of the City, any merchandise or materials as an adjunct to the business of begging, soliciting funds or asking monetary alms, unless a permit for such purpose shall have first been secured from the City Manger. (1989)

**Sec. 3. Permit Required for Exhibition at Which Collection is Taken Up.**

No person or organization shall give any exhibitions or offer entertainment in any form upon the streets or in the public spaces of the City in connection with taking up an offering or collection, without first having secured a permit for such purposes from the City Manager. (1989)

**Sec. 4. Contents of Application for Permit.**

Every application submitted by an individual or person seeking a permit under this chapter shall contain:

- a) Name of non-profit organization.
- b) Purpose of activity.
- c) Description of activity.
- d) Number of participants.
- e) Area to be solicited.
- f) Person in charge of activities.
- g) Dates and times of activity. (1989)

**Sec. 5. Qualification of Permittee.**

Permits for the purpose set out in this chapter shall be issued only to persons acting as agents for non-profit organizations located in Summers County, West Virginia (1989)

**Sec. 6. Display of permit.**

The permittee at all times while engaged in acting under the provisions of a permit, shall prominently display such permit. Every member of any group operating under the chapter shall prominently display a copy of the permit issued to any non-profit organization. (1989)

**Sec. 7. Duration of Permit.**

No permit issued under this chapter shall be for a period of more than fourteen days, unless specified by the Council. (1989)

**Sec. 8. Time Limit on Soliciting.**

It is hereby declared to be unlawful for any person whether registered under this ordinance or not, to go upon any premises and ring the door bell upon or near any door of a residence located thereon, or rap or knock upon any door or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engage in soliciting as herein defined, prior to ten A.M. or after six P.M. of any weekend or Saturday, or at any time on a Sunday or on a State or National Holiday. (1989)

**Sec. 9. Stopping Traffic.**

No person or organization operating under the provisions of this chapter shall engage in any activity which involves the stopping or hindering of the free flow of traffic. (1989)

**Sec. 10. Solicitation by Minor.**

Any person under the age of eighteen engaged in solicitation must be accompanied by and under the supervision of an adult.

**Sec. 11. Revocation of Permit.**

The City Manager or Chief of Police shall be empowered to revoke any permit issued under this Chapter at any time for the violation by any permittee of any Section of this Chapter. Any violation of this Chapter may be punished by a fine of not less than twenty-five (\$25.00) nor more than one hundred (\$100.00) dollars. (1989)

**CHAPTER 22. STREETS AND SIDEWALKS**

**Article I. In General**

- Sec. 1. Sidewalks, Bridges and Enclosures.
- Sec. 2. Grading Prerequisite to Curbing.
- Sec. 3. Barricades and Lights.
- Sec. 4. Coal Holes, Basement Openings, Stairways, etc.

**Article II. Laying, Relaying and Repair of Sidewalks**

- Sec. 5. Duty of Property Owner to Lay Sidewalks.
- Sec. 6. Duty of Property Owner to Repair or Relay.
- Sec. 7. Work Done by Council.
- Sec. 8. Establishment of Grades.
- Sec. 9. Specifications for Location and Construction.
- Sec. 10. Setting Stakes for Grade and Width; Report Thereof.
- Sec. 11. Compliance with Report.
- Sec. 12. Lateral Support.

**Article III. Surface Openings**

- Sec. 13. Permit Required.
- Sec. 14. Application Therefore.
- Sec. 15. Indemnification.
- Sec. 16. Cash Deposit.
- Sec. 17. Revocation.
- Sec. 18. Forfeiture of Deposit on Revocation.
- Sec. 19. Effect of Defective Work Done Under Permit.

**Article IV. Obstructions**

- Sec. 20. Prohibited.
- Sec. 21. Receiving or Delivery of Boxes, Barrels, etc.
- Sec. 22. Flow of Water.

- Sec. 23. Removal by City.
- Sec. 24. Inspection by City Manager.
- Sec. 25. Duration.
- Sec. 26. Snow Removal.
- Sec. 27. City to Remove Snow, Expense Property Owner.

**Article V. Street Names and Premises Numbers**

- Sec. 28. Street Signs.
- Sec. 29. Buildings to be Numbered.
- Sec. 30. Plan of Such Numbering.
- Sec. 31. Numbering when Owner Fails to Do So.
- Sec. 32. Penalty.

**Article I. In General**

**Sec. 1. Sidewalks, Bridges and Enclosures.**

Sidewalks, bridges and enclosures must be provided, maintained and lighted when required for public safety. (1989)

**Sec. 2. Grading Prerequisite to Curbing.**

Before the laying of any curbing within the City limits, the grades must first be established by the City Manager. (1989)

**Sec. 3. Barricades and Lights.**

Any obstruction, excavation or surface opening of a street or sidewalk shall be sufficiently barricaded and sufficiently lighted at night for the protection of persons and property. No person shall remove damage or interfere with any such barricade or light so placed in accordance with this Article. Such barricades and lights shall be removed as soon as the need therefore has ceased. (1927, Ord. No. 21.)

**Sec. 4. Coal Holes, Basement Openings, Stairways, etc.**

No person or property owner shall have or maintain in the City any coal hole, basement opening, stairway or any other opening for like purpose in the sidewalk or street which opening in not protected by a grating provided with a limiting device. Such limiting device shall prohibit the cover of any such opening from raising to an angle greater than eight-five degrees and shall so function that such opening cannot willfully or negligently be left open. It shall be unlawful to detach the limiting device so as to permit the cover of such opening to be propped open or left open unless an attendant is stationed on the street level to warn pedestrians or vehicles of the opening and to protect them from falling or stepping therein. When any such opening is to be left uncovered for any length of time it is not practicable to station an attendant thereat, the opening shall be substantially fenced or barricaded off in such manner that pedestrians or vehicles shall not fall or step therein. (1989.)

**Article II. Laying, Relaying and Repair of Sidewalks**

**Sec. 5. Duty of Property Owner to Lay Sidewalks.**

It shall be the duty of every person owning and of every agent having charge of property in front of which or alongside of which the curb has been placed to cause the sidewalks abutting such curb to be laid according to the rules and regulations and certification adopted or prescribed by the Council or the Hinton Historic Landmarks Commission within thirty days after the completion of such curb. (1989)

**Sec. 6. Duty of Property Owner to Repair or Relay.**

It shall be the duty of all such property owners and agents to repair any such sidewalks abutting upon the property owned by him, or in his charge, or relay the same whenever it becomes in bad repair, or whenever the same for any reason is not in conformity with the rules and regulations and specifications adopted or prescribed by the Council or Hinton Historic Landmark Commission. In any event he shall do so within thirty days after receiving notice from the Council or the City Manager requiring him to repair or relay such sidewalk. (1989.)

**Sec. 7. Work Done by Council.**

It shall be the duty of all such property owners to repair or relay any such sidewalks, or to construct any sidewalks upon any street where the curb has been set, after first giving the property owner or his duly authorized agent, thirty days notice of its intention so to do, and may levy and collect the expenses of such work to the extent thereof, with one per cent per month interest added thirty days after a demand has been made by the City Manager or Treasurer of the City, for the payment thereof. Costs and interest shall be collected in the same manner and shall become a lien on the abutting property the same as taxes. (1927, Ord. No. 19.)

**Sec. 8. Establishment of Grades.**

Before the laying of any sidewalk within the City limits, the grades must first have been established by the City Manager. (1989)

**Sec. 9. Specification for Locations and Construction.**

The principal constituent of sidewalks, the manner of constructing the same, the width thereof, together with the location of same, between the property line and the curb, shall all be in accordance with the rules, orders, and specifications promulgated or adopted by the Council or Hinton Historic Landmark Commission. (1989)

**Sec. 10. Setting Stakes for Grade and Width; Report Thereof.**

It shall be the duty of the City Manager to inspect stakes set for the grade and width of sidewalks as conditions may require, and to file a report thereof with the City Council. Such report shall show the number and width of the lot or property in front of which the sidewalk is to be laid. (1989)

**Sec. 11. Compliance with Report.**

The work shall be done in conformity with such report when the same has been approved by the Council. (1927, Ord. No. 19)

**Sec. 12. Lateral Support.**

The property owner or agent shall, at his own expense, properly erect masonry or steel construction or a retaining wall sufficient to support the adjoining earth when necessary to save damage to other parties or the street. (1927, Ord. No. 19.)

### **Article III. Surface Openings**

#### **Sec. 13. Permit Required.**

No one shall cut, molest, move or remove any paving, or opening, trench, dig or disturb any sidewalk or street within the corporate limits without first having obtained a building permit from the City Manager. (1989)

#### **Sec. 14. Application Therefore.**

The application for such permit shall be filed with the City Manager and shall specify the time, place, method, duration, purpose and size of the opening to be made. (Vol. 3, p. 32, 2-10-31.)

#### **Sec. 15. Indemnification.**

Such permit shall be granted only after the applicant has indemnified the City against harm, loss or damage during, or subsequent to, the exercise of the permit. (Vol. 3, p. 32, 2-10-31.)

#### **Sec. 16. Cash Deposit.**

The applicant shall post with the City Manager a cash deposit equal to the cost of replacing the street or pavement in its original condition, as estimated by the City Manager. Such deposit shall remain in the custody of the City with interest thereon at the rate of 6% per annum until all the conditions of the permit have been fulfilled and the replacements made to the satisfaction of the City Manager, which satisfaction the City Manager shall indicate in writing. (1989)

#### **Sec. 17. Revocation.**

If, at any time, in the opinion of the City Manager, operations under the permit are not being conducted with proper regard to the best interests of the City, or the permittee is neglecting or refusing to comply promptly with orders or instructions of the City Manager, the permit may be revoked by the City Manager.  
(1989)

#### **Sec. 18. Forfeiture of Deposit on Revocation.**

Upon such revocation, the cash deposit shall be forfeited to the City as liquidated damages. (Vol. 3, p.32, 2-10-31.)

#### **Sec. 19. Effect of Defective Work Done Under Permit.**

If, at any time within one year after the granting of a permit under this Article the work done there under or the replacement effected proves defective, then any money the permittee may at the time have on deposit, shall be forfeited to the City to cover the cost of subsequent corrections or, if no forfeiture

is available, then the City shall make the necessary corrections and assess the costs against the permittee, or the property benefited by the work done under the permit and the costs so assessed shall become property liens of the same as taxes. (Vol. 3, p. 32, 2-10-31). (1989)

**Sec. 20. Prohibited.**

That it shall be unlawful to place, build, erect, maintain or allow to remain in any street or sidewalk of the City any obstructions, impediment, structure, fence, pole, post, hedge or barricade of any kind, timber, lumber, or any other matter or thing that will interfere with the use of the street or sidewalk at any time, or to pile any dirt or material of any kind within the limits of any such streets or sidewalk. (1989)

**Sec. 21. Receiving or Delivery of Boxes, Barrels, etc.**

The preceding section shall not prevent any person from placing or allowing boxes, barrels, bales, tables, crates or other obstructions of like nature on the street or sidewalk in delivering or receiving goods or materials as ordinary business demands. (1927, Ord. No. 24.)

**Sec. 22. Flow of Water.**

No person shall obstruct the gutter of any street so as to prevent the flow of water therein. (1927, Ord. No. 23.)

**Sec 23. Removal by City.**

The City may remove any obstruction, impediment or other thing placed or allowed to remain in the streets or sidewalks when the party placing or causing such obstruction shall not remove it upon demand made. The expense of such removal by the City may be recovered by the City from the party placing or causing the same. (1927, Ord. No. 21)

**Sec 24. Inspection by City Manager.**

The City Manager shall in his discretion inspect the work in order to insure compliance with the provisions of this Code. (1927, Ord. No. 21.)

**Sec. 25. Duration.**

It shall be unlawful to maintain any such obstructions any longer than is reasonably necessary, with due diligence, to carry out and complete the work at any particular point or place where the necessity exists. (1927, Ord. No. 21.)

**Sec. 26. Snow Removal.**

It shall be the duty of each and every person, incorporated society, public institution, or other corporation owning, using or occupying, in any manner, or for any purpose whatsoever, any house, store, shop, garage, stable, building or tenement of any kind and of all persons having charge of churches and public buildings of every description, and of the owners of unoccupied houses, stores, shops, garages, stables, buildings or tenements of any kind and of the owners of vacant or unimproved lots, situated on or along any paved street or alley in the City of Hinton and of their agents, within three hours, after the fall of any snow, to remove or clear away such snow, or cause the same to be

removed or cleared away, from the pavements or sidewalks, fronting the houses, stores, shops, garages, stables, buildings, churches, public buildings or tenement of any kind, or lots, so used, occupied, or owned by them or under their charge, in such manner as to leave the sidewalk clean and free from snow, and in such manner as not to obstruct the passage of the water in the gutters, provided, that if such snow shall fall between the hours of 6:00 P.M. and 6:00 A.M., then such snow shall be removed or cleared away before 11:00 A.M., pursuant to all the provisions hereof. (2-10-48.)

**Sec. 27. City to Remove Snow, Expense Property Owner.**

The Foreman of Streets, after the expiration of the times specified in Section 26, may without notice remove any snow or ice not removed as provided in Section 26, and make report to the Council of the costs and expense which may be assessed against the person and property delinquent, in addition to the penalty provided in this Code. (1989)

**Article V. Street Names and Premises Numbers**

**Sec. 28. Street Signs.**

It shall be the duty of the City Manager to procure, and the duty of the City Manger and the police force to have placed upon the houses at the street corners, or upon posts conveniently fixed, signs having letters or figures thereon, the numbers of the Avenues and the names of the Streets, of such pattern and cost as may be approved by the City Manager or the council and to maintain such signs in order and replace such as may be worn out or destroyed. (1927, Ord. No. 28.)

**Sec. 29. Buildings to be Numbered.**

All the buildings fronting on the streets of the City shall be plainly and distinctly numbered by the owner or by the agent having the same in charge, by figures not less than two inches nor more than six inches long, placed or painted on the door, transom, or transom rail on top of the door frame, or transom ways thereof or in a position in the house plainly visible from the street. (1989)

**Sec. 30. Plan of Such Numbering.**

Beginning at First Avenue and proceeding eastward to the eastern limit of the City, the odd numbers shall be assigned to the left hand side of the Avenue and the even numbers to the right hand side. One hundred numbers, or such portions thereof as may be necessary, shall be assigned to each block or space between two streets, so that between First Avenue and Second Avenue, on each side of such street, the numbers shall be from 100 to 200, and between Second Avenue and Third Avenue the numbers shall be from 200 to 300 and so on.

In blocks where the lots are fifty feet front on such streets, two numbers shall be assigned to each lot as follows: Lot No. 1 shall have the first number in regular order assigned to the west portion thereof, and the second number in turn assigned to the east portion thereof; that is. No. 1. and 3, and so on to all of the lots in the block in the regular way, in the regular order.

If more doors or entrances are found on fifty foot lots than the two, those in excess of the stated numbers shall be designated by adding the fraction  $\frac{1}{2}$ ,  $\frac{1}{4}$ , etc., to the number preceding, it being the intention to assign one number to every twenty-five feet on such street; and the same method in numbering shall be applied to the streets, commencing at Front Street and proceeding in a southerly or southeasterly direction as the streets ascend. (1927, Ord. No. 28)

**Sec. 31. Numbering when Owner Fails to Do So.**

The City Manager or the chief of police may, in default of the owner or agent so doing, place the appropriate number on the building. The cost thereof, together with a fee of one (\$1.00) dollar to the person superintending the same, shall be charged the owner of the property and collected as taxes for the following year, after giving him the proper notice required by law. (1927, Ord. No. 28)

**Sec. 32. Penalty.**

Any violation of any of the foregoing provisions of this Chapter shall be punishable by a fine of not less than five (\$5.00) dollars nor more than one hundred (\$100.00) dollars and each and every day that the violation exists shall constitute a separate offense.

**CHAPTER 23. MOBILE HOMES, RECREATIONAL VEHICLES, TOURSIST CAMPS AND TRAILER PARKS**

**Article I. Mobile Homes**

- Sec. 1. Definitions.
- Sec. 2. License Required.
- Sec. 3. Application; Privilege Payment and Sketch of Plots.
- Sec. 4. Supervision.
- Sec. 5. Spaces.
- Sec. 6. Placement of Mobile Homes.
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**Article II. Recreational Vehicles**

- Sec. 10. Definitions.
- Sec. 11. Storage.
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**Article III. Trailer Parks and Tourist Camps**

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Sec. 33. Allowance/Exception.

**Article I. Mobile Homes**

**Sec. 1. Definitions.**

- (a) "Mobile Home" shall mean and include any vehicle or similar portable structure constructed with an axle permanently attached so as to permit its being moved on a public street and so as to permit the occupancy thereof as a dwelling by one or more persons.
- (b) "Mobile Home Park" shall mean and include an area of land on which two or more occupied mobile homes are harbored, either free of charge or for revenue, together with any building, structure or enclosure used as part of the equipment of such park.

**Sec. 2. License required.**

It shall be unlawful for any person to establish, advertise, operate, or maintain a mobile home park within the limits of the City, without first having secured from the City Manager a license granted under the terms of this Chapter in the same manner that other City licenses are secured.

**Sec. 3. Application; Privilege Payment and Sketch of Plots.**

Application for such license shall be filed with the City Manager and must be accompanied by a privilege payment of one dollar (\$1.00) for each mobile home plot available in the designated mobile home park, by a sketch or plat designating the boundaries and location of such mobile home park and accurately showing the plots and their sizes available or to be made available in the mobile home park and by a statement advising the City Manager of the attendant or caretaker of said park along with an address where said attendant or caretaker may be contacted.

**Sec. 4. Supervision.**

Each mobile home park, while operated, shall be in the charge of a responsible attendant or caretaker at all times, who shall be responsible, with the licensee, for compliance with the provisions of this ordinance relating to the conduct of such parks.

**Sec. 5. Spaces.**

Each mobile home shall be allotted a site of not less than one thousand square feet. No mobile home shall be parked closer than fifteen feet to the side of lot lines of a mobile home park, if the abutting property is improved property, or closer than ten feet to a public street, alley or building. Each individual site shall abut or face on a driveway or clear unoccupied space of not less than twenty feet in width, which space shall have unobstructed access to a public highway or alley. There shall be an open space of at least ten feet between the sides of every mobile home and at least five feet between the ends of every mobile home.

**Sec. 6. Placement of Mobile Homes.**

Any mobile home installed in the City must be placed on blocks, tied down and underpinned. Payment for a sewer hook-up shall be required even though it is in a sewer already in service. (1989)

**Sec. 7. Garbage.**

It shall be the duty of the owner, his agent or caretaker, to provide for the collection and removal of garbage or other waste material and to otherwise maintain the park in a clean and sanitary condition.

**Sec. 8. Lights.**

The park shall be kept adequately lighted by the owner at all times so that the grounds shall be safe for occupants and visitors.

**Sec. 9. Permanent Use.**

It shall be unlawful for any person to maintain any mobile home used for human habitation, upon any plot of ground in the City except in a licensed mobile home park.

**Article II. Recreational Vehicles**

**Sec. 10. Definitions.**

For the purposes of this ordinance the term "recreational vehicle" shall mean any motor vehicle or trailer used as a travel trailer, camper, motor home, tent trailer, boat, boat trailer, snowmobile, snowmobile trailer, camping trailer, and for any similar purpose.

**Sec. 11. Storage.**

In residential areas, including multiple-family areas, a recreational vehicle may be stored in a garage, storage outside a garage shall not be closer than ten feet to any building on the same lot, nor shall it be stored on the front yard of any lot except on a driveway. Such recreational vehicles shall not occupy more than ten percent of the area of the lot which the main building occupies. It shall be unlawful for the owner of said recreational vehicle to store said vehicle on any City street within the City of Hinton.

**Sec. 12. Traffic and Vehicle Regulations.**

Recreational vehicles shall be used in compliance with all ordinances regulating traffic or the condition of vehicles insofar as such ordinances are applicable.

**Sec. 13. Occupation.**

It shall be unlawful to occupy any motor home, camper or trailer for residential purposes anywhere in the City except in a duly established trailer park maintained in accordance with the ordinances of the City.

### **Article III. Travel Trailer Parks and Tourist Camps**

#### **Sec. 14. Definitions.**

- (a) "Travel Trailer Park" shall be taken to mean any site, lot, tract or parcel of land designed, maintained, intended, or used by house trailers by any person or for temporary residence, camping or overnight residence.
- (b) "Tourist camp" shall be taken to mean any site, lot or parcel of land upon which one or more cabins or cottages are located and maintained for the accommodation of transients by day, week or month.
- (c) "Trailer plot or camp plot" shall be taken to mean a section of ground in a trailer camp or tourist camp of not less than sixteen hundred (1,600) square feet area designed for the exclusive use of one trailer and its motive unit, or one tourist cabin or cottage.

#### **Sec. 15. License Required.**

It shall be unlawful for any person to establish, advertise, operate or maintain a travel trailer park or a tourist camp, or a combination of the two, within the limits of the City, without first having secured from the City Manager a license granted under the terms of this chapter in the same manner that other City licenses are secured.

#### **Sec. 16. Applicable Provisions.**

All provisions of Article 1 of this chapter concerning permits, applications, supervision and the operation of a mobile home park shall be applicable to a travel trailer park or tourist camp and the licensee of any travel trailer park or tourist camp shall be required to comply thereto.

#### **Sec. 17. Park Office.**

Every travel trailer park or tourist camp shall have a suitable office at which the person in charge of the camp can be located. Such office shall be designated by proper signs.

#### **Sec. 18. Register.**

The person in charge of any travel trailer park or tourist camp shall maintain a camp register. The register shall show at all times for all guests: names and addresses, dates of entrance and departure, license numbers of travel trailers and automobiles, what state issued the license, the length of stay and place of last location.

#### **Sec. 19. Street Connections.**

No tourist camp or travel trailer park shall be licensed for location within the City unless it has all-weather street connections permitting easy passage for motorized fire apparatus and refuse service trucks.

**Sec. 20. Position Relative to Church, School, Hospital or Public Building.**

No tourist camp or travel trailer park shall be licensed for location within the City unless it is at least three hundred feet from any church, school, hospital, or any public building.

**Sec. 21. Water Supply and Sewerage System.**

No tourist camp or travel trailer park shall be licensed for location within the City unless it can be and is connected with a water supply and sewerage system approved by the State Health Department.

**Sec. 22. Drainage and Storm Water Removal.**

Every tourist camp or travel trailer park shall be located on a well drained site and sewered for storm water removal.

**Sec. 23. Camp Plots and Travel Trailer.**

Each camp plot and travel trailer plot shall not be less than sixteen hundred (1,600) square feet in area and shall face or abut at least sixteen feet upon an access drive or roadway, which is lighted at night and has unobstructed connection with a City street not more than six hundred feet away.

**Sec. 24. Electricity.**

Each plot shall be equipped with an electric service outlet of approved type of thirty amperes capacity, one hundred and ten volts. Each service building shall be electrically lighted at all times.

**Sec. 25. Service Buildings; Toilet, Shower and Laundry Facilities; Refuse.**

Every travel trailer park or tourist camp shall have erected thereon, under proper permit, a suitable building to house toilets, showers and laundry facilities. Such buildings shall be known as "service buildings" and one shall be provided for each plot group so that it shall not be more than three hundred feet, by established driveway, from any plot to be served. Such service buildings shall provide:

- a) Separate toilet rooms for each sex.
- b) Flush toilets of approved type, each enclosed in compartments of adequate size, and each toilet connected to a supply of running water and a proper sanitary sewer.
- c) One such toilet for each sex for every ten camp plots, or fraction of ten plots.
- d) Separate bathing facilities for each sex.
- e) One standard enclosed shower stall for each sex for each ten camp plots, or fraction of ten plots.

An abundant supply of running hot water shall be available at all times for lavatories, showers and laundry trays. Each service building shall be adequately heated at all times. Laundry facilities shall be

provided in the ratio of one double tray and one ironing board with plug-in outlets for every ten camp plots, or fraction of ten plots. All such facilities shall be on a basis of the total camp capacity. The service building shall be kept clean and sanitary by the camp owner or operator. It shall have a sufficient number of approved refuse receptacles, as prescribed by Sections 6 and 7 of Chapter 13, to accommodate the refuse of all plot occupants.

**Sec. 26. Stopping or Parking Elsewhere than Camp Grounds.**

It shall be unlawful to park or stop any house travel trailer on any property, public or private, within the corporate limits of the City unless within a camp licensed as specified in this Chapter. Emergency or temporary stopping or parking shall be permitted within the City, subject to all rules and regulations governing other vehicle traffic. The housing or parking of one travel trailer may be permitted on the lot of an occupied dwelling, provided it is owned by the dwelling occupant and the travel trailer is used neither as living quarters nor as a place of business.

**Sec. 27. Building Construction Privileges.**

Licenses issued under the terms of this Chapter do not convey building construction privileges. House trailers shall not be converted into permanent places of abode except by building or rebuilding under the specifications of a regularly procured municipal building permit.

**Article IV. Miscellaneous Provisions**

**Sec. 28. Enforcement.**

It shall be the duty of the Chief of Police, through the facilities of his department, to enforce the provisions of this Chapter and to investigate any complaint made by any resident of the City of Hinton.

**Sec. 29. Penalty.**

Any person, firm or corporation found guilty of violating any provision of this Chapter shall be fined not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars. Every day such violation continues shall constitute a separate offense.

**Sec. 30. Existing Mobile Homes and Mobile Home Parks.**

Any mobile home or mobile home park which has previously been located within the City of Hinton may remain even though its installation or location is not in compliance with this Chapter, however, replacement of said existing mobile home, whether inside or outside an existing park or expansion of said existing mobile home park is prohibited unless in strict compliance with this Chapter and other relevant portion of this Code.

**Article V. ATV Ordinance**

**Sec. 31. Provisions.**

AN ORDINANCE ADDING ANEW SECTION 14-1000 PROHIBITING THE OPERATION OF ALL-TERRAIN VEHICLES UPON ALL PUBLIC STREETS, ALLEYS, SIDEWALKS, PARKING LOTS, AND ANY AND ALL OTHER CITY OF HINTON-OWNED, LEASED, OR OTHERWISE CONTROLLED PROPERTY WITHIN THE CORPORATE LIMITS OF THE CITY OF HINTON;

AND MAKING SUCH PROHIBITED OPERATION OF SUCH VEHICLES A CRIMINAL  
OFFENSE AND PROVIDING SPECIFIC PENALTIES THEREFORE

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (1) of the West Virginia Code, as amended, municipal corporations have plenary power and authority to keep and maintain public streets, avenues, roads, alleys, and sidewalks free from obstructions; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (4) of the West Virginia code, as amended, municipal corporations have plenary powers and authority to regulate the use of streets, avenues, roads, alleys, sidewalks, crosswalks, and public places belonging to the municipality; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (13) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and

WHEREAS, pursuant to Chapter 8, Article 12, Section 5, Paragraph (57) of the West Virginia Code, as amended, municipal corporations have plenary powers and authority to provide penalties for the offenses and violations of law set forth in Chapter 8, Article 12, Section 5 of the West Virginia Code, as amended; and

WHEREAS, numerous incidents have been observed by , or otherwise reported to, municipal authorities, and particularly the City of Hinton Police Department, involving the operation of all terrain vehicles upon the public streets, alleys, sidewalks, parking lots, and other public-owned, leased, or controlled property; and

WHEREAS, these incidents frequently have posed concerns for the safety and well-being of (i) individuals operating all-terrain vehicles, (ii) individuals operating other permitted and licensed vehicles, and (iii) pedestrians; and

WHEREAS, the Council of the City of Hinton has determined that, in order to best protect the safety, health, and general well-being of all those individuals described within (i), (ii), and (iii) of the immediately foregoing paragraph, i.e., individuals operating all-terrain vehicles, individuals operating other permitted and licensed vehicles, and pedestrians, that the operation of all-terrain vehicles upon the streets, alleys, sidewalks, parking lots, and other City-owned, leased, or otherwise controlled property situated within the corporate limits of the City of Hinton should be banned and prohibited altogether, and further state that such activity should be criminalized with the imposition of progressive fines against those individuals operating all-terrain vehicles in prohibited areas. Exemptions shall be made for motorized handicapped vehicles.

**Sec. 32. Prohibition of Operation and Use of All-Terrain Vehicles.**

Sec. 14-1000. When and Where Applicable. Prohibition. Enforcement. Penalties. Exceptions.

- (a) The riding, operation, or other use of all-terrain vehicles for transportation or recreational purposes, within or upon the streets, alleys, sidewalks, parking lots, and other realty-owned, leased, or controlled property by the City of Hinton or any of its boards, authorities, or commissions is prohibited.
- (b) Any violation of Paragraph “a” above shall constitute the commission of a misdemeanor criminal offense, and any officer of the Police Department of the City of Hinton or any

other officer is hereby authorized and empowered to issue a citation and to charge any such person who commits a violation of Paragraph “a” above. Any person convicted of a first offense established hereunder shall be fined not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars. Any person convicted of a second or further offense established hereunder shall be fined not less than fifty (\$50.00) dollars nor more than two hundred fifty (\$250.00) dollars.

- (c) For the purpose of this Code Section, the term “all-terrain vehicle” shall be defined in Section 17A-1-1(ii) of the West Virginia Code.
- (d) Notwithstanding any other provision of this Code Section, it shall not be an offense for any person to lawfully ride or operate any such all-terrain vehicle upon any governmentally-owned realty not owned or controlled by the City of Hinton or any of its boards, authorities, or commissions located within the corporate limits of the City of Hinton.
- (e) Notwithstanding any other provision of this Code Section, it shall not be an offense for any person licensed to operate a motor vehicle within the State of West Virginia, to ride, operate, or otherwise use an all-terrain vehicle upon a designated parade route, when such person is a duly registered and recognized participant in any such permitted parade, provided that such all-terrain vehicle riding or operation occurs in conjunction with said parade.
- (f) Notwithstanding any other provision of this Code Section, it shall not be an offense to operate motorized handicapped vehicles upon public streets, alleys, sidewalks, parking lots, and other public-owned, leased or controlled realty by the City of Hinton.
- (g) The Federal Government, the State of West Virginia, and its political subdivisions are exempt from the prohibitions contained herein, when any such all-terrain vehicle is used for government purposes.
- (h) Nothing contained within this Code Section is intended, nor shall be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the City of Hinton or any of its officers, employees, or agents for any injury or damage resulting to any person as a consequence of any action or inaction on the part of the City of Hinton related, in any manner, to the enforcement or non-enforcement of this Code Section by the City’s officers, officials, employees, or agents.
- (i) The parent or guardian of any person not having attained the age of eighteen (18) years shall not authorize or knowingly permit any such minor to violate any provision within this Code Section. Any such authorization or knowingly permitting any such minor to violate the provisions of this Code Section shall constitute a criminal violation hereof and shall subject such parent or guardian to the criminal penalties set forth in this Code Section. The citing of any parent or guardian pursuant to this paragraph shall not be reason to prohibit the police officer from also citing the driver of said all-terrain vehicle.
- (j) The provisions of this Code Section are severable and, in the event that any provision or part hereof 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 of this Code Section not specifically held to be invalid. It is hereby declared

to be the intent of the City of Hinton that this Code Section would have been adopted if any such invalid provision or part hereof had not been included herein.

This Ordinance shall become effective upon passage.

**Sec. 33. Allowance/Exception.**

The previous ATV Ordinance adopted by the City of Hinton does not apply to the use of an ATV for snow removal. This Allowance/Exception with regard to the ATV Ordinance of the City of Hinton is for the use of an ATV in snow removal only. However, prior to being allowed to use an ATV in the City of Hinton for the purpose of snow removal, the owner/operator must apply for a Permit with the City Manager at City Hall. It will be at the discretion of the City Manager to issue these permits for the use of snow removal. There will be no charge for these permits.

**CHAPTER 24. VEHICLES AND TRAFFIC**

Revised 2002

**VEHICLES AND TRAFFIC  
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## Article I. In General

### Sec. 1. Persons Required to Obey Regulations.

The owner, driver or operator of any vehicle, motor or railway engine or any train of cars, animals and pedestrians, within the corporate limits of the city, shall conform to and observe the rules and regulations set out in this chapter.

### Sec. 2. Definitions.

Whenever in this chapter or in any rule or regulation authorized by it, any of the words, terms or phrases defined in this section are used, they shall be taken and construed to have the meaning, application and effect respectively ascribed to them in this section; unless otherwise specified or clearly intended.

- (a) Animal – The word “animal” shall be constructed to include each horse, pony, donkey, mule or other animal which may be ridden or driven.
- (b) Authorized emergency vehicles – The phrase “authorized emergency vehicles” shall mean and include all vehicles of the fire and police departments and such other vehicles of municipal departments and public service corporations and ambulances as are and when designated or authorized by the Chief of Police of the city.

- (c) Auto Trailers – The term “auto trailers” shall mean and include any vehicle or trailer for living and sleeping purposes.
- (d) Business District – The term “business district” shall mean and include the territory contiguous to and including a street or highway when fifty percent or more of the frontage thereon, or either side thereof, for a distance of 300 feet or more is occupied by buildings in use for business purposes.
- (e) Congested District – The term “congested district” as the same applies to this chapter, shall be held to apply to such streets as the council may designate.
- (f) Crosswalk – The term “crosswalk” shall mean and include that portion of roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks or intersections, or any portion of the roadway, distinctly marked or indicated for pedestrian crossing by lines or other markings on the surface.
- (g) Driver or Operator – The terms “driver” or “operator” shall be constructed to include the rider, driver or person in charge of the vehicle or animal.
- (h) Intersection – The term “intersection” shall mean and embrace the area within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadway of two streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets and joining at any other angle may come in conflict.
- (i) Motor Vehicle – The term “motor vehicle” shall include every wheeled or tractor tread vehicle operated or propelled by any form of engine, motor, electrical or mechanical power, including trailers and every vehicle which is propelled by electrical power obtained from overhead trolley wires but not operated upon stationary rails or tracks.
- (j) Official Time – The term “official time” shall mean standard time or daylight savings time as may be in current use by the city.
- (k) Official Traffic Control Devices – The term “official traffic control devices” shall mean and include all signs, signals, markings, parking meters and devices not inconsistent with this ordinance, placed or erected by the authority of a public body, or an official having jurisdiction for the purpose of regulating, warning or guiding traffic.
- (l) Official Traffic Signals – The term “official traffic signals” shall mean and include any devices, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- (m) Parking – The term “parking” shall mean the standing of a vehicle, whether occupied or not, other than temporarily.
- (n) Parking Meters – The term “parking meters” shall mean and include any patented mechanical device or contrivance having timing meters and used for timing the parking of vehicles on the public streets.
- (o) Pedestrian – The term “pedestrian” shall mean any person afoot.

- (p) Police Officer – The term “police officer” shall mean and include every officer of the municipal police department or any officer authorized to direct or regulate traffic or to make arrests for traffic violations.
- (q) Private Road or Driveway – The term “private road or driveway” shall mean and include every way or place in private ownership and used for vehicular travel by the owner and those having express implied permission from the owner, but not by other persons.
- (r) Residence District – The term “residence district” shall mean and include the territory contiguous to and including a street not comprising of a business or congested district.
- (s) Right of Way – The term “right of way” shall mean the privilege of the immediate use of the street.
- (t) Safety Zone – The term “safety zone” shall mean and include the area or space officially set apart within a street for the exclusive use of pedestrians, and which is protected and so marked or indicated by adequate signs to be plainly visible at all times while set apart as a safety zone.
- (u) Standing – The term “standing” shall mean any stopping of a vehicle, whether occupied or not.
- (v) Stop or Stopping – The term “stop or stopping” when prohibited, shall mean any stopping of a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or a traffic control sign or signal.
- (w) Stop – The word “stop” shall mean a complete cessation of movement.
- (x) Traffic – The word “traffic” shall mean and include pedestrians, ridden, driven or herded animals, vehicles, railroad trains and other conveyances, either single or together, while using any street or part thereof for purposes of travel.
- (y) Trailer – The term “trailer” shall mean and include every separate vehicle which is not driven or propelled by its own power, but is drawn by some independent power other than human power.
- (z) Vehicle – The term “vehicle” shall mean and include every mechanical device or artificial contrivance used or capable of being used as a means of transportation upon public streets, whether operated on wheels, runners, or otherwise, except those, other than bicycles, propelled or drawn by human power and those used exclusively on stationary rails or tracks.

### **Sec. 3. Powers and Duties of the Chief of Police.**

The Chief of Police shall have all the powers and duties granted or given by this Code in relation to the management and control of traffic, and shall have full power and it shall be the duty of all police and traffic officers of the city to see that any and all provisions of the Code in regard to vehicles and traffic are rigidly enforced and observed.

The Chief of Police shall have power any time to regulate or prohibit traffic or parking on any street, on which traffic or parking has not been expressly regulated by ordinance or resolution provided he first shall cause suitable and legible signs to be properly placed indicating the regulation so adopted. During any emergency, the Chief of Police shall have express power to regulate or prohibit traffic or parking on any street within the city.

**Sec. 4. State Laws Part of Chapter.**

All the laws of the State of West Virginia and all rules, regulations and orders made by the Public Service Commission, the State Road Commission of the State of West Virginia, or either of them, insofar as such laws, rules, regulations and orders may relate or apply to traffic upon the public streets of incorporated villages, towns and cities shall be deemed, held to be and are hereby made a part of this Chapter and any violation of such laws, rules, regulations and orders shall be a violation of this Chapter and constitute a misdemeanor, and any person convicted thereof shall be subject to the misdemeanor penalty prescribed therefore by such laws, rules, regulations and orders.

Should any penalty herein provided for any violation of this chapter be inoperative by reason of conflict with the penalty required by the laws of this state for such violation, then the penalty fixed by the state law for any such violation constituting a misdemeanor shall be and constitute the penalty for such violation of this Chapter.

**Sec. 5. Provisions of Chapter to Apply to Government Vehicles.**

The provisions of this Chapter shall apply to the driver of any vehicle owned by or used in the service of the United States government, the government of the State of West Virginia, any county, city or municipality of this state, or this city; and it shall be unlawful for any such driver to violate any of the provisions of this Chapter except as otherwise permitted in this Chapter or by state law.

**Sec. 6. Exemption to Authorized Emergency Vehicles.**

The provisions of this Chapter regulating the operation, speeding, parking, stopping and standing of vehicles shall apply to authorized emergency vehicles as defined in this Chapter, except as follows: drivers, when operating any such vehicle in an emergency, except when otherwise directed by a police officer, may park or stand, notwithstanding the provisions of this Chapter, proceed past any stop sign or stop signal; but only after slowing down as may be necessary for safe operation; exceed the prima facie speed limit when they sound an audible signal by bell, siren or exhaust whistle; disregard regulations governing direction of movement or turning in specified directions. These exemptions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the street, nor shall it protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

**Sec. 6.a. 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 to answer to a fire alarm or other emergency.

Any person violating the provision(s) of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred (\$200.00) dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 6.b. Failure to Yield – Emergency Vehicles.**

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

Any person violating the provision(s) of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred (\$200.00) dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 7. Persons Propelling Pushcarts or Riding Bicycles or Animals to Obey Traffic Regulations.**

Every person propelling any pushcart or riding a bicycle or an animal upon a street, and every person driving any animal or animal-drawn vehicle, shall be subject to the provisions of this Chapter applicable to the driver of any vehicle, except those provisions of this Chapter which by their very nature can have no application.

**Sec. 8. Reports of Accidents.**

It shall be the duty of the owner, operator or persons in charge of any motor vehicle which may be involved in an accident within the city, either by collision with another vehicle or obstacle or otherwise, whereby any person is injured or damage is done to any vehicle or other property, to report said accident with the details and the facts concerning the same to the Chief of Police or an official of the police headquarters of the city in charge of police headquarters within 24 hours from the time of such accident.

**Sec. 8.a. Leaving the Scene of an Accident; Property Damage.**

The driver of any vehicle involved in an accident resulting only in damage done to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 8.b.

Any person violating the provision(s) of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

**Sec. 8.b. Failure to Render Aid or Information.**

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his/her name, address and registration number of the vehicle he/she is driving and shall, upon request and if available, exhibit his/her drivers license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making arrangement for the carrying of such person to a physician, surgeon or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is required by the injured person.

Any person violating the provision(s) of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred (\$200.00) dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 8.c. Leaving the Scene, Highway Fixture.**

The driver of any vehicle involved in an accident resulting in only damage to fixtures or property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his/her name, address and registration number of the vehicle he/she is driving and shall upon request, and if available, exhibit his/her driver's license and shall make report of such accident when and as required.

Any person violating the provision(s) of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred (\$200.00) dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 9. Garage Keeper to Report Damaged Vehicles.**

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a serious accident or struck by any bullet shall report to the police headquarters of the city within 24 hours after such motor vehicle is received, given the engine number, license number and the name and address of the owner or operator of such vehicle.

**Sec. 10. Penalties.**

Any person violating any of the provisions of this Article, unless otherwise provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than one hundred (\$100.00) dollars.

**Article II. Signs and Signals****Sec. 11. Duties of Police Department.**

The police department shall place, erect, install, provide, maintain and keep in repair or cause to be placed, erected, installed, provided, maintained and kept in repair, such markings, signs, signals, lights and other traffic control devices as the City Council or the Chief of Police may deem necessary to properly control traffic within the city.

**Sec. 12. Obedience to Traffic Control Devices.**

Every driver operating any vehicle upon any street of the city shall obey the instructions of any official traffic control device applicable thereto placed in accordance with this Chapter, unless directed by a police officer and subject to the exceptions granted the driver of an authorized emergency vehicle in this Chapter.

**Sec. 12.a. Failure to Obey Traffic Control Instructions.**

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 control devices, act as flag men or operate authorized vehicles engaged to work at or near the site of street or highway construction or maintenance work, for the purpose of regulating, warning or guiding traffic; subject to exceptions granted the driver of an authorized emergency vehicle.

Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, upon a second conviction within one year thereafter, shall be fined not more than two hundred (\$200.00) dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 13. Obedience to Signs or Turning Markers.**

Whenever authorized signs are erected to control or regulate traffic, every driver of a vehicle and all traffic shall obey the direction of any such sign.

**Sec. 14. Quiet Zones.**

Whenever authorized signs are erected indicating a quiet zone, any person operating a vehicle within any such zone shall not sound his/her horn or other warning device on said vehicle, except in an emergency, or make or create any unnecessary noise within such zone.

**Sec. 15. Play Streets.**

Wherever authorized signs or markers are erected, indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residence are within such closed area, in which event, any such driver shall exercise the greatest care in driving upon any such street or portion thereof.

**Sec. 16. Driving on Newly Paved, Repaired or Closed Streets Prohibited.**

When authorized signs or markers are erected indicating that any street or part thereof is newly paved or repaired or closed to traffic, no person shall drive any vehicle over any such street until the same is officially opened to traffic.

**Sec. 17. Traffic Control Signal Legend.**

Whenever traffic at an intersection is alternately directed to proceed and to stop by the use of signals exhibiting colored lights or the words "go" "caution" "wait" or "stop" said lights and terms shall be indicated as follows:

- (1) Green or Go – Traffic facing the signal may proceed, except that vehicular traffic shall yield the right of way to pedestrians and vehicles lawfully within a crosswalk or the intersection at the time such signal was exhibited.
- (2) Yellow, Caution or Wait, When Shown Following the Green or Go – Traffic facing the signal shall stop before entering the intersection, unless so close to the intersection that a stop cannot be made in safety.
- (3) Red or Stop – Traffic facing the signal shall stop before entering the intersection and remain standing until green or go is shown alone.
- (4) Yellow, Caution or Wait, When Shown Following the Red or Stop – Traffic facing this signal shall prepare to proceed; but shall not move except on green or go signal as above provided.

**Sec. 18. Flashing Signals.**

Whenever flashing red or yellow signals are used, they shall require obedience by vehicular traffic as follows:

- (1) Flashing Red, “Stop” Signal – When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at any intersection or at a limit line when marked and the right to proceed shall be subject to the rules applicable after making a stop at a “stop” signal.
- (2) Flashing Yellow, “Caution” Signal – When a yellow lens is illuminated by rapid intermittent flashes, drivers of vehicles may proceed through the intersection or pass such signal only with caution.

**Sec. 19. Display of Unauthorized Signs, Signals or Markers.**

No person shall place, maintain or display upon or in view of any street 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 hides from view or interferes with the effectiveness of any official traffic control device or signal or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit upon any street within the city, any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to street signs giving useful directional information and of a type that cannot be mistaken for official signs. Every such prohibited sign, signal or marking shall be a public nuisance and the authority having jurisdiction over the street shall be empowered to remove the same or cause it to be removed without notice.

**Sec. 20. Interference with Official Traffic Control Devices or 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 parking meter or any railroad sign or signal or any inscription, shield or insignia thereon or any part thereof.

**Sec. 21. Arm Signals.**

Any operator of a vehicle upon a street in this city shall observe the following traffic rules and regulations:

- (1) Left turn – Any operator intending to turn his vehicle to the left shall extend his/her arm in a horizontal position and slow down.
- (2) Right turn – Any operator intending to turn his vehicle to the right shall extend his/her arm with the forearm raised at right angles and slow down.
- (3) Stop – Any operator intending to stop his vehicle shall extend his/her arm and move it up and down in a vertical direction.

**Sec. 22 Penalties.**

Any person violating any of the provisions of this Article, unless otherwise provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred (\$100.00) dollars.

**Article III. Rules and Regulations**

**Sec. 23. Equipment – Improper or Defective. (Revised 2002)**

It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this Article, or which is equipped in any manner in violation of this Article, or for any person to do any act forbidden or fail to perform any act required under this Article.

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

The provisions of this Article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable. Every farm tractor equipped with an electric lighting system shall at all times mentioned in Section 25 of this Chapter display a red tail lamp and either multiple beam or single beam head lamps meeting the requirements of Section 25.

**Sec. 24. Chains and Cleats.**

No person shall drive any tractor, traction engine or vehicle equipped with cleats upon any street or sidewalk in the city in such a manner as to damage the paving of such street or sidewalk.

**Sec. 25. Lights.**

Every motor vehicle operated on any street within the city shall be equipped with two (2) headlights mounted on the right and left of the front vehicle thereof with clear bulb and lens of sufficient illuminating power to render clearly discernible a substantial object on the street ahead for a distance of 200 feet, and a rear or tail light mounted on the right and left rear vehicle thereof with a red lens and

a clear light illuminating the rear plates of such vehicle so that the characters thereon shall be visible for a distance of 50 feet; provided, however, motorcycles shall be equipped with one such headlight and one rear light with red lens and a clear light illuminating the registration plates of such motorcycle.

No more than two (2) additional for and two (2) spotlights of either clear or amber color, visible from the front, may be used on any motor vehicle. Authorized emergency vehicles may use red spotlight visible from the front for identification purposes and such red spotlight so visible from the front may be used only by authorized emergency vehicles. Trucks may use as many marking lights as are necessary. In addition to such headlights and spotlights or fog lights, a motor vehicle may be equipped with parking lights visible from the front and rear thereof, of colors to conform with driving lights.

Every bicycle and every horse drawn vehicle, when operated at night on any street within the city, shall display a clear light visible to the front for a distance of at least 200 feet and at the rear, a red light visible for a distance of at least 200 feet.

All lights required in this Section shall be kept lighted from one-half hour after sunset until one-half hour before sunrise on every vehicle while operated on any street within the city; provided the city as governing lights on vehicles shall apply whenever applicable.

**Sec. 26.       Horns and Other Sounding Devices.**

Motor vehicles and bicycles shall be equipped with a suitable signal horn so as to produce an abrupt sound sufficiently loud to serve as an adequate warning of the approach of such vehicle or as a warning of danger, and the use of such signaling device for purposes other than those set forth in this Section is hereby expressly prohibited.

- (1)     When approaching or passing other vehicles or pedestrians, a driver of a vehicle may sound a short signal of his intention to approach or pass.
- (2)     Vehicles used in connection with any parade, official escorts or other procession when previously approved and authorized by the Chief of Police, shall not use horns and other sounding devices intermittently or continuously while in such parade, escort, or procession.
- (3)     This Section shall not apply to vehicles of the police and fire departments and other authorized emergency vehicles.

**Sec. 27.       Sirens and Exhaust Whistles.**

Sirens and exhaust whistles shall not be used on vehicles operated within the city except on vehicles of the police and fire departments or other authorized emergency vehicles.

**Sec. 28.       Cut-outs; Mufflers; Racing Motors.**

A driver shall not use the cut-out of a motor while operating the same on any street within the city, or operate a motor vehicle without a proper muffler functioning in good order, or race the motor of any motor vehicle so as to cause a backfire or other loud noise.

**Sec. 29.       Sound Apparatus on Vehicles.**

No vehicle equipped with sound, musical, loud speaking or other loud noise producing devices or apparatus shall be operated upon the streets or other places within the city except after first having obtained permission from the Chief of Police and under such restrictions as he may impose.

**Sec. 30. Motorcycles.**

Every motorcycle shall be operated as quietly as possible at all times within the city and when so operated shall be equipped with a muffler.

**Sec. 31. Smoke, Gases, etc.**

It shall be a violation of this Chapter for any person to use or permit any vehicle or device or apparatus therewith to emit smoke, steam, noxious gas, fumes or vapors, other than those produced by ordinary combustion for power purposes on the streets or in any public place within the city.

**Sec. 32. Speeding; Generally and too Fast for Roadway Conditions. (Revised 2002)**

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

Where no special hazard exists that requires lower speed for compliance with this section, the speed of any vehicle in excess of the limits lawfully posted shall constitute a violation of this Section and upon conviction shall be deemed guilty of a misdemeanor and shall be fined no more than one hundred (\$100.00) dollars.

**Sec. 32.a. Reckless Driving. (Revised 2002)**

Any person who drives any vehicle upon any street or highway, upon any residential street, in any parking area, upon the highways of any city institution, upon the property of any county Boards of Education or upon any property within the city park and public recreation system established by the Director of the Department of Natural Resources, pursuant to city law in the willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

**Sec. 32.b. Speeding - School Zone.**

Any person, who drives any vehicle in excess of fifteen miles per hour in a school zone during school recess, while children are going to or leaving school during opening or closing hours, shall be guilty of a misdemeanor. A school zone is all school property including school grounds and extending 125 feet along such street or highway from the school or school grounds.

**Sec. 32.c. Driving too Slow.**

No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law. Any person who violates the provisions of this Section is guilty of a misdemeanor.

**Sec. 32.d. Traffic Violations in Construction Zone.**

At each and every location where street or highway construction work is to be conducted, a sign shall be posted at least 1000 feet from the construction site, or as close to 1000 feet from the construction as is practicable, given the location of the site when workers are present, notifying all motorists as to the speed limit and display the words “construction work.”

Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in this Section by less than 15 miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred (\$200.00) dollars.

Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in this Section by 15 miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred (\$200.00) dollars or confined in a county or regional jail not more than twenty days, or both.

**Sec. 32.e. Failure to Maintain Control.**

A driver shall at all times maintain sufficient control of his/her vehicle as to avoid colliding with any person, vehicle or other conveyance on or entering the streets or highways. Upon conviction for violation of this Section the driver shall be found guilty of a misdemeanor and shall be fined no more than one hundred (\$100.00) dollars.

**Sec. 33. One-way Streets.**

One-way streets shall be those designated by the council and traffic, other than pedestrian, thereon shall travel as directed by proper signs and marking.

**Sec. 34. Through Streets.**

Through streets shall be those so designated by the council and marked by proper signs.

**Sec. 35. Stop Signs; Right of Way at an Intersection.**

The driver of a vehicle shall stop before entering any through street, or at an intersection where a stop sign is erected although not a part of a through street, and shall yield the right of way to other vehicles which have entered the intersection of said through street or other street, or which are approaching said intersection so closely on such through or other street as to constitute a hazard. A driver having so yielded the right of way may proceed cautiously, yielding the right of way to vehicles not required to stop by this Chapter on approaching such said intersection; but when a vehicle has thus entered such intersection for a cross street, all vehicles approaching on such through street or other street shall yield the right of way to the vehicles so proceeding across such through or other street.

Where vehicles meet at a street intersection, neither of which is a through street, or where both streets are through streets, and no traffic signs or signals indicate the contrary, the driver on the right hand side shall have the right of way.

**Sec. 36. Driver to Stop on Approach of Authorized Emergency Vehicle.**

Except when otherwise directed by a police officer, the driver of every other vehicle, on the approach of an authorized emergency vehicle giving signal for right of way, shall immediately drive to a

position parallel to and as close to the right curb of the street as possible, clear of any intersections, stop and remain in such position until the authorized emergency vehicle has passed.

**Sec. 37. Obstructing Intersection or Crosswalk.**

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

**Sec. 38. Funeral Processions.**

No person shall drive or take any vehicle through a funeral procession or cortege, except by permission of a police officer, provided; however, that this rule shall not apply to drivers of authorized emergency vehicles. Each vehicle of such funeral cortege shall at all time while moving keep within 20 feet of the vehicle immediately preceding.

**Sec. 39. Limitations on Turning.**

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business or congested district and shall not upon any other street so turn the vehicle unless such movement can be made in safety and without interfering with other traffic.

**Sec. 40. Limitations on Backing.**

No vehicles shall be backed without the driver first indicating by some sign or signal his intention to back, and no vehicle shall be backed in any street if by so doing any other vehicle is impeded or any pedestrian is endangered. No vehicle shall in any event or on any street be backed a greater distance than 25 feet, unless it be necessary to relieve a traffic jam or on orders from a police officer.

**Sec. 41. Emerging from an Alley, Private Driveway, Parking Lot or Garage.**

The driver of a vehicle emerging from an alley, driveway, parking lot, garage, building or place of business shall stop such vehicle immediately prior to driving onto the sidewalk area extending across any alley or other way; and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

**Sec. 42. Bridges.**

The maximum gross weight or speed of any vehicle using any bridge within the city shall not exceed the gross weight or speed indicated upon any sign placed by the city or other proper authority at or near the approach to the bridge, notwithstanding any other provision of this Chapter.

**Sec. 43. Sidewalks.**

The driver of a vehicle shall not drive on any sidewalk area, except as a permanent or temporary driveway.

**Sec. 44. Meeting and Passing.**

A driver of a vehicle meeting another vehicle coming from the opposite direction on the same street shall turn to the right of the center of the street so as to pass without interference, and the driver of a vehicle overtaking another vehicle going in the same direction and desiring to pass the same, shall, after giving signal therefore, pass to the left of the vehicle overtaken; except where cars are stopped from a left hand turn, or where lines are clearly marked on the street indicating where traffic shall move, provided the way ahead is clear of approaching traffic; provided that no driver of a vehicle shall pass from the rear where the way ahead is not clear of traffic or there is not room enough to pass in safety while the vehicle is passing through an intersection or crosswalk. The driver of the vehicle so overtaken shall, upon signal to pass being given by the other vehicle, turn his vehicle over as far as reasonably possible to the right in order to allow free passage on his left.

**Sec. 45. Attaching to Moving Vehicles.**

Any person riding upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicle shall not attach the same or himself to any moving vehicle upon any street, nor shall the operator of any moving vehicle permit the same to be done.

**Sec. 46. Riding on Handlebars, etc., of Motorcycles and Bicycles Prohibited.**

The operator of a motorcycle or bicycle, when upon a street, shall not carry any other person upon the handlebars, frame, mud guard or tank of such vehicle, nor shall any person so ride upon any vehicle.

**Sec. 47. Use of Coasters, Sleds, Roller Skates and Similar Devices Restricted.**

No person upon roller skates or riding in or by means of any coaster, toy vehicle or similar device shall go upon any street except while crossing a street or crosswalk and except upon streets set aside as play streets when and as authorized by the council or Chief of Police.

**Sec. 48. Unattended Motor Vehicles.**

No person driving or in charge of a motor vehicle shall permit it to stand unattended upon any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the street.

**Sec. 49. Driving Vehicles Carrying Projecting Objects.**

All vehicles carrying objects projecting more than five feet from the rear, shall, during the period from one-half hour after sunset and one-half hour before sunrise, carry a red light at the end of the object so projecting, clearly visible for a distance of at least 200 feet; during the period of one-half hour before sunrise to one-half hour before sunset, shall carry a red flag or other marker of dimension of at least one square foot at or near the rear end of the projecting object.

**Sec. 50. Towing.**

No vehicle shall tow more than one disabled vehicle at a time. The connection between the two shall not be longer than ten feet and shall be substantial enough to pull the towed vehicle without breaking. No vehicle shall have attached to it more than one trailer at any one time.

**Sec. 51. Obstructing Drivers View or Control.**

No person shall drive any vehicle when it is so loaded or when there are in the front seat such number of persons exceeding three as to obstruct the view of the driver from the front or sides of the vehicle, or to interfere with the drivers control of the driving mechanism of the vehicle, nor shall any passenger ride in the vehicle in such a position as to interfere with the drivers view ahead or the sides or to interfere with his control over the driving mechanism of the vehicle.

**Sec. 52. Following Fire Apparatus Prohibited.**

The driver of any vehicle other than one of official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 300 feet, or drive into or park such vehicle within the block where the fire apparatus has stopped in answer to a fire alarm.

**Sec. 53. Crossing Fire Hose.**

No vehicle or railway train shall travel over any unprotected hose of the fire department when laid down on any street, private driveway, or track to be used at any fire or alarm of fire, without the consent of the city official in charge.

**Sec. 54. Duty on Removing Damaged Vehicles.**

Any person removing a damaged or wrecked vehicle from the street shall remove any glass or injurious substances dropped upon the street from such vehicle.

**Sec. 55. Duty upon Striking Unattended Vehicle.**

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall within 24 hours, make a complete report of the accident to the police department.

**Sec. 56. Removal from Streets of Wrecked or Abandoned Vehicles.**

If any motor vehicle or wagon be wrecked or abandoned on the streets of the city, and no arrangement is made for the immediate removal thereof, the police shall, in order to open said streets to free the flow of traffic, call a garage man; to be designated by the Chief of Police or other police officer in charge, to immediately remove said vehicle to a safe place of storage. The cost of said removal and storage shall be paid by the owner of said vehicle to said person so removing and storing said vehicle. In the event said vehicle is not called for by the owner within 60 days, then said person so removing said vehicle shall be permitted to proceed against said vehicle for rent, storage and towing under the laws of the city of West Virginia made and provided for the collection of such charges. The police designating the work and services performed shall be deemed to be the agent of the owner.

**Sec. 57. Repairing and/or Washing Motor Vehicles in Streets Prohibited.**

No person shall use any public street as a place to repair or wash motor vehicles, except in cases of emergency.

**Sec. 58. Riding on Outside of Vehicles or Driving with Anyone on Outside of Vehicles is Prohibited.**

No person shall jump, hang or ride upon the outside of any vehicle while the same is in motion and no person shall drive any vehicle with any person riding on the hood, bumpers, running boards or fenders of said vehicle, except as may be required in the performance of official duties or while testing or making repairs to such vehicle.

**Sec. 59. Driving Under the Influence of Alcohol, Controlled Substances or with a Blood Alcohol Content greater than .08. (Revised June 2005)**

- (A) Any person who:
- 1) Drives a vehicle in this city while he or she:
    - a) is under the influence of alcohol; or
    - b) is under the influence of any controlled substance; or
    - c) is under the influence of any other drug; or
    - d) is under the combined influence of alcohol and any controlled substance or any other drug; or
    - e) has an alcohol concentration in his/her blood of eight hundredths of one percent or more, by weight;
  - 2) Is guilty of a misdemeanor and upon conviction thereof, shall be confined in the county or regional jail for not less than one day or more than six months, which jail term is to include actual confinement of not less than twenty-four hours and shall be fined not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars.
- (B) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this city, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day or more than six months, which jail term is to include actual confinement of not less than twenty-four hours and shall be fined not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars.
- (C) Any person who:
- 1) Knowingly permits his/her vehicle to be driven in this city by any other person who:
    - a) is under the influence of alcohol; or
    - b) is under the influence of any controlled substance; or
    - c) is under the influence of any other drug; or
    - d) is under the combined influence of alcohol and any controlled substance or any other drug; or
    - e) has an alcohol concentration in his/her blood of eight hundredths of one percent or more, by weight;
  - 2) Is guilty of a misdemeanor and upon conviction thereof, shall be confined in the county or regional jail for not less than one day or more than six months, which jail term is to include actual confinement of not less than twenty-four hours and

shall be fined not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars.

(D) Any person who:

- 1) Knowingly permits his/her vehicle to be driven in this city by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof
- 2) Is guilty of a misdemeanor and upon conviction thereof, shall be confined in the county or regional jail for not less than one day or more than six months, which jail term is to include actual confinement of not less than twenty-four hours and shall be fined not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars.

(E) Any person under the age of twenty-one years who drives a vehicle in this city while he/she has an alcohol concentration in his/her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five (\$25.00) dollars or more than one hundred (\$100.00) dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours and shall be fined not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars. 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 by West Virginia State Statute 17C-5A-3a. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence. A person arrested and charged with an offense under the provisions of subsection (A), (B), (C), (D), (E) or (F) of this Section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(F) Any person who:

- 1) Drives a vehicle in this city while he/she:
  - a) is under the influence of alcohol; or
  - b) is under the influence of any controlled substance; or
  - c) is under the influence of any other drug; or
  - d) is under the combined influence of alcohol and any controlled substance or any other drug; or
  - e) has an alcohol concentration in his/her blood of eight hundredths of one percent or more, by weight;
- 2) The person when so driving has on or within the motor vehicle one or more other persons who are not emancipated minors who have not reached their

sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days or more than twelve months, which jail term is to include actual confinement of not less than forty eight hours and shall be fined not less than two hundred (\$200.00) dollars or more than one thousand (\$1,000.00) dollars.

- (G) A person violating any provision of subsection (B), (C), (D), (E) or (F) of this Section for the second offense under this Section, is guilty of a misdemeanor and upon conviction thereof shall be confine in the county or regional jail for 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 (\$1,000.00) dollars or more than three thousand (\$3,000.00) dollars.
- (H) A person may be charged in a warrant or indictment or information for a second subsequent offense under this Section if the person has been previously arrested for or charged with a violation of this Section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, a warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this Section unless the conviction for the previous offense has become final.

**Sec. 60. Drivers License; Driving Without.** (Revised 2002)

No person, except those specifically exempt as prescribed under the laws of West Virginia, may drive any motor vehicle upon any street or highway in this city unless the person has a valid driver's license.

**Sec. 61. Registration; Valid Registration Required.** (Revised 2002)

It is unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any street or highway of this city any vehicle not properly registered under the laws of West Virginia.

**Sec. 61.a. Registration; Card Violation.**

Every owner upon receipt of a West Virginia registration card shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer.

**Sec. 61.b. Registration; Improper.**

No person shall lend to another any certificate of title, registration card, registration plate, special plate or permit issued to him/her if the person desiring to borrow the same would not be entitled to the use thereof. Nor shall any person knowingly permit the use of any of the same by one not entitled thereto, nor shall any person display upon a vehicle any registration card, registration plates or permit not issued for such vehicle or not otherwise lawfully used thereon under the laws of West Virginia.

**Sec. 61.c. Registration; New Residents.**

Every owner of a motor vehicle, trailer or other vehicle, shall within thirty days after taking up residence in the state of West Virginia, apply to the division and obtain registration and title for the vehicle.

**Sec. 62. Penalties.**

Any person violating any of the provisions of this Article, unless otherwise provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred (\$500.00) dollars.

**Article IV. Pedestrians**

**Sec. 63. Pedestrians on Sidewalks.**

Pedestrians shall keep to the right on all walks and driveways and shall stop at or near the curb or house line and not in the center of the walk or street or on the sidewalk at street intersections within the lines of the intersecting sidewalk.

**Sec. 64. Pedestrians Crossing Streets.**

Pedestrians crossing streets in the “congested district” shall move parallel with motor traffic and shall await the signal from the traffic policeman, wherever one is stationed, or a traffic control light signal, where such light is in operation.

**Sec. 65. Jay Walking.**

Pedestrians shall not start from the sidewalk in crossing a street without looking in both directions to see what is approaching, and shall cross the street at right angles with the street; they shall not pass diagonally across intersections but shall go around the center of the line of traffic and cross only one street at a time. It shall be unlawful for any pedestrian to cross a street in the “congested district” except at street intersections and such other places as may be designated by the traffic commission crossings.

**Sec. 66. Leaving Buses.**

All persons leaving busses shall go directly and cautiously from the bus to the sidewalk on the side from which they alight.

**Sec. 67. Penalties.**

Any person violating any of the foregoing provision of this Article may, upon conviction thereof, be fined not more than ten dollars.

**Article V. Stopping, Standing or Parking**

**Sec. 68. No-Parking Areas.**

When authorized official signs prohibiting parking are erected on the streets, no person shall park a vehicle in any such designated place.

**Sec. 69. Limited Parking Areas.**

When authorized official signs limiting parking as to time are erected on the streets, no person shall park a vehicle save in accordance with such signs.

**Sec. 70. Truck and Trailers More than Sixteen Feet in Length.**

No person shall stand, park or allow remaining any truck and trailer more than sixteen feet long or truck more than sixteen feet long upon any street on which the council has prohibited such action and caused official signs to that effect to be placed.

**Sec. 71. Vehicles Transporting Inflammables.**

No tank wagon, truck or trailer used for transporting or hauling inflammable liquids shall be parked or left unattended on the street of the city at any time day or night.

**Sec. 72. Where less than Ten Feet of Roadway is left Available for Traffic.**

No person shall stop, stand or park any vehicle upon any street in the city in such a manner or under such conditions as to leave available less than ten feet of width of the roadway for free movement of vehicular traffic, except that a driver may stop at the curb temporarily during the actual loading or unloading or when necessary in obedience of traffic regulations or traffic signs or directions of a police officer.

**Sec. 73. Trucks - Height and Width.**

No person shall park any truck of a total outside width, including and load thereon, of no more than 76 inches, or a total height, including any load thereon, of more than 78 inches, on any street within the city for a period of time longer than two hours.

**Sec. 74. Loading Zones.**

Spaces on the street that have been set out and officially marked as "loading zones" shall be used only by vehicles for a reasonable length of time for the expeditious unloading and delivery or pickup and loading of materials or merchandise.

**Sec. 75. Bus Stops or Stands.**

No bus shall be permitted to stand or park on any street in any business district for the purpose of loading or unloading passengers, except at stops or stands officially designed for such use.

**Sec. 76. Same - Use by Other Vehicles Prohibited.**

No person shall stop, stand or park a vehicle other than a bus in any bus stop or stand that has been officially marked or designated for such use.

**Sec. 77. Parking Close to Curb.**

No person shall park a vehicle on any street other than parallel with the edge of the street, headed in the direction of traffic and with the curb side wheels of the vehicle within 12 inches of the curb or edge of the roadway except upon streets marked for angle parking.

**Sec. 78. Stopping, Standing or Parking Prohibited in Specified Places.**

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:

- 1) On the sidewalk
- 2) In front of the entrance to any school, hospital, church, hotel, theater, assembly hall, place of amusement, private or public driveway
- 3) Within 20 feet of an intersection
- 4) Within 15 feet of a fire hydrant
- 5) On a crosswalk, or within 10 feet of a crosswalk
- 6) Between a safety zone and the adjacent curb
- 7) Within 30 feet of the nearest rail of a railroad crossing
- 8) Within 20 feet of the driveway entrance to any fire station and on the side of the street opposite to the entrance of a fire station within 75 feet of said entrance when "No Parking" signs are erected
- 9) Along the side or opposite any street evacuation or obstructions when such stopping, standing, or parking would obstruct traffic
- 10) On the roadway side of any vehicle stopped or parked at the curb or edge of a street
- 11) Upon any bridge or elevated structure upon a street or within a tunnel or viaduct
- 12) At any place where official signs or markers prohibit stopping, standing or parking
- 13) On the roadway side of a street facing traffic

**Sec. 79. Owner Responsible for Illegal Parking.**

No person shall allow, permit or suffer any vehicle registered in his/her name to stand or park in any street in the city in violation of any provision of this Chapter regulating standing and parking of vehicles.

**Sec. 80. Moving or Impounding Vehicle Parked Illegally.**

Any vehicle parked in a place where parking is prohibited may be entered and moved or may be impounded by the city as directed by the Chief of Police.

**Sec. 80.a. Storing Vehicles on Street. (enacted 6/21/05)**

- 1) For the purpose of this section, the term "vehicle" means every device in, upon, or by which persons or property is or may be transported or drawn upon a highway or street; except devices moved by human power or used exclusively upon stationary rails or tracks, and; "PARK" shall mean:
  - A) To leave a vehicle on a street, sidewalk, parkway or public alley unattended for a period longer than twenty four (24) hours.
  - B) To stop or park a vehicle on a street, sidewalk, parkway or public alley for the purpose of making repairs or adjustments other than emergency

repairs necessary to move a vehicle which has been temporarily stopped by a mechanical failure.

- 2) It shall be unlawful for any person to store a vehicle on any street, sidewalk, parkway or public alley within the city, except:  
Provided nothing in this section shall prohibit the owner of a passenger vehicle from leaving the same legally parked in front of or in connection to his/her residence as a part of normal use thereof for as long as desired by the owner; so long as the vehicle complies with lawful regulations concerning registration, inspection and insurance requirements or is not in violation of any other article of this Chapter.
- 3) Any vehicle stored in violation of this section may, at the discretion of the Chief of Police or his designate, be removed from such street, sidewalk, parkway or public alleys and impounded in conformity with the provisions of this section.
- 4) The owner or person in charge of any vehicle impounded by subsection (2) shall pay the cost of impoundment and hauling of such vehicle, in addition to any fine and costs accredited in connection with the violation of this Article, approved by the City Council and Mayor.

**Sec. 81. Same - Cost to be Paid by Owner.**

The owner or person in charge of any vehicle impounded as provided in the preceding Section shall pay the cost of impounding and hauling said vehicle, in addition to any fine and costs assessed in connection with the violation of this Chapter.

**Sec. 82. Lights on Parked Vehicle.**

No person shall permit any vehicle to be parked on any street at any time between the hours of one-half hour after sunset and one-half hour before sunrise without adequate parking lights lighted on such vehicle, except where city street lights render such vehicle clearly visible at a distance of 200 feet from such vehicle.

**Sec. 83. Penalties.**

Any person violating any of the provisions of the foregoing Sections of the Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than twenty-five (\$25.00) dollars.

**Article VI. Parking Meters**

**Sec. 84. Marking Spaces; Erecting Meters.**

On streets where parking is limited in time, the council may cause parking spaces to be marked by lines on the curb or pavement or by other appropriate markings, and on the sidewalk adjacent to each such parking space may cause to be erected a parking meter, which, upon the deposit of a coin as hereinafter provided, will indicate the duration of the legal parking period and the time when such period has elapsed.

**Sec. 85. Time Limits; Illegal Parking. (Revised 2005)**

Between the hours of 8:00 a.m. and 9:00 p.m., on Saturdays and 8:00 a.m. and 6:00 p.m., on any other day, except Sundays and legal holidays when any vehicle shall be parked in any space along side of a parking meter. The person parking such vehicle shall immediately deposit a coin of US currency, as indicated by said parking meter, in payment of the fee hereby imposed for such parking privilege; and failure to do so shall constitute a violation of this Article. Said vehicle shall not be permitted to remain parked in any such parking space beyond the parking time limit fixed for such space. Whenever a parking meter shall display a sign or signal showing illegal parking of a vehicle in such parking space, it shall be prima facie evidence that such vehicle has been parked in violation of this Article. It shall be unlawful for any person to cause, allow or permit any vehicle registered in his name to be parked where a parking meter has been installed in violation of this Article.

**Sec. 86. Monthly Payment for use of Metered Parking Space.** (Revised 2002)

Upon the payment in advance of the sum of thirty (\$30.00) dollars the Chief of Police may issue to the person making such payment a registered non-transferable sticker which, when securely gummed to and plainly displayed on the windshield of the vehicle for which it was purchased, shall entitle such vehicle to the use of metered parking space during the month for which the payment was made. The payment of thirty dollars (\$30.00) shall not be prorated for any part of the month and shall be deemed an alternative method of paying for parking meter privileges.

**Sec. 87. Slugs; Injuring, etc., Meters; Failure to Park within Space; Penalty.** (revised 2005)

It shall be unlawful for any person to deposit or cause to be deposited in any parking meter any slug, device or metallic substitute for such required coin of the United States. It shall also be unlawful for any person to injure, tamper with, open, willfully break, destroy or impair the usefulness of any parking meter installed under the terms of this Article, or for any person other than those duly authorized to remove coins from any parking meters.

Any person violating any of the foregoing provisions of this Section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment in the regional jail for not more than sixty days or by both such fine and imprisonment.

**Sec. 88. Reports by Police Officers of Violations; Notice to Owner or Operator of Vehicle; Payment of Penalty.** (revised 2002)

When a police officer of this city has placed on any vehicle a notice to the owner or operator thereof that such vehicle has been parked in violation of a provision of Section 85 of this Article and instructing such owner or operator to report to the police headquarters in the City Hall in regard to such violation, each such owner or operator may, within 24 hours of time when such notice was attached to such vehicle, pay as a penalty for and in full satisfaction of such violation the sum of five (\$5.00) dollars. The failure of such owner or operator to make such payment within said 24 hours shall render such owner or operator subject to the penalties hereinafter provided for violation of the provisions of this Article.

**Sec. 89. Penalties.** (revised 2005)

Any person violating any of the provisions of the foregoing Sections of this Article, unless otherwise therein provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than ten (\$10.00) dollars.

### **Article VII. Miscellaneous Traffic Codes**

#### **Sec. 90. Improper 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. Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

#### **Sec. 91. Prohibited Travel in Center Lane.**

Upon a roadway which is divided into three lanes, a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn of where such center lane is, at the time, allocated exclusively to traffic moving the direction the vehicle is proceeding and has a sign posted to give notice of such allocation. Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

#### **Sec. 92. Drag Racing.**

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 city.

For the purpose of this Section "speed race" means:

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

Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall have their license revoked for up to six months, and shall be fined not more than one hundred (\$100.00) dollars; upon a second conviction the person shall have their license revoked for up to two (2) years and shall be fined not more than five hundred (\$500.00) dollars and/or may be sentenced for six days to sixty days in jail; upon a third conviction the person shall have their license revoked for up to five years and shall be fined not more than one thousand (\$1,000.00) dollars and/or sentenced to sixty days to four months in jail.

#### **Sec. 93. Driving - Permitting Unlicensed Person.**

No person shall authorize or knowingly permit a motor vehicle owned by him/her or under his/her control to be driven upon any street or highway by any person who is not authorized under state law.

Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 94. Failure to Yield One Half Portion of Paved Highway.**

(Head on collisions/failure to yield ½ paved portion of highway)

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.

Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 95. Fleeing Vehicle.**

Any person who intentionally flees or attempts to flee in a vehicle from any law enforcement officer acting in his/her official capacity, after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred (\$500.00) dollars nor more than one thousand (\$1,000.00) dollars and/or be sentenced for up to one year in jail.

**Sec. 96. Following too Closely.**

A 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.

Any person violating the provisions of this Section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 97. Highway - Placing Injurious Materials.**

No person shall throw or deposit upon any street or highway any glass, bottles, nails, tacks, wire, cans or any other substance likely to injure any persons, animals and/or vehicles upon such street or highway.

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.

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.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars and/or sentenced up to ten days in jail; for a second offense conviction within two years shall be fined not more than two hundred (\$200.00) dollars and/or sentenced up to twenty days in jail; for the third and subsequent conviction shall be find not more than five hundred (\$500.00) dollars and/or sentenced up to six months in jail.

**Sec. 98. Hitch-Hiking.**

No person shall stand in a roadway for the purpose of soliciting a ride from a driver of any vehicle.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 99. Improper Stopping.**

No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 100. Inspection Sticker.**

It is a misdemeanor for any owner or operator (or both) of any vehicle required to be inspected under the laws of West Virginia to operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection sticker.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars, but shall be found not guilty if defendant provides receipt of inspection and makes the vehicle so operated available for examination by a court of competent jurisdiction within five (5) days of the issuance of the citation. If certificate of inspection was not valid for a period exceeding three (3) months prior to the date the citation was issued, then a fine must be imposed.

**Sec. 101. Inspection Sticker – False.**

No person shall make issue, or knowingly use any imitation or counterfeit of an official certificate of inspection. 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.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 102. Insurance.**

Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as hereinafter provided in effect continuously throughout the registration or licensing period except in case of a periodic use or seasonal vehicle, in which case the owner or registrant is required to maintain security upon the vehicle only for the portion of the year the vehicle is in actual use. No person shall knowingly drive or operate upon any road or highway in this state any motor vehicle upon which security is required unless such security is in effect.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined two hundred (\$200.00) to five hundred (\$500.00) dollars and/or sentenced fifteen days up to one year in jail.

**Sec. 103. Joy Riding.**

Any person who drives a vehicle, not his/her own, without the consent of the owner thereof, and with intent temporarily to deprive said owner of the possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 104. Obstructing Traffic.**

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 so leave such vehicle off such part of said highway.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 105. Passing in a No Passing Zone.**

Under the laws of West Virginia the Commissioner of Highways is 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 ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

**Sec. 106. Stop Sign - Failure to Stop.**

Every driver of a vehicle and every motor person of a streetcar approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection. In the event there is no crosswalk, the driver or motor person shall stop at a clearly marked stop line, but if not, then at the point nearest the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic control signal.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 107. Tampering with a Motor Vehicle.**

No person shall either individually or in association with one or more persons willfully injure or tamper with any vehicle or break or remove any part or parts of or from a vehicle without the consent of the owner; nor shall any person, who with the intent to commit any malicious mischief, injury or other crime, climb into or upon a vehicle whether it is in motion or at rest or with like intent attempt to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 108. Failure to Deliver.**

It is a misdemeanor for any person to fail or neglect to properly endorse and deliver certificate of title to transferee or owner lawfully entitled thereto.

Any person violating the provisions of this Section shall be fined not more than five hundred (\$500.00) dollars.

**Sec. 109. Damage to Traffic Control Device; or Railroad 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.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than one hundred (\$100.00) dollars.

**Sec. 110. Window Tinting and Sun Screen Devices.**

No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the head of the driver that do not meet the requirements of this Section.

- 1) A sun screening device when used in conjunction with the windshield must be non-reflective and may not be red, yellow or amber in color. A sun screening device may be used only along the top of the windshield and may not be extended downward beyond the ASI line or more than five inches from the top of the windshield, whichever is closer to the top of the windshield.
- 2) A sun screen device, when used in conjunction with the automotive safety glazing materials, of the side wings or side windows located at the immediate right and left of the driver shall be of non-reflective type with not less than thirty five percent and reflectively of not more than twenty percent. If a sun screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

Any person violating the provisions of this Section is guilty of a misdemeanor and upon conviction thereof, shall be fined not more than two hundred (\$200.00) dollars.

**Sec. 111. 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 state, 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.

A violation of this Section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages. If any provision of this Section or the application thereof to any person or circumstances is

held invalid, such invalidity shall not affect other provisions or applications of this Section and to this end the subsections of this Section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seatbelts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver shall not be considered as violating 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 (\$10.00) or more than twenty (\$20.00) dollars.

**Sec. 112. Operation of Vehicles with Safety Belts.**

- (A) A driver shall not operate a passenger vehicle on a public street or highway of this city and 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 under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this Section shall apply to all passenger vehicles manufactured after the first day of January 1967 and being 1968 models and newer.
- (B) The required use of safety belts as provided herein does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in such safety belt if the condition is duly certified by a physician who shall state the nature of the disability as well as the reason such restraint is inappropriate.
- (C) Any person who violates the provisions of this Section shall be fined no more than twenty five (\$25.00) dollars. 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.
- (D) A violation of this Section is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages and shall not be admissible in mitigation of damages except as permissible by State Statute.
- (E) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver’s record maintained by the Division of Motor Vehicles as a result of a violation of this Section.
- (F) Nothing contained in this Section shall be construed to abrogate or alter the provisions of Section 111 of this Article relating to the mandatory use of child passenger safety devices.

## CHAPTER 25. WEEDS.

- Sec. 1. Definition.
- Sec. 2. Growth Over One Foot High.
- Sec. 3. Growth on Sidewalk.
- Sec. 4. Disposal.
- Sec. 5. Penalty.

### **Sec. 1. Definition.**

“Weeds” shall be held to include all rank vegetable growths which exhale unpleasant and noxious odors, all high and/or rank vegetable growth that may conceal filthy deposits and any useless or troublesome plant or vegetation. (1989)

### **Sec. 2. Growth Over One Foot High.**

No person having control of any lot or ground, or any part of any lot, shall allow or maintain on any such lot, any growth of weeds to the height of over one foot. (1927, Ord. No. 34.)

### **Sec. 3. Growth on Sidewalk.**

No person shall allow on the sidewalk abutting and in front of any lot of ground or any part of any lot of which he may have control any growth of weeds or grass whatever. (1927, Ord. No. 34.)

### **Sec. 4. Disposal.**

All weeds, grass and other vegetation, when cut down, must be removed and disposed of in such manner as not to create a nuisance. Any weeds, grass and other vegetation shall not be deposited and remain in a public street or sidewalk. Any failure to remove said weeds, grass and other vegetation shall be considered a nuisance and may be abated as set out in Chapter 18 of this Code. (1989)

### **Sec. 5. Penalty.**

Any person found guilty of any violation of this Chapter shall be fined not less than ten dollars nor more than one hundred dollars. (1989)

## CHAPTER 27. TAXES

### **Article I. Business and Occupation Tax**

- Sec. 1. Definitions.
- Sec. 2. Imposition of Business and Occupation Tax.
- Sec. 3. Business Falling in More than One Category.
- Sec. 4. Shipping Products out of City Without Sale.
- Sec. 5. Exemptions.
- Sec. 6. Computation of Tax; Payment.
- Sec. 7. Erroneous Computation.
- Sec. 8. Failure to Make Return; Incomplete or Erroneous Return.

- Sec. 9. Appeal; Correction of Assessment.
- Sec. 10. Tax Additional to Others.
- Sec. 11. Payment.
- Sec. 12. Tax a Personal Obligation and a Lien; Surcharge.
- Sec. 13. Collection by Suit; Injunction.
- Sec. 14. Selling Out or Quitting Business; Liability of Purchase.
- Sec. 15. Prerequisite to Final Settlement with City Contractors.
- Sec. 16. Priority in Distribution in Receivership; Personal Liability of Administration.
- Sec. 17. Certificate to Clerk of the County Court or Assessment of Taxes.
- Sec. 18. Collection by Distrain; Report of Collection.
- Sec. 19. Administration of this Article by City Manager.
- Sec. 20. Exemption in Amount of Tax.
- Sec. 21. Exchange of Tax Information between State of West Virginia and the City of Hinton.
- Sec. 22. Violations.
- Sec. 23. Penalties.
- Sec. 24. Effective Date.

## **Article II. Utility Service Tax.**

- Sec. 25. Definitions.
- Sec. 26. Imposition and Levying of Tax.
- Sec. 27. Collection; Time of Payment; Accounting; Proration.
- Sec. 28. Records; Inspection Thereof.
- Sec. 29. Exemptions.
- Sec. 30. Nonliability of Utility; Duty of City; Refunds; Rules and Regulations.
- Sec. 31. Enforcement Provisions; Penalties.
- Sec. 32. Notice of Utilities.
- Sec. 33. Invalidity of Any Provision of Application.

## **Article III. Amusement Tax.**

- Sec. 34. Definitions.
- Sec. 35. Levy and Collection.
- Sec. 36. When Due and Payable; Return.
- Sec. 37. Lien of Unpaid Tax; Penalties.
- Sec. 38. When Lien Attaches; Enforcement.
- Sec. 39. Records, Statements, Etc; Powers of City Manager.
- Sec. 40. Insufficient Returns.
- Sec. 41. Facts and Information Confidential.
- Sec. 42. Rules and Regulations.
- Sec. 43. Application of Article.
- Sec. 44. Failure or Refusal of City Manager to Collect Tax.
- Sec. 45. Permit.
- Sec. 46. Severability of Provisions.
- Sec. 47. Penalty.

## **Article IV. Hotel/Motel Tax.**

- Sec. 48. Definitions.

- Sec. 49. Imposition of Tax.
- Sec. 50. Collection of Tax.
- Sec. 51. Records and Returns.
- Sec. 52. Liability.
- Sec. 53. Exceptions.
- Sec. 54. Rules and Regulations.
- Sec. 55. Penalties.

**Article V. Liquor Tax.**

- Sec. 56. Authority.
- Sec. 57. Tax Imposed.
- Sec. 58. Collection of Taxes.

**Article VI. Real Estate Taxes; Assessments.**

- Sec. 59. Statement of Valuation of Property.
- Sec. 60. Determination Therefrom of Annual Tax Rate.
- Sec. 61. Order Determining Tax Rate Furnished to Officer Making Out Property Books.
- Sec. 62. Extension Against City Property.
- Sec. 63. Real Estate Delinquent for Nonpayment of Special Assessment.
- Sec. 64. Lien for Taxes, Assessments, Etc.; Enforcement.
- Sec. 65. Enforcement of Lien of Special Assessment.
- Sec. 66. Same – Disposition of Money Collected; Report to Council.

**Article VII. Privilege Tax.**

- Sec. 67. Definitions.
- Sec. 68. Imposition of Privilege Tax.
- Sec. 69. Public Service or Utility Business.
- Sec. 70. Exemptions; Non-Exempt Business.
- Sec. 71. Normal Tax.
- Sec. 72. Computation of Tax; Payment.
- Sec. 73. Return and Remittance by Taxpayer.
- Sec. 74. Erroneous Computation.
- Sec. 75. Failure to Make Return.
- Sec. 76. Appeal; Correction of Assessment.
- Sec. 77. Tax Year.
- Sec. 78. Tax Cumulative.
- Sec. 79. Payment.
- Sec. 80. Lien of Tax Due and Unpaid
- Sec. 81. Collection by Suit.
- Sec. 82. Tax Lien Upon Property of Person Selling Out or Quitting Business.
- Sec. 83. Returns of Taxpayers Not Public Records.
- Sec. 84. Recordation of Tax Liens.
- Sec. 85. Collection by Distrain.
- Sec. 86. Offenses.
- Sec. 87. Administration.
- Sec. 88. Construction of Article.

**Article I. Business and Occupation Tax.****Sec. 1. Definitions.**

- (a) “Person” or “Company” when used in this Chapter are interchangeable and include any individual, firm, partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.
- (b) “Sale” includes the exchange of properties as well as the sale thereof for money, every closed transaction shall constitute a sale.
- (c) “Taxpayer” means any person liable for any tax hereunder.
- (d) “Gross Income” means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value preceding 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, discounts, rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of the property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.
- (e) “Business” shall include 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 business engaged in, taxable in the class in which it falls.
- (f) “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.
- (g) “Gross Income” and “Gross Proceeds of Sales” shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, ware 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 price of the new Article is included in the “gross income” or “gross proceeds of sales”.
- (h) “Service Business” or “Calling” shall include all professional or non-professional activities engaged in for other persons for a consideration, which involves the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the service rendered by an employee to his employer.
- (i) “Wholesaler” or “Jobber” shall include persons doing a regularly organized jobbing business, known to the trade as such, selling to licensed retail merchants or jobbers, or to others in wholesale quantities and at wholesale prices.
- (j) “Manufacturer” shall include persons who by labor, art or skill transform raw material into some kind of finished product or article of trade. (1989)

**Sec. 2. Imposition of Business and Occupation Tax.**

There is levied and shall be collected quarterly against the persons, on account of his business and other activities a Business and Occupation tax as follows:

	Rate/ \$100.00
Production	
Coal	1.00
Sand & gravel (not mined or quarried)	3.00
Oil, blast furnace slag	3.00
Natural gas in excess of \$5,000	6.00
Limestone or sandstone quarried or mined	1.50
Timber	1.50
Other natural resource products	2.00
Manufacturing	.30
Business of selling tangible property	
Retailers	.25
Wholesalers	.15
Public Service or utility business	
Electric light and power companies (sales and demand charges, domestic purposes and commercial lighting)	2.00
Water Companies	2.00
Electric light and power companies (all other sales and demand charges)	2.00
Natural gas companies, toll bridges	2.00
All other public service or utility business	2.00
Electric Railway	1.00
Contracting	2.00
Amusements	.50
Service business or calling	1.00
Rentals, royalties, fees or otherwise	1.00
Small loan and industrial loan business	1.00
Banking and other financial business	1.00
Generating or producing electrical power (1989)	.30

**Sec. 3. Business Falling in More than One Category.**

If a business may be taxed in two or more of the above categories, then that business shall be taxed at the highest applicable rate which could apply. (1989)

**Sec. 4. Shipping Products Out of the City without Sale.**

If any person liable for any tax under this Article shall ship or transport his products or any part thereof out of the City without making sale of such products, the value of the products in the condition from which they exist immediately before transportation out of the City shall be the basis for the assessment of the tax imposed in said sections. The City Manager shall prescribe equitable and uniform rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross from the sale of similar products of like quality or character were no common interest exists between the buyer and seller, but the circumstances and conditions are otherwise similar. (1989)

**Sec. 5. Exemptions.**

The following constitute exemptions from this Article:

- (a) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members.
- (b) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit.
- (c) Corporations, associations, and societies organized and operated exclusively for religious or charitable purposes, providing however, that the exemptions of this section shall not apply to corporations or cooperative associations organized and existing under the provisions of West Virginia Code Chapter 19, Article 4.
- (d) Persons engaged in conducting the business of industrial loans under authority granted them by West Virginia Code, Chapter 31, Article 7, provided, however, that said exemption shall not extend to that part of the gross income of such persons which is received from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income be in form of rental or royalties.
- (e) The business of selling motor vehicles, insofar as the Federal Excise Tax is concerned. The Federal Excise Tax on the sale of motor vehicles by registered dealers shall not be added to this gross sales tax; however, all other costs included in the sale of motor vehicles shall be subject to and included in the gross sale price of motor vehicles and subject to this Article of one-eighth of one per cent.
- (f) State Excise Taxes are to be deducted from gross income used to measure Business and Occupation Tax in accordance with any applicable W.Va. Business and Occupation Tax regulations.  
Persons claiming deductions for State Excise Taxes on gasoline, diesel fuel, cigarettes, beer and soft drinks must itemize on the return the number of units sold for which deductions are claimed. Deductions will be disallowed in those cases where the taxpayer fails to provide the necessary information.
- (g) State and Federal Gasoline Excise Taxes and taxes on oil and lubricants are to be excluded in the calculation of gross income constituting the tax base for municipal Business and Occupation Tax in accordance with any applicable W.Va. Business and Occupation Tax regulations.

Persons claiming the above deductions must itemize on the return the number of units sold for which deductions are claimed. Deductions will be disallowed where the taxpayer fails to provide the necessary information as set forth hereinabove. (1989)

**Sec. 6. Computation of Tax; Payment.**

The taxes levied under this Article shall be payable in quarterly installments on or before the expiration of thirty (30) days from the end of the period in which they accrue. The taxpayer shall, within thirty (30) days from the expiration of each quarter, make out a return upon a form prescribed by the City Manager, showing the gross proceeds of sales, or gross income of business, trade or calling and compute the amount of tax for which he is liable for such quarter, verify the same by oath, and mail the same, together with his remittance for the amount of the tax to the Office of the City Manager. The City Manager, if he deems it necessary to insure payment of the tax, may require return and payment under this section for other than quarterly periods. If for any reason it is not practicable for the individual taxpayer to make the oath, the same may be made by any duly authorized agent. (1989)

**Sec. 7. Erroneous Computation.**

If the taxpayer shall make any error in computing the tax assessable against him, the City Manager shall correct such error or reassess the property amount of taxes, and notify the taxpayer of this action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement. If the amount already paid has exceed 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 by the City Manager who shall issue his check therefore, which shall be payable out of the fund available for that purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing thereunder. (1989)

**Sec. 8. Failure to Make Return; Incomplete or Erroneous Return**

If any person fails or refuses to make a return either in whole or in part, or if the City Manager has reasonable ground to believe that any return made is incorrect or is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain information on which to base the assessment of the tax. The City Manager may by himself or his duly appointed agent, make an examination of the books, records and papers, and audit the accounts of any person, including bank accounts, and may take the evidence, upon oath, of any person who he may believe shall be in possession of any relevant information. As soon as possible after procuring such information as he may be able to obtain as to any person making an incomplete or incorrect return, or failing or refusing to make a return, the City Manager shall proceed to assess the tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the City Manager shall be final as to any person who refused to make a return.

A separate and complete record of the business of the taxpayer conducted within the City shall be kept at his place of business, and shall not be confused or combined with the records of business carried on at other places. The City Manager may require the preservations of the records for a period not exceeding five years. (1989)

**Sec. 9. Appeal; Correction of Assessment**

If any person having made the return and paid the tax as provided by this Article, feels aggrieved by the assessment so made upon him by the City Manager, he may apply to the City Council by petition in writing, within thirty days after notice is mailed by the City Manager, in which petition shall be set forth the reasons why such hearings should be granted and the amount such tax should be reduced. The City Council shall promptly consider such petition, and may grant such hearing or deny the same. If denied, the Petitioner shall be forthwith notified thereof; if granted, the City Council shall notify the Petitioner of the time and place fixed for such hearing. After such hearing, the City Council may make such order in the matter as may appear to it just and lawful, and shall furnish a copy of such order to the Petitioner. Any person improperly charged with any tax and required to pay the same, may recover the amount paid, together with interest, in any proper action or suit against the City. It shall not be necessary for the taxpayer to protest against the payment of the tax or to make any demand to have the same refunded in order to maintain such suit. (1989)

**Sec. 10. Tax Additional to Others.**

The tax imposed by this Article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. (1989)

**Sec. 11. Payment.**

All remittance of taxes imposed by this Article shall be made to the City of Hinton through the City Manager by bank draft, certified check, cashier's check, money order or by Certificate of Deposit. (1989)

**Sec. 12. Tax a Personal Obligation and a Lien; Surcharge.**

A tax due and unpaid under this Article shall be a debt due the City. It shall be a personal obligation of the taxpayer and shall be a lien upon all property used in the business or occupation upon which such tax is imposed and said lien shall have priority over all other liens and obligations except those due the United States and the State of West Virginia. A penalty of five per cent of the tax shall be added for any default for thirty days or less, and for each succeeding thirty days elapsing before payment, there shall be an additional penalty of one per cent, all of which penalties shall be secured by the lien provided in this Section. (1989)

**Sec. 13. Collection by Suit; Injunction.**

The City Manager may in person, or by a duly appointed agent, collect taxes due and unpaid under this Article, together with all accrued penalties and for such purposes may exercise under this Article all the power authorized for the collection of taxes under the Charter and the Ordinances of the City and under the laws of the State. After delinquency shall have continued sixty (60) days, the City Manager may proceed, in person or by agent, in the Circuit Court of Summers County to obtain an injunction restraining the further engaging in business until full payment shall have been made of all taxes and penalties due under this Article. In any proceeding under this Section upon judgment or decree for the Plaintiff, he shall be awarded his costs. (1989)

**Sec. 14. Selling Out or Quitting Business; Liability of Purchase.**

The tax imposed by this Article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock or goods, or shall quit business, and such person shall be required to make all returns provided for under this Article within thirty (30) days after

the date he sold out his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such taxes due and unpaid until such time as the former shall produce a receipt from the City Manager showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided above, and the taxes shall be due and unpaid after the thirty (30) day period allowed, he shall be personally liable for the payment of the taxes accrued and he shall pay the taxes on account of the operation of the business by the former owner. (1989)

**Sec. 15. Prerequisite to Final Settlement with City Contractors.**

All officers and agents making contracts on behalf of the City shall withhold payment in the final settlement of such contracts, until receipt of a certificate from the City Manager to the effect that all taxes levied or accrued under this Article against the contractor with respect to such contracts have been paid. (1989)

**Sec. 16. Priority in Distribution in Receivership; Personal Liability of Administration.**

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, all taxes due and unpaid under this Article shall be paid from the first money available for distribution in priority to all claims, except taxes and debts due the United States and the State of West Virginia. Any person charged with the administration of an estate who, shall violate the provisions of this Section shall be personally liable for any taxes accrued and unpaid under this Article, which are chargeable against the person whose estate is in administration. (1989)

**Sec. 17. Certificate to Clerk of the County Court or Assessment of Taxes.**

The City Manager for the more effective collection of the tax may file with the Clerk of the County Court, a certified copy of an assessment of taxes under this Article. A certificate so filed shall be recorded in a book provided for the purpose and thereafter shall constitute binding notice of the lien created by this Article upon all lands of the taxpayer located in the City as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this Article, the lien of which shall have been recorded, the City Manager may certify in duplicate the fact and amount of payment, and the balance due, if any, and shall forward the certificates one to the taxpayer and one to the Clerk of the County Court. The Clerk of the County Court shall record the certificate in the book in which releases are recorded. From the date that such a certificate is admitted to record the land of the taxpayer in the County shall be free from any lien for taxes under this Article accrued to the date that the certificate was issued. (1989)

**Sec. 18. Collection by Distraint; Report of Collection.**

The City Manager may distraint upon any goods, chattels or intangibles represented by negotiable evidence of indebtedness, of any taxpayer delinquent under this Article for the amount of all taxes and penalties accrued and unpaid hereunder. The City Manager may require the assistance of the Chief of Police in levying such distress. (1989)

**Sec. 19. Administration of this Article by City Manager.**

The administration of this Article is vested in and shall be exercised by the City Manager who shall prescribe forms and reasonable rules of procedure in conformity with this Article for the marking of returns and for the ascertainment, assessment and collection of the taxes imposed under this Article.

The enforcement of any of the provisions of this Article in any of the Courts of the State shall be under the exclusive jurisdiction of the City Manager, who shall require the assistance of and act through the City Attorney. (1989)

**Sec. 20. Exemption in Amount of Tax.**

All persons liable for any tax included in this Article are declared an exemption for twenty-five (\$25.00) dollars per quarter on the total amount of tax due under this Article, and any exemptions for less than one quarter shall be prorated by the City Manager. (1989)

**Sec. 21. Exchange of Tax Information between State of West Virginia and the City of Hinton.**

There shall be an exchange of tax information between the State of West Virginia and the City of Hinton, West Virginia, under the authority of Chapter 11, Article 10, Section 5 (f) and (g) of the West Virginia Code, and in conformity with the provisions of an agreement between the State of West Virginia and the City of Hinton, West Virginia dated April 26, 1985.

It shall be unlawful for any officer or employee of the City of Hinton to divulge or make known in any manner the tax returns or any part thereof, of any individual, firm or corporation or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation or disclose the amount of income, or any particulars, set forth or disclosed in any report, declaration or return, exchanged under said agreement, except as required in an official investigation into tax matters before a Court of competent jurisdiction or except when any person, in writing, waives the secrecy provisions of said agreement and Article. (1989)

**Sec. 22. Violations.**

- (a) It shall be unlawful for any person to refuse to make the return provided to be made in this Article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the City or to evade the payment of the tax, or any part thereof, imposed by this Article, or for the President, Vice-President, Secretary or Treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this Article, which intends to evade the payment of any tax hereunder. Any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of false swearing, and shall be punished in the manner provided by law.
- (b) No corporation shall make a false return or a return containing a false statement. (1989)

**Sec. 23. Penalties.**

Anyone violating the provisions of this Article may be fined up to \$1,000 or jailed for up to sixty (60) days or both. Such fine or imprisonment shall be in addition to any interest or penalty added in to the tax itself as provided elsewhere in this Article. (1989)

**Sec. 24. Effective Date.**

The taxes levied by this Article shall be operative for the quarter beginning, April 1, 1989, and for each quarter and fiscal year thereafter. (1989)

## **Article II. Utility Service Tax**

### **Sec. 25. Definitions.**

The following words and phrases when used in this Article shall, for the purposes of this Article, have the following respective meanings:

- (a) “Public Utility Service” shall mean all services and tangible personal property purchased within the City from a seller, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of the State of West Virginia, including, but not limited to, telephone service, electric service, gas service, including bottled or liquid gas and water service.
- (b) “Purchaser” shall mean every person, firm, business, corporation, organization and unincorporated association who purchases, uses or consumes a public utility service.
- (c) “User” shall mean 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.

### **Sec. 26. Imposition and Levying of Tax.**

There is hereby imposed and levied upon every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming within the corporate limits of the City such public utility service. Such tax shall be in the amount of two per cent (2%) of the charge, exclusive of any federal or state tax thereon imposed upon the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller of public utility services 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 Article is in addition to all other taxes imposed and levied by the City. In the event more than one public utility shall furnish the identical public utility service to the same purchaser, the 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.

### **Sec. 27. Collection; Time of Payment; Accounting; Proration.**

It shall be the duty of every seller of public utility services in acting as the tax collecting medium or agency for the City to collect from each purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the City and each seller shall remit the amount of tax shown by the report to have been collected to the City on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The required report shall be in the form prescribed by the City Manager.

**Sec. 28. Records; Inspection Thereof.**

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

**Sec. 29. Exemptions.**

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

- (a) Purchases of public utility service for resale;
- (b) Purchases of public utility service by the United States of America.
- (c) Purchases of tangible personal property such as appliances or the like as distinguished from the public service supplied;
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones and specific charges or tolls for telephone calls to points outside the corporate limits of the City; and
- (e) Nonrecurring or one-time charges incidental to the furnishings of public utility service.

**Sec. 30 Nonliability of Utility; Duty of City; Refunds; Rules and Regulations.**

- (a) There shall be no liability upon the seller of public utility services for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of the City, the seller shall refer the question to the City Manager 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 so by the City Manager. All claims for refunds of any such tax shall be presented to the City and not to the Seller.
- (b) The City Manager shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this Article.

**Sec. 31. Enforcement Provisions; Penalties.**

- (a) Any amount of tax due and unpaid under this Article shall be a debt due the City, which shall be a personal obligation of the purchaser and shall be enforceable as provided in Section 8-13-15 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.

- (b) 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 punished as provided by Chapter I, Sec. 4, of this Code. 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.
- (c) In addition to any fine that may be imposed against any purchaser failing or refusing to pay the tax, the City may also collect interest of one per cent (1%) per month on any tax more than thirty days in arrears.

**Sec. 32. Notice to Utilities.**

The tax hereby imposed and levied shall not be effective until the City gives sixty (60) days written notice by certified mail of the effective date of the tax to any public utility doing business within the City which is required to collect the tax imposed and levied hereby.

**Sec. 33 Invalidity of Any Provision of Application.**

If any provision or application of this Article is held invalid, such invalidity shall not affect other provisions or application of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are declared to be severable.

**Article III. Amusement Tax.**

**Sec. 34. Definitions.**

The following words and phrases when used in this Article shall, for the purposes of this Article, have the following respective meanings:

- (a) "Tax" shall mean all taxes, interest or penalties levied hereunder.
- (b) "Taxpayer" shall mean a person, firm or corporation engaged in the business of furnishing public amusement or entertainment conducted within the corporate limits of the City of Hinton, Summers County, West Virginia, for private profit or gain.
- (c) "Amusement or Entertainment" shall mean theatres, including motion picture shows, public dances and dance halls or dances for which paid admissions are required, circuses, the exhibition of natural or artificial curiosities, caravans, menageries and musical exhibitions and performances, boxing and wrestling matches or exhibitions, miniature or Tom Thumb golf or other golf of like kinds, human contests at walking or dancing, sometimes designated as marathons, sitting on a pole or other things severely taxing human endurance or endangering the life and safety of those engaged therein or any public street, fairs, shows of all kinds, baseball, basketball, football and all sports or exhibitions, and any and all other forms of amusement or entertainment conducted for private profit or gain, and not specifically named herein.

**Sec. 35. Levy and Collection.**

There is hereby levied an admission or Amusement Tax of two percent (2%) on the sale of each ticket to any public amusement or entertainment conducted for private profit or gain within the corporate limits of the City of Hinton, Summers County, West Virginia, provided however, that if the amount of the tax so levied shall, when computed, be or contain a fraction of one cent, such fraction shall be counted as one cent.

It is the intent of this Article that the tax levied thereunder shall be passed on to and paid by the patron or purchaser. For the privilege of engaging in the business of operating or conducting any amusement or entertainment as herein defined, the owner or operator shall add the amount of said tax to the admission or amusement charge or price, and shall collect the tax from the patron or person paying such amusement or admission charge, and shall then pay the amount so collected to the City Manager in accordance with the provisions of this Article.

**Sec. 36. When Due and Payable; Return.**

The tax levied by this Article shall be due and payable in monthly installments on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the City Manager a return for the preceding month, in the form prescribed by the City Manager, showing the amount of the tax for which he is liable and any other further information necessary in the computation and collection of the tax which the City Manager may require. A remittance for the amount of the tax shall accompany the return. A monthly return shall be signed by the taxpayer or his duly authorized agent. Provided, however, for itinerant amusement companies, the tax will be due and payable before the completion of the final performance.

**Sec. 37. Lien of Unpaid Tax; Penalties.**

A tax due and unpaid under this ordinance shall be a debt due to the City. It shall be a personal obligation of the taxpayer and shall be a lien upon all the property of the taxpayer. The lien shall have priority over all other liens and obligations except those due the State of West Virginia and the United States of America.

A taxpayer who fails to file his return and remit the tax at the time requested by this ordinance, in addition to all other penalties, shall pay a penalty of six per cent (6%) of the amount of the tax due. For each succeeding thirty days elapsing before payment, there shall be added an additional penalty of one per cent (1%). If the taxpayer is an association or corporation, the officers thereof, whose duty it is to make and return and pay the tax, shall be personally liable jointly and severally for any default on the part of the association or corporation.

**Sec. 38. When Lien Attaches; Enforcement.**

A lien for taxes under this Article shall attach when the obligation to pay the tax to the City Manager accrues. The lien shall be enforceable by the City Manager as any other lien against the property of a debtor.

**Sec. 39. Records, Statements, Etc; Powers of City Manager.**

A person liable for the tax imposed under this ordinance shall keep the records, render under oath the statements, make returns, and comply with the rules and regulations that the City Manager may, from time to time, prescribe. The City Manager may require such records, statements, or returns, upon notice from any person in order to determine whether he is liable for the tax hereunder. The City

Manager may require preservation of records for a period not to exceed five years, and may, at any time, through his authorized agent inspect all books and accounts of the taxpayer, including banking accounts, which in any way enter into the record of the business out of which the tax imposed herein arises.

**Sec. 40. Insufficient Returns.**

If the City Manager has reason to believe that the tax imposed by this Article is insufficiently returned by a taxpayer, either because the taxpayer has failed or refused to make a return or has made an incomplete return, or has made a return which is deficient or otherwise erroneous, he may proceed to determine the amount of the tax for which the taxpayer is liable. The City Manager may make such audits and investigations, and take such evidence and testimony as may be necessary for the purpose of his investigation.

**Sec. 41. Facts and Information Confidential.**

Unless in compliance with Judicial Order, or as may be returned by the proper administration thereof, the City Manager, his agents and employees, or the former City Manager, his agents or employees shall not divulge facts or information obtained in the administration of this Article.

**Sec. 42. Rules and Regulations.**

The City Manager shall have the authority to promulgate and enforce reasonable rules and regulations necessary to the administration of this Article.

**Sec. 43. Application of Article.**

This Article shall apply to persons who attend public amusements or entertainments for private profit or gain on passes or other forms of complimentary tickets, as well as those persons attending on tickets purchased for consideration; and the tax returns made hereunder shall include the tax collected on such passes or other complimentary tickets.

**Sec. 44. Failure or Refusal of City Manager to Collect Tax.**

In the event the City Manager fails or refuses to collect the tax assessable hereunder, he shall be liable on his official bond for the amount of the tax which he fails or refuses to collect.

**Sec. 45. Permit.**

All persons engaging in the business of conducting dances or furnishing any other public amusement or entertainment conducted for private profit or gain as herein defined shall obtain a permit therefore from the City Manager at least twenty-four hours in advance of the dance, amusement or entertainment, unless a permit therefore has been heretofore issued.

**Sec. 46. Severability of Provisions.**

If any Section, part of Section, sentence, clause or phrase of this Article shall be held to be unconstitutional or invalid, the remaining provisions shall nevertheless remain in full force and effect.

**Sec. 47. Penalty.**

Any person who willfully violates any of the provisions of this Article, or any lawful rule or regulation promulgated under it, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five (\$5) dollars nor more than one hundred (\$100) dollars, and, in the discretion of the Court may be confined in the County jail not to exceed thirty (30) days, or both.

#### **Article IV. Hotel/Motel Tax.**

##### **Sec. 48. Definitions.**

Unless the context hereof requires otherwise, all terms used herein shall have the same meanings as set forth in Chapter 7, Article 18 of the West Virginia Code of 1931, as last amended.

##### **Sec. 49. Imposition of Tax.**

There is hereby imposed a tax on the use and occupancy of a hotel/motel room within the boundaries of the City. The rate of such tax shall be six per cent (6%) of the consideration paid for such use and occupancy. The tax shall be paid by the consumer or occupant of the hotel/motel room and be collected by the hotel/motel operator as a part of the consideration paid for the occupancy of the hotel/motel room. **(Amended 2008)**

##### **Sec. 50. Collection of Tax.**

- (a) The tax shall be collectible by the hotel/motel operator, who shall account for, and remit to the City, all taxes paid by consumer. The hotel/motel operator shall separately state the tax on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel/motel room.
- (b) A hotel/motel or hotel/motel operator shall not represent to the public, in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.
- (c) A hotel/motel operator doing business wholly or partly on a credit basis shall require the consumer to pay the full amount of tax due upon the credit sale at the time such sale is made or within thirty days (30) thereafter.
- (d) Notwithstanding that the total amount of such taxes collected by a hotel/motel operator may be in excess of the amount of which a consumer would be liable by application of the levy of six per cent (6%) for the occupancy of a hotel/motel room or rooms, the total amount of all taxes collected by any hotel/motel operator shall be remitted to the City. **(2008)CCM**

##### **Sec. 51. Records and Returns.**

- (a) Each hotel/motel operator shall keep complete and accurate records of taxable sales and charges, together with a record of the tax collected thereon. Such records and documents shall be kept and maintained for a period of three years unless the hotel/motel operator is notified by the City that they are kept for a longer period.

- (b) The tax imposed by this Article shall be due and payable in monthly installments on the tenth day of the month for all taxes collected from consumers in the preceding calendar month. The remittance of such taxes shall be accompanied by a return, in a form and containing such information as the City Manager may, by rule or regulation, require.

**Sec. 52. Liability.**

- (a) If any hotel/motel operator fails to collect the tax imposed by this Article or shall fail to properly remit such tax to the City, he shall be personally liable for such amount as he failed to collect or remit.
- (b) If the hotel/motel operator is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable; jointly and severally for any default or the part of the association or corporation to collect or remit the tax as herein required.

**Sec. 53. Exceptions.**

The tax imposed by this Ordinance shall not be collected in the following instances:

- (a) From any consumer occupying a hotel/motel room for thirty or more consecutive days.
- (b) When the hotel/motel room occupancy is billed directly to the United States of America or any agency thereof.
- (c) When the hotel/motel room occupancy is billed directly to the State of West Virginia or any political subdivision thereof.

**Sec. 54. Rules and Regulations.**

The City Manager may promulgate rules, regulations and administrative procedures concerning the assessment, collection and refund of the tax imposed by this Article.

**Sec. 55. Penalties.**

- (a) It shall be unlawful for any person to do any of the following:
  - i. To willfully refuse to pay or collect the tax.
  - ii. To willfully refuse to make the return required by this ordinance.
  - iii. To willfully make any false or fraudulent return or false statement in any return with the intent to defraud the City.
  - iv. To willfully evade the payment of the tax, or any part thereof.
  - v. To willfully aid or abet another in an attempt to evade the payment of the tax, or any part thereof.

- vi. For any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return, with the intent to evade payment of the tax.
- (b) Any person found guilty of willfully violating the provisions of this ordinance shall be fined not more than five hundred (\$500.00) dollars or imprisoned for a period of not more than thirty (30) days, or both fined and imprisoned.

**Article V. Liquor Tax.**

**Sec. 56. Authority.**

The authority for this Article may be found in West Virginia Code 8-13-7 (1983).

**Sec. 57. Tax Imposed.**

There is hereby imposed a tax of five per cent (5%) on the retail purchase price of any and all intoxicating liquors or wines purchased from the Alcohol Beverage Commission or from any person licensed to sell wine to the public under the provisions of Chapter 60, Article 8 of the Code of West Virginia, within the corporate boundaries of the municipality.

**Sec. 58. Collection of Taxes.**

The tax provided in this Article shall be levied upon the purchase of intoxicating liquors or wines within the municipality and shall be added to the purchase price of such intoxicating liquors or wines. Such tax shall be received by the municipality from the State Treasurer pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine, sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7, of said West Virginia Code. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of Chapter 60, Article 7, of said West Virginia Code from a wine distributor licensed pursuant to the provisions of Chapter 60, Article 3, et. Seq. of said West Virginia Code.

**Article VI. Real Estate Taxes; Assessments.**

**Sec. 59. Statement of Valuation of Property.**

The City Manager shall procure from the assessor whose duty it is to make out the land books for Summers County, annually, not later than the seventh day of March, a certified statement, showing, in separate amounts, the aggregate value of all the personal property, the aggregate of all the real estate and the aggregate value of all property assessed by the State Tax Department, in the City, as ascertained from the land and personal property books, and from the statement furnished by the auditor to the county clerk of the value of property assessed in said county by the board for the current year. The statement so furnished shall be taken as the property valuation of all property situated in the City and liable for all purposes. (1989)

**Sec. 60. Determination Therefrom of Annual Tax Rate.**

Upon receiving such statement the City Manager shall immediately present the same to the Council, at a meeting to be held not later than the 25<sup>th</sup> day of March, for the purpose of determining the rate of levy for municipal purposes for the current year. The rate shall be determined by the Council as provided by law. (1989)

**Sec. 61. Order Determining Tax Rate Furnished to Officer Making Out Property Books.**

As soon as the rate shall have been determined, the City Manager shall furnish to the State Tax Department and the State Auditor, a certified copy of the order of the Council, fixing the rate of tax. (1989)

**Sec. 62. Extension Against City Property.**

The Assessor shall extend the tax against the property situated in the City, in the land book and the personal property book of the county. (1989)

**Sec. 63. Real Estate Delinquent for Nonpayment of Special Assessment.**

When any real estate shall become delinquent by reason of expiration of the time for payment of any special assessment or installment thereof, made by the City on the same, for cleaning, repairing or paving any sidewalk, footway or gutter, or for the share of any such property or the cost of paving any street on which it abuts., or any of the things other than taxes for which assessment any be made as hereinabove set forth, it shall be the duty of the City Manager to return the same to the Council, in writing, in the following form, giving, substantially, the following information, to-wit:

List of real estate in the City of Hinton, Summers County, West Virginia, delinquent of the nonpayment of special assessment thereon, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

- Lot Number:
- Name of Owner and Person in Interest:
- Name of Occupant:
- Location and Description of Lot:
- Front Feet:
- Square Yards:
- Amount Assessed-Dollars, Cents:
- Why Not Paid:

And the City Manager, returning such list, shall, at the foot thereof, subscribe the following oath:

I, \_\_\_\_\_, City Manager of the City of Hinton, do swear that the foregoing list is, I verily believe, correct and just, and that I have received no part of the money of said assessments for which the real estate therein mentioned is returned delinquent and in default; and that I have used due diligence to find property, dues or demands within my county and city, liable to distress for said assessments, and have found none.

\_\_\_\_\_  
City Manager

(1927, Ord. No. 14.)

**Sec. 64. Lien for Taxes, Assessments, Etc.; Enforcement.**

There shall be a lien on all real estate within the City for taxes assessed thereon, and for all fines and penalties assessed against or imposed upon the owners of said real estate, by the authorities of the City, according to law, including expenses of making, maintaining and repairing, paving and macadamizing sidewalks, drains, gutters and streets, from the time the same are so assessed or imposed, and, in the case of taxes, from the day fixed by law for the commencement of the assessment of such taxes in each year, and the interest upon such taxes, at the rate of ten per cent per annum, from the 1<sup>st</sup> day of July next after such assessment, until payment, which shall have priority over all other liens except taxes due the United States and the lien for the taxes due the state and county. In the case of taxes, such lien may be enforced in the same manner provided by law for the enforcement of the lien for state and county taxes, and in case of all other of said fines, penalties and assessments of every kind, the same shall be enforced by proper suit in equity. The other liens herein mentioned, in case of dispute or conflict, to be subsequent to such lien for taxes. (1989)

**Sec. 65. Enforcement of Lien of Special Assessment.**

At the same meeting at which the Council shall approve any such delinquent list of persons or property in default for non-payment of any special assessment or installment thereof, or any other of the things mentioned, except taxes, the Council shall order the enforcement of the lien of such assessment by the proper actions at law or suits in equity, to be instituted by the City Attorney. (1927, Ord. No. 14.)

**Sec. 66. Same – Disposition of Money collected; Report to Council.**

All money collected by the City Attorney by reasons of any sales of such land or a redemption by payment of the amount sued for, he shall forthwith deposit with the City Manager. In all cases where any such money is collected, whether by a commission of the court, or the City Attorney, it shall be the duty of such commission or attorney to report the fact to the City Council. (1927, Ord. No. 14.)

**Article VII. Privilege Tax.****Sec. 67. Definitions.**

- (a) “Person” or “Company” when used in this Chapter are interchangeable and include any individual, firm, partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.
- (b) “Tax year” or “Taxable year” means either the calendar year, or the taxpayer’s fiscal year when permission is obtained from the Mayor to use same as the tax period in lieu of the calendar year.
- (c) “Sale” or “Sales” includes the exchange of properties as well as the sale thereof for money. Every closed transaction shall constitute a sale.
- (d) “Taxpayer” means any person liable for any tax hereunder.
- (e) “Gross income” means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value preceding 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, discounts, rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of the property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

- (f) “Business” shall include 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 business engaged in, taxable in the class in which it falls.
- (g) “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.
- (h) “Gross income” and “Gross proceeds of sales” shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers 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 price of the new article is included in the “gross income” or “gross proceeds of sales”.

**Sec. 68. Imposition of Privilege Tax.**

There is hereby levied 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 as hereinafter set forth.

**Sec. 69. Public Service or Utility Business.**

Upon any person, firm or corporation, engaging or continuing within this City in the following public service or utility business, there is hereby levied and shall be collected taxes on account of the gross income of the business as follows: Electric Light and Power companies, 4% of sales and demand charges for domestic purposes and commercial lighting, and 3% on sales and demand charges for all other purposes; natural gas companies, 3% on the gross income, said gross income for this purpose to be determined by deducting from gross income from all sales of gas to consumers the amount of the tax paid by the taxpayer under Section 2A, Article 13, Chapter 11 of the Office Code of West Virginia; water companies, 2% on the gross income. The measure of this tax shall not include gross income derived from outside the City.

**Sec. 70. Exemptions; Non-Exempt Business.**

There shall be an exemption in every case of \$100.00 in amount of tax computed under the provisions of this Article. A person exercising a privilege taxable hereunder for a fractional part of a year shall be entitled to an exemption of the sum bearing the proportions to \$100.00 that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person whether he exercises one or more privileges taxable hereunder.

**Sec. 71. Normal Tax.**

When used in this Article the phrase “normal tax” shall be the tax computed by the application of rates against values or gross income as set forth in Section 3 of this Article.

The normal tax shall be computed by the application of rates against values or gross income as set forth in Section 3. The total amount of normal tax due shall be reduced by a 10% credit

The total net balance of normal taxes due reduced by 10% is the amount of tax payable.

**Sec. 72. Computation of Tax; Payment.**

The taxes levied hereunder shall be payable in quarterly installments on or before the expiration of thirty days from the end of the quarter in which they accrue. The taxpayer shall, within 30 days from the expiration of each quarter, make an estimate of the tax for which he is liable for such quarter, verify the same by oath, and mail the same together with a remittance in the form required by this Article for the amount of the tax, to the Office of the City Manager of the City. The City, if it deems it necessary to insure payment of the tax, may require return and payment under this Article for other than quarter year periods. In estimating the amount of the tax due for each quarter, the taxpayer may deduct one-fourth of the total exemption allowed for the year.

**Sec. 73. Return and Remittance by Taxpayer.**

On or before 30 days after the end of the tax year, each person liable for the payment of a tax under this Article shall make a return showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this Article and deduct the amount of quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by this Article covering the residue of the tax chargeable against him to the Office of the City Manager; such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the President, Vice President, Secretary or Treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, shall make the oath on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to make the oath, the same may be made by any duly authorized agent.

**Sec. 74. Erroneous Computation.**

If the taxpayer shall make any error in computing the tax assessable against him, the City Manager shall correct such error or reassess the proper amount of taxes. He shall then notify the taxpayer of his action by promptly mailing him a copy of the corrected assessment. Any additional tax for which such taxpayer may be liable shall be paid within 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 requisition of the Mayor, and shall be payable out of any funds available for this purpose.

**Sec. 75. Failure to Make Return.**

If any person shall fail or refuse to make a return either in whole or in part, or if the Mayor has reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, he may proceed as he deems best to obtain the information on which to base the assessment of the tax. The Mayor may, by himself or his duly appointed agent, make an examination of the books, records and papers and audit the accounts of any such person, and may take

the evidence, on oath administered by himself or his agent, or of any person who he may believe shall be in possession of any relevant information. As soon as possible after the procuring of such information as he may be able to obtain as to any person failing or refusing to make return, the Mayor shall proceed to assess that tax and shall notify the person assessed of the amount of the tax. The assessment of the tax by the Mayor shall be final as to any person who refused to make a return.

**Sec. 76. Appeal; Correction of Assessment.**

If any person, having made the return and paid the tax as provided by this Article, feels aggrieved by the assessment so made upon him for any period by the Mayor, he may apply to the City Council by a petition, in writing within 30 days after notice is mailed to him by the Mayor, for a hearing and a correction of the amount of the tax so assessed upon him by the Mayor, in which petition shall be set forth the reason why such hearing should be granted and the amount such tax should be reduced. The Council shall promptly consider such petition, and may grant such hearing or may deny the same. If denied, the petitioner shall forthwith be notified thereof, but if granted, the Council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the Council may make such order of the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same, may recover the amount paid together with interest, in such proper action or suit against the City of Hinton as may be authorized by law.

**Sec. 77. Tax Year.**

The assessment of the taxes herein made and the returns required therefore shall be for the 12 calendar months beginning May 1<sup>st</sup> and ending April 30<sup>th</sup>, and for each 12 month period ending on April 30<sup>th</sup> of each calendar year thereafter that this Article remains in effect.

If the taxpayer, in exercising a privilege taxable under this Article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the City make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

**Sec. 78. Tax Cumulative.**

The tax imposed by this Article shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this Article, subject to the payments of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current tax year upon the condition that he shall pay tax accruing under this Article.

**Sec. 79. Payment.**

All remittances of taxes, imposed by this Article shall be made, to the City of Hinton in lawful money of the United States of America, or by bank draft, certified check, cashier's check, money order or certificate of deposit. The City shall issue receipts therefore to the taxpayer and shall pay the money into the City Treasury to be kept and accounted for as provided by law.

**Sec. 80. Lien of Tax Due and Unpaid.**

A tax due and unpaid under this Article shall be a debt due the City. It should be a personal obligation of the taxpayer and shall be a lien upon all property used in the business or occupation upon which such tax is imposed. Provided that no such tax lien shall be enforceable against a purchaser (including

lien creditor) for valuable consideration without notice, unless docketed in the Office of the County Court in the county where such property is located before a deed therefore to such purchaser is delivered for record to the Clerk of the Court of the County.

A penalty of 5% of the tax shall be added for the default for 30 days or less, and for each succeeding 30 days elapsing before payment, there shall be an additional penalty of 1%.

**Sec. 81. Collection by Suit.**

The City may collect taxes due and unpaid under this Article, together with all accrued penalties under the power conferred to the Mayor by law. After delinquency shall have continued 60 days, the City may proceed in the Circuit Court of Summers County, to obtain an injunction restraining the further exercises of the privilege, until full payment shall have been made of all taxes and penalties due under this Article. In any proceeding under this Article upon judgment or decree for the plaintiff it shall be awarded its costs.

**Sec. 82. Tax Lien Upon Property of Person Selling Out or Quitting Business.**

The tax imposed by this Article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make the return provided for under this Article within 30 days after the date he sold out his business or stock of goods, or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the City Manager showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided and the taxes shall be due and unpaid after the 30 days period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

**Sec. 83. Returns of Taxpayers Not Public Records.**

The returns submitted by taxpayers in accordance with this Article, or the information contained therein, shall not be published or be open to public inspection, except in accordance with such rules and regulations as may be prescribed by the City Council.

**Sec. 84. Recordation of Tax Liens.**

The City, for the more effective collection of the tax, may file with the Clerk of the County Court of Summers County, a certified copy of the assessment of taxes under this Article, for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the State are recorded and thereafter constitute binding notices of lien created by this Article upon all lands of the taxpayer located within the City as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this Article, the lien of which shall have been recorded by the City shall certify in duplicate the fact and amount of payment and balances due, if any, and shall forward the certificates, one to the taxpayer, and one to the Clerk of the County Court of Summers County. The Clerk of the County Court shall record such certificates in the book in which releases are recorded. From date that such a certificate is admitted to record the land of the taxpayer in the City shall be free from any lien for taxes under this Article accrued to the date that the certificate was issued.

**Sec. 85. Collection by Distraint.**

The Mayor may distrain upon any goods, chattels or intangibles represented by negotiable evidences or indebtedness of any taxpayer delinquent under this Article for the payment of all taxes and penalties accrued and unpaid hereunder. The lien created by this Article on real estate may be enforced by suit in equity and other means provided by law.

**Sec. 86. Offenses.**

It shall be unlawful for any person to refuse to make the return provided for in this Article or to make any false or fraudulent return or false or fraudulent statement in any return with intent to defraud the City, or to evade the payment of the tax, or any part thereof, imposed by this Article, or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this Article, or for the President, Vice President, Secretary or Treasurer of any corporation to make or permit to be made, for any corporation or association, any false return, or any false statement in any return in this Article, with the intent to evade the payment of any tax hereunder. Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned not exceeding 90 days or punished by both fine and imprisonment, at the discretion of the Court, within the limitation aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing, and on conviction thereof shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing false statements as aforesaid, shall be made, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$5,000.

**Sec. 87. Administration.**

The administration of this Article is vested in, and shall be exercised by the Mayor who shall prescribe forms and reasonable rules of procedure in conformity with this Article subject to the approval of the City Council for the making of returns and for the ascertainment, assessment of any of the provisions of this Article in any of the courts of the State, shall be under the exclusive jurisdiction of the Mayor, who shall require the assistance and act through the City Attorney to the extent permitted by the Charter of the City of Hinton. The Mayor may delegate his duties hereunder to the City Manager.

**Sec. 88. Construction of Article.**

This Article and the various parts, sections and clauses hereof are hereby declared to be severable. If any part, section or clause is adjudged unconstitutional or invalid, it is intended that the residue of the Article shall not be affected thereby. It is not meant or intended that the head notes and captions to sections are a part of this Article, inasmuch as the same are placed herein for convenience merely. This Article is based upon the authority delegated to municipalities by Chapter 8, Article 4, Section 13B of the West Virginia Code, as amended, which is hereby adopted and made a part of the Charter of the City of Hinton.

**CHAPTER 30. FLOOD PLAIN DISTRICT**

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**Article VI. Administration.**

Sec. 23. Building Permits and Site Plan Approvals Required.  
Sec. 24. Approval of Permits and Plans.  
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**Article VII. Appeals and Penalties.**

Sec. 31. Appeals.  
Sec. 32. Appeals Review Criteria.  
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**Article VIII. Severability and Municipal Liability.**

- Sec. 34. Severability.
- Sec. 35. Municipal Liability.

**Article I. General Provisions.**

**Sec. 1. Intent.**

The intent of this Chapter is to:

- (a) Promote the general health, welfare and safety of the community.
- (b) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (c) Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal and natural drainage.
- (d) Reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

**Sec. 2. Applicability.**

Provisions of all other Codes, Chapters and regulations shall be applicable insofar as they are consistent with the provisions of this Chapter and the municipality's and/or county's need to minimize the hazards and damage resulting from flooding.

**Article II. Definitions.**

**Sec. 3. Definitions.**

- (a) "Base Flood" shall mean the flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other Chapters have been prepared is the one-hundred (100) year flood.
- (b) "Base Flood Elevation" shall mean the 100 year flood elevation. Within the approximated flood plain the base flood elevation shall be established as a point on the boundary of the approximated flood plain which is nearest to the construction site in question.
- (c) "Principally above Ground" shall mean where at least 51 percent of the actual cash value of a structure, less land value, is above ground.
- (d) "Start of Construction" shall mean the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 excavations for basements, 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 as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the “start of construction” includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, “start of construction” means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions “start of construction” is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including at a minimum the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) as completed.

- (e) “Structure” shall mean walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.
- (f) “Substantial Improvement” shall mean any repair, reconstruction or improvement of a structure, the cost which equals or exceeds 50 percent of the market value of the structure either;
  - 1) Before the improvement or repair is started, or
  - 2) If the structure has been damaged, and is being restored, before the damage occurred.

For the purpose of this definition “Substantial 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. The term does not however, include either,

- 1) Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
  - 2) Any alterations of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- (g) “Development” shall mean 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.
  - (h) “Flood” shall mean a general and temporary inundation of normally dry land areas.
  - (i) “Flood Plain” shall mean:
    - 1) A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation, or
    - 2) An area subject to the unusual and rapid accumulation or runoff of surface from any source.

- (j) “Flood proofing” shall mean any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures and contents of buildings.
- (k) “Mobile Home” shall mean a structure, transportable in one or more sections, which is eight body feet or more in width and is thirty-two body feet or more in length, and which is built on a permanent chassis, and designed to be used with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-condition and electrical systems contained therein.
- (l) “Mobile Home Park or Subdivision” shall mean a parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) have been provided.
- (m) “New Construction” shall mean structures for which the start of construction as herein defined commenced on or after the effective date of this Chapter. This term does not apply to any work on a structure existing before the effective date of this Chapter.
- (n) “One Hundred (100) Year Flood” shall mean a flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.
- (o) “Person” shall mean any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

### **Article III. Establishment of Flood Plain District.**

#### **Sec. 4. Composition.**

The Flood Plain District shall be comprised of two (2) sub-districts as follows:

- a) Floodway (F1) – That portion of the Flood Plain District required to carry and discharge the waters of the One Hundred (100) Year Flood without increasing the water surface elevation at any point more than one (1) foot above existing conditions, as demonstrated in the Flood Insurance Study.
- b) Floodway Fringe (F2) – Those portions of land within the Flood Plain District subject to inundation by the One Hundred (100) Year Flood, lying beyond the floodway in areas where detailed study data and profiles are available.

#### **Sec. 5. Delineation.**

The delineation of the Flood Plain District may be revised, amended and modified by the Council in compliance with the National Flood Insurance Program when:

- a) There are changes through natural or other causes;
- b) Changes are indicated by future detailed hydrologic and hydraulic studies.

All such changes shall be subject to the review and approval of the Federal Insurance Administrator.

**Sec. 6. Boundary Dispute.**

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Building Inspector. Any party aggrieved by this decision may appeal to the Council. The burden of proof shall be on the appellant.

**Article IV. Utilization of the Flood Plain District.****Sec. 7. Floodway (F1) General Requirements.**

In the Floodway no development shall be permitted which would result in any increase in the base Flood Elevation during the occurrence of the Base Flood discharge. When a developer proposes to offset the effects of development in the Floodway by construction of stream improvements, he shall submit an engineering study prepared by a Registered Professional Engineer which fully evaluates the effects of such construction. The report shall use the Base Flood as herein defined as the basis of analysis. All adjacent communities and State Coordinating Office shall be notified by the developer by certified mail of all such intended activities prior to any alteration or relocation of a watercourse and shall submit copies of such notification to the Federal Insurance Administrator. In addition, the developer shall assure the Council, in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained..

All uses, activities and other developments shall be undertaken in strict compliance with the flood proofing and related provision contained herein, and in all other applicable codes, chapters and regulations.

**Sec. 8. Mobile Homes.**

In the Floodway the placement of any mobile homes, except in an existing mobile home park or mobile home subdivision shall be prohibited. For any existing mobile home park or subdivision within the Floodway, the owner or operator of the mobile home park or subdivision shall file with the Disaster Preparedness authorities of Summers County and the City of Hinton an evacuation plan which indicates alternate vehicular access routes and escape routes.

**Sec. 9. Floodway Fringe (F2)**

In the Floodway Fringe 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, chapters and regulations. For any mobile home park or subdivision within the Floodway Fringe, the owner or operator of the mobile home park or subdivision shall file with the Disaster Preparedness authorities of Summers County and the City of Hinton, an evacuation plan which indicates alternate vehicular access routes.

In addition, whenever a developer intends to alter or relocate a watercourse within the Floodway Fringe, the developer shall notify in writing by certified mail all adjacent communities and the State Coordinating Office of all such intended activities prior to any alteration or relocation of the watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the City of Hinton in writing, that the flood carrying within the altered or relocated portion of the watercourse in question will be maintained.

## **Article V. Criteria for Building Permit Site Plan Approval.**

### **Sec. 10. Flood Plain Building Permit Criteria.**

Building Permits are required in order to determine whether all new construction or substantial improvements are:

- (a) Designed (or modified) and adequately anchored to prevent flotation collapse or lateral movement.
- (b) Constructed with materials and utility equipment resistant to flood damage.
- (c) Constructed by methods and practices that minimize flood damage.

### **Sec. 11. Format of Flood Plain Building Permit.**

The basic format of the Flood Plain Building Permit shall include the following:

- (a) Name and address of applicant.
- (b) Name and address of owner of land on which proposed construction is to occur
- (c) Name and address of contractor.
- (d) Site location.
- (e) Brief description of proposed work and estimated cost.
- (f) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.

### **Sec. 12. Additional Information Required on Flood Plain Building Permit.**

Depending on the type of structure involved, the following information shall also be included in the Flood Plain Building Permit for work within the Flood Plain District:

- (a) For structures to be elevated to the Base Flood Elevation:
  - (1) A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
  - (2) A determination of elevations of the existing ground, proposed finished ground, lowest floors certified by a registered professional engineer, surveyor or architect.
  - (3) Plans showing the method of elevating the proposed structures, including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc., when required by the Building Inspector, these plans shall be prepared by a registered professional engineer or architect.

- (4) Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.
- (b) For structures to be flood proofed to the Base Flood Elevation (non-residential structures only):
- (1) Plans that show details of all flood proofing measures, prepared by a registered professional engineer or architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
  - (2) A determination of elevations of existing ground, proposed finished ground, lowest floors and flood proofing limits, certified by a registered professional engineer, surveyor or architect.
  - (3) A certificate prepared by the registered professional engineer or architect who prepared the plans in (1) above, that the structure in question, together with attendant utility and sanitary facilities is designed so that below the Base Flood Elevation the structure is watertight and walls substantially impermeable to the passage of water.

**Sec. 13. Minimum Flood Proofing Standards.**

In order to prevent excessive damage to buildings and structures, the following restrictions shall apply to all new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain District.

**Sec. 14. Basements and Lowest Floors.**

All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to the Base Flood Elevation. All new construction and substantial improvements of non-residential structures must have the lowest floor (including basement) elevated to the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

**Sec. 15. Fill.**

If fill is used to raise the finished surface of the lowest floor to the Base Flood Elevation:

- (a) 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. For non-residential 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 to twenty-five (25) percent of the perimeter of a non-residential structure.

- (b) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted.
- (c) Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring or setting.
- (d) Fill slopes shall be no steeper than one (1) vertical to two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Building Inspector.
- (e) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

**Sec. 16. Placement of Buildings, Structures and Mobile Homes.**

- (a) All buildings and structures shall be constructed and 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 flood water.
- (b) The following shall not be placed or caused to be placed in the designated Floodway: fences, except two-wire fences, other matter which may impede, retard or change the direction of the flow of water or that will catch or collect debris carried by such water or that is placed where the natural flow of the stream or flood waters would carry the same downstream to the damage or detriment of either public or private property adjacent to the flood plain.
- (c) Mobile homes shall be elevated on compacted fill or on pilings so that the lowest floor of each mobile home will be at the Base Flood Elevation.
- (d) Adequate surface drainage and access for a mobile home hauler shall be provided.
- (e) When mobile homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed in stable soil no more than ten feet apart, and reinforcement shall be provided for pilings more than six feet above the ground level.

**Sec. 17. Anchoring.**

- (a) All buildings and structures 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 and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- (c) All mobile homes shall be anchored to resist flotation, collapse or lateral movement by providing over-the-top and frame ties to ground anchors. Specifically:

- (1) Over-the-top ties shall be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations and mobile home less than 50 feet long requiring one additional tie per side.
- (2) Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with mobile homes less than 50 feet long requiring four additional ties per side.
- (3) All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
- (4) Any additions to a mobile home shall be similarly anchored.

**Sec. 18. Storage.**

No new construction which stores 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.

**Sec. 19. Site Plan Criteria.**

- (a) The owner or developer of any proposed subdivision, mobile home park or subdivision or other development shall submit a site plan to the Building Inspector which includes the following information:
  - (1) Name of engineer, surveyor or other qualified person responsible for providing the information required in this section.
  - (2) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood-prone areas, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or five (5) acres, whichever is lesser, shall include Base Flood Elevation data.
  - (3) Where the subdivision and/or development lies partially or completely in the flood-prone areas, the plan map shall include detailed information giving the location and elevation of proposed road, 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 flood-prone areas.
- (b) For all new mobile home parks, or expansions to existing mobile home parks and for existing mobile home parks where the repair, reconstruction or improvement of the streets, utilities and pads equal or exceed 50 per cent of the value of the streets, utilities and pads before the repair, reconstruction or improvements has commenced, the following requirements shall be met for any construction with the Floodway Fringe.
  - (1) Stands or lots shall be elevated on compacted fill or on pilings so that the lowest floor of each mobile home will be at the Base Flood Elevation.

- (2) Adequate surface drainage and access for a mobile home hauler shall be provided.
- (3) When mobile homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed on stable soil no more than ten (10) feet apart, and reinforcement shall be provided for pilings more than six (6) feet above ground level.

**Sec. 20. Utility and Facility Requirements.**

For all proposed subdivisions, mobile home parks or subdivisions or other development the Building Inspector shall require:

- (a) All new or replacement water systems, located in the Flood Plain District, whether public or private, shall be flood proofed to the Base Flood Elevations.
- (b) All new replacement sanitary disposal systems, located within the Flood Plain District, whether public or private shall be flood-proofed to the Base Flood Elevation.
- (c) All other or replacement public and/or private utilities and facilities shall be elevated or flood-proofed to the Base Flood Elevation.

**Sec. 21. Drainage.**

Adequate drainage shall be provided to reduce exposure of flood hazards.

**Sec. 22. These Permits in Addition to Regular Permits.**

The Flood Plain Permit for construction and other matters as required by this Article and Chapter are in addition to, and not in place of, building permits required elsewhere in this Code.

**Article VI. Administration.**

**Sec. 23. Building Permits and Site Plan Approvals Required.**

It shall be unlawful for any person, partnership, business or corporation to undertake or cause to be undertaken, the new construction, substantial improvement or relocation of any structure (including mobile homes) within the Flood Plain District, unless the necessary permits have been obtained from the Building Inspector. In addition, where land is to be subdivision, utilized for a mobile home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Building Inspector prior to any development.

**Sec. 24. Approval of Permits and Plans.**

All Flood Plain 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 this and all other applicable Codes and Chapters.

The Building Inspector shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal or State law.

A record of all information supplied to the Building Inspector shall be kept on file by the City.

**Sec. 25. Application Procedures.**

Application for a building permit and site plan approvals shall be made, in writing, to the Building Inspector and shall include all information stipulated under this Chapter.

**Sec. 26. Changes.**

After the issuance of a building permit or site plan approval by the Building Inspector, 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 of approval of the Building Inspector.

**Sec. 27. Placards.**

In addition to the building permit, the Building Inspector shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of its issuance and be signed by the Building Inspector.

**Sec. 28. Start of Construction.**

Work on the proposed construction shall begin with six (6) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Building Inspector.

**Sec. 29. Inspection and Revocation.**

During the construction period, the Building Inspector or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable law and Chapters. In the event the Building Inspector discovers that the work does not comply with the permit application or any applicable laws and Chapters, or that there had been a false statement or misrepresentation by any applicant, the Building Inspector shall revoke the building permit and report such fact to the City for whatever action is considered necessary.

**Sec. 30. Fees.**

Application for a Flood Plain Building Permit shall be accompanied by a fee, payable to the City Council, based upon the estimated cost of the proposed construction as determined by the Building Inspector at the following rates:

0	to	50.00.....	0
50.00	to	100.00 .....	2.00
100.01	to	500.00 .....	3.00
500.01	to	1,000.00 .....	10.00
1,000.01	to	2,000.00 .....	15.00
2,000.01	to	3,500.00 .....	20.00
3,500.01	to	5,000.00 .....	25.00

Plus \$2.00 for each additional \$1,000.00 above the \$5,000.00 or fractional part thereof.

## **Article VII. Appeals and Penalties.**

### **Sec. 31. Appeals.**

Whenever any person is aggrieved by a decision of the Building Inspector with respect to the provisions of this Chapter, it is the right of that person to appeal to the Council. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Building Inspector. Upon receipt of such appeal, the Council shall set a time and place not less than ten (10) nor more than thirty (3) days for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard. The determination by the Council shall be final in all cases.

### **Sec. 32. Appeals Review Criteria.**

- (a) All appeals contesting only the permit fee established by the Building Inspector may be handled at the discretion of the Council.
- (b) All decisions on appeals to all other provisions of this Chapter not covered in (a) above shall adhere to the following criteria:
  - (1) An affirmative decision shall not be issued by the Council within the designated floodway if any increase in flood levels during the base flood discharge would result.
  - (2) A decision may be issued by the Council for the construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the Base Flood Elevation in conformance with the procedures of paragraphs (3), (4), (5), and (6) of this section.
  - (3) Affirmative decisions shall only be issued by the Council upon:
    - (i) A showing of good and sufficient cause,
    - (ii) A determination that failure to grant the appeal would result in exceptional hardship to the applicant, and
    - (iii) A determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or Chapters.
  - (4) Affirmative decisions shall be issued upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.
  - (5) The Council shall notify the applicant in writing over the signature of a community 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 notification shall be maintained with a record of all decisions as required in paragraph (vi) of this section; and
- (6) The Council shall
- (i) Maintain a record of all decisions including justification for their issuance, and
  - (ii) Report such decisions issued in its annual report submitted to the Federal Insurance Administration.

**Sec. 33. Penalties.**

Any person who fails to comply with any or all of the requirements or provisions of this Chapter or direction of the Building Inspector or any other authorized employee of the municipality shall be guilty of an offense and, upon conviction, shall pay a fine to the City of not less than twenty-five (\$25.00) dollars nor more than three hundred (\$300.00) dollars plus costs of prosecution or may be imprisoned in the county jail for a period not to exceed ten (10) days. Each day during which any violation of this Chapter 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 Chapter. The imposition of a fine or penalty for any violation of, or non-compliance with, this Chapter shall not excuse the violation or non-compliance 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 Chapter may be declared by the Council to be a public nuisance and abatable as such.

**Article VIII. Severability and Municipal Liability.**

**Sec. 34. Severability.**

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions to this Chapter which shall remain in full force and effect, and for this purpose the provisions of this Chapter are hereby declared to be severable.

**Sec. 35. Municipal Liability.**

The granting of a permit or approval of a subdivision of development plan in an identified flood-prone area, shall not constitute a representation, guarantee or warranty of any kind by the City or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City, its officials or employees.(2009)

**CHAPTER 31. PARADES**

(This entire Chapter was adopted with the 1989 Code).

Sec. 1.	Definition.
Sec. 2.	Permit Required.
Sec. 3.	Interference with Parade.
Sec. 4.	Application for Permit.
Sec. 5.	Issuance or Denial of Permit.
Sec. 6.	Contents of Permit.
Sec. 7.	Appeal Procedure.
Sec. 8.	Official to be Notified.
Sec. 9.	Revocation of Permit.
Sec. 10.	Fees.

**Sec. 1. Definition.**

“Parade” means any march or procession consisting of people, animals or vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations or controls.

**Sec. 2. Permit Required.**

It shall be unlawful for any person to conduct a parade in or upon any public street, sidewalk or alley in the City or knowingly participate in any such parade unless and until a permit to conduct such parade has been obtained from the Chief of Police, or, as hereinafter provided, from the City Council.

**Sec. 3. Interference with Parade.**

No person shall knowingly join or participate in any parade conducted under permit from the Chief of Police in violation of any of the terms of said permit, nor knowingly join or participate in any permitted parade without the consent and over the objection of the permittee, nor in any manner interfere with its progress or orderly conduct.

**Sec. 4. Application for Permit.**

Any person who wants to conduct a parade shall apply to the chief of police for a permit at least thirty (30) days in advance of the date of the proposed parade. The Chief of Police may in his discretion consider any application for a permit to conduct a parade which is filed less than thirty (30) days prior to the date such parade is to be conducted. The application for such permit shall be made in writing on a form approved by the Chief of Police. In order that adequate arrangements may be made for the proper policing of the parade, the application shall contain the following information:

- (a) The name of the applicant, the sponsoring organization, the parade chairman and the addresses and telephone numbers of each.
- (b) The purpose of the parade, the date when it is proposed to be conducted, the location of the assembly area, the location of the disbanding area, route to be traveled and the approximate time when the parade will assemble, start and terminate.
- (c) A general description of the floats, marching units, vehicles, bands, including a description of any sound amplification equipment to be used.

- (d) Such other information as the Chief of Police may deem reasonably necessary.

**Sec. 5. Issuance or Denial of Permit.**

- (a) Standards for issuance. The Chief of Police shall issue a parade permit conditioned upon the applicant's written agreement to comply with the terms of such permit unless the Chief of Police finds that:
  - (1) The time, route and size of the parade will disrupt to an unreasonable extent the movement of other traffic.
  - (2) The parade is of a size or nature that requires the diversion of so great a number of police officers of the City to properly police the line of movement and the areas contiguous thereto that allowing the parade would deny reasonable police protection to the City.
  - (3) Such parade will interfere with another parade for which a permit has been issued.
- (b) Standards for denial. The Chief of Police shall deny an application for a parade permit and notify the applicant of such denial where:
  - (1) The Chief of Police makes any finding contrary to the findings required to be made for the issuance of a permit.
  - (2) The information contained in the application is found to be false or nonexistent in any material detail.
  - (3) The applicant refuses to agree to abide by or comply with all conditions of the permit.
  - (4) The inclusion of any vehicle which, by weight, locomotion or otherwise adversely affects the pavement of the streets.

**Sec. 6. Contents of Permit.**

- (a) The assembly area and time therefore;
- (b) The starting time;
- (c) The minimum and maximum speeds.
- (d) The route of the parade;
- (e) What portions of streets to be traversed may be occupied by such parade;
- (f) The maximum number of platoons or units and the maximum and minimum intervals of space to be maintained between the units of such parade;
- (g) The maximum length of such parade in miles or fractions thereof;
- (h) The disbanding area, and disbanding time;
- (i) The number of persons required to monitor the parade;
- (j) The number and type of vehicles, if any;
- (k) The material and maximum size of any sign, banner, placard or carrying device therefore;

- (l) That the materials used in the construction of floats used in any parade be of fire-retardant materials and be subject to such requirements concerning fire safety as may be determined by the Fire Chief;
- (m) That permittee advise all participants in the parade either orally or by written notice, of the terms and conditions of the permit, prior to the commencement of such parade;
- (n) That the amplification of sound permitted to be emitted from sound trucks, or bull horns, be fixed and not variable;
- (o) That the parade continue to move at a fixed rate of speed and that any willful delay or willful stopping of said parade, except when reasonably required for the safe and orderly conduct of the parade shall constitute a violation of the permit;
- (p) The means and methods of cleaning the public streets and sidewalks after the parade, and;
- (q) Such other requirements as are found by the Chief of Police to be reasonably necessary for the protection of persons or property.  
All conditions of the permit shall be complied with so far as reasonably practicable.

**Sec. 7. Appeal Procedure.**

Upon a denial by the Chief of Police of an application, the applicant may appeal from the determination of the Chief of Police within five days thereafter to the City Council by filing a written notice of appeal for hearing by the City Council at its next meeting. Upon such appeal, the City Council may reverse, affirm, or modify in any regard the determination of the Chief of Police.

In the event an application is not filed within the required time, the applicant may request a waiver of such requirement by the City Council at its next regular meeting, or at a special meeting which may be called prior thereto by said City Council to consider such matter, and the City Council, if it finds unusual circumstances and in the exercise of its sound discretion, may waive such requirement.

**Sec. 8. Officials to be Notified.**

Immediately upon the granting of a permit for a parade, the Chief of Police shall send a copy thereof to the following:

- a. Mayor
- b. City Manager
- c. Fire Chief

**Sec. 9. Revocation of Permit.**

Any permit for a parade issued pursuant to this Chapter may be summarily revoked by the Chief of Police at any time when by reason of disaster, public calamity, riot or other emergency, the Chief of Police determines that the safety of the public or property requires such revocation. Notice of such action revoking permit shall be delivered in writing to the permittee by personal service or by certified mail.

**Sec. 10. Fees.**

There shall be a fee of \$50.00 for each parade permit issued except that the fee may be waived for any parade sponsored in whole or in part by the City.

## **CHAPTER 32. HINTON HISTORIC LANDMARK COMMISSION**

- Sec. 1. Purpose.
- Sec. 2. Establishment; Membership; Terms.
- Sec. 3. Powers of the Commission.
- Sec. 4. Duties of the Commission.
- Sec. 5. Rules and Regulations.
- Sec. 6. Certificate of Approval.
- Sec. 7. Injunctive Relief.
- Sec. 8. Cooperation with Other Agencies.
- Sec. 9. Annual Report.
- Sec. 10. Monetary Charges.
- Sec. 11. Boundaries.
- Sec. 12. Violations.
- Sec. 13. Appeals.

### **Sec. 1. Purpose.**

This Chapter is adopted in order to preserve the National Register Historic District in the City of Hinton and historic structures located in the City which reflect elements of its cultural, social, economic, political and architectural history. This Chapter is designed to stabilize and improve property values in the District and to preserve specific buildings, structures or sites in the District, which are deemed to be of historic or architectural value, to foster civic beauty, to strengthen the local economy and to promote the use of the District for the education, pleasure and welfare of the citizens of Hinton.

### **Sec. 2. Establishment; Membership; Terms.**

There is hereby created a Historic Landmark Commission for the municipality which shall consist of five citizens, all of whom shall be residents and taxpayers of the City of Hinton. All shall be nominated by the Mayor and confirmed by the Council.

- (a) One member of the Commission first appointed shall serve for a term of five years; one member first appointed shall serve for a term of four years; one member first appointed shall serve for terms of three years; one member first appointed shall serve for a term of two years; and one member first appointed shall serve for a term of one year. Thereafter members shall be appointed for terms of five years each.
- (b) Vacancies shall be filled by nomination of the Mayor and confirmation of the Council for the unexpired term only.
- (c) Any member who ceases to reside in the City or who is absent without just cause from three consecutive regular meetings of the Commission shall be deemed to have resigned the position, and the Mayor, upon certification of nonresidence or absences, shall nominate to the Council a replacement member to fill the unexpired term.
- (d) Members of the Commission shall serve without salary or compensation. However, with prior written approval by the Mayor of such expenditures, the members of the

Commission are to be reimbursed by the municipality for all of their necessary and reasonable expenses actually incurred by them in the performance of their duties.

- (e) The Commission shall meet the first month of each year and elect a Chairman and Secretary. In the absence of the Chairman, the Secretary shall serve as the Chairman and shall appoint a temporary Secretary to serve in that capacity while the permanent Secretary acts as the Chairman. The commission shall meet at least quarterly and shall conduct such special meetings from time to time as may be called by the Chairman or by a majority of the Commission. All Commission meetings are subject to the Open Governmental Proceeds Act of the West Virginia Code, Chapter 6, Article 9A.
- (f) A record of the proceedings and actions of the Commission shall be made by the Secretary and shall be opened to public inspection at normal business hours at City Hall.
- (g) All actions taken by the Commission shall be done so only upon the affirmative vote of at least three members of the Commission.
- (h) The presence of 3 members of the Commission at any regular or special meeting of the Commission shall constitute a quorum for the conducting of business.
- (i) Members of the Commission shall be eligible for reappointment by the Mayor.

**Sec. 3. Powers of the Commission.**

The Commission shall have plenary power and authority, within the jurisdictional limits of the municipality and within the limits of available funds, to:

- (a) Make a survey of, and designate as historic landmarks, buildings, structures and sites which constitute the principal historical and architectural sites which are of local, regional, statewide or national significance. No building, structure, or site shall be deemed to be a historic one unless it has been prominently identified with, or represents, some major aspect of the cultural, political, economic, military or social history of the locality, region, state or nation, or has a major relationship with the life of a historic personage or event representing some major aspect of, or ideals related to, the history of the locality, region, state or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times;
- (b) Prepare a register of landmarks, buildings, structures and sites which meet the requirements of subdivision of this section, publish lists of such properties and, with the consent of the property owners, inspect such properties and from time to time and publish a register thereof from time to time setting forth appropriate information concerning the registered buildings, structures and sites;
- (c) With the consent of the property owners, certify and mark with appropriately designed markers, landmarks, buildings, structures and sites which it has registered;

- (d) Establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed;
- (e) Acquire by purchase, gift, or lease and administer registered landmarks and easements and interests therein, both real and personal;
- (f) Lease or sell property so acquired under terms and conditions designed to insure the proper preservation of the landmark in question;
- (g) Prepare and place markers to designate historic sites or structures in Hinton as well as the Hinton Historic District as already established;
- (h) Identify historical districts for registered landmarks and aid and encourage the municipality or county in which the district or landmark is located to adopt rules and regulations for the preservation of historical or architectural values;
- (i) Seek the advise and assistance of individuals, groups and departments and agencies of government who or which are conducting historical preservation programs and coordinate the same insofar as possible;
- (j) Seek and accept gifts, bequests, endowments and funds from any and all sources for the accomplishment of the functions of the Commission;
- (k) Seek the advice and assistance of individuals, groups and departments and agencies of government who or which are conducting historical preservation programs and coordinate the same insofar as possible;
- (l) Adopt rules and regulations concerning the operation of the Commission, the functions and responsibilities of its officers, employees, assistants and other personnel and such other matters as may be necessary to carry out the purposes of the article within compliance with the laws of the City of Hinton and State of West Virginia.
- (m) Adopts such other rules and regulations as may be deemed necessary to effectuate the purposes of this article, but no such rules and regulations shall be inconsistent with the provisions of this article or with any rules, regulations or guidelines of the U.S. Department of Interior and the W.V. Department of Culture and History.

**Sec. 4. Duties of the Commission.**

It shall be the duty of the Historic Landmark Commission to review any application to construct, alter, move, demolish or repair any landmark, buildings, structure or site within the Historic District and to approve or reject such application, if any such changes are visible or intended to be visible from an adjacent public-way or from the public spaces of the interior of the structure or building.

- (a) In reviewing an application and plan, the Commission shall give consideration to:
  - (1) The historical or architectural value or significance of the landmark, building, structure or site and its relation to the historic value of the surrounding area.

- (2) The relationship of the exterior architectural features of a designated structure to the rest of the structure and the surrounding area.
  - (3) The general compatibility of exterior design, arrangement, texture, color and materials proposed.
- (b) In the case of an application for repairs or alterations affecting the appearance of a structure which the Commission deems of value to the City that the loss thereof will be a great loss to the City, state or nation, the Commission shall endeavor to work out with the owner an economically feasible plan for the preservation of such structure.
- (c) It is the intent of this section that the Commission be strict in its judgment of plans for landmarks, buildings, structures or sites deemed to be valuable according to the studies performed for the historical or architectural value of the area. It is also the intent of this Section that the Commission shall be strict in its judgment of plans for new construction. The Commission shall promulgate such rules and regulations as it may deem appropriate, which comply with the standards set by the U.S. Department of Interior and the W.V. Department of Culture and History, concerning new construction, including, but not limited to the Secretary of the Interior's Standards for Rehabilitation and Guidelines from Rehabilitation, Historic Buildings.

#### **Sec. 5. Rules and Regulations.**

Any person, individual, firm or corporation proposing to construct, alter, move, demolish or repair any landmark, building, structure or site within the historic district and such changes are visible or intended to be visible from an adjacent public way or from the public spaces of the interior of the structure or building, shall file an application for the same with the City Building Inspector as well as the Historic Landmark Commission along with all maps, plats, plans and all other data concerning such construction. Each application shall include the following:

- (a) Alteration or Repair.

Describe clearly and in detail all work to be done. Include the following items where appropriate.

- (1) Sketches, photographs, specifications, manufacturer's illustrations, or other description of proposed changes to the building facade or roof, new additions, or site improvements. Drawings will be required for major changes in design for such items as roofs, facades, porches, or prominent architectural features.
- (2) Color schedule.
- (3) Color of brick and type of mortar to be used for masonry work.
- (4) Samples of proposed materials when the original material will not be retained.
- (5) Site information including the location of all large trees, parking areas, walls, fences, outbuildings, or other landscape features of note where major site improvements are proposed.

- (6) Landscape plan with measured distances for new parking areas or other major site improvements.

(b) New Construction.

Describe the nature of the proposed project. Include the following items were appropriate:

- (1) Site plan with measured distances.
- (2) Elevation drawings of each façade and specifications which clearly show the exterior appearance of the project.
- (3) Photograph of the proposed site.
- (4) Landscape plan.
- (5) Color schedule.
- (6) Samples or other description of materials to be used.
- (7) Drawings or other description of site improvements: fences, walls, walks, lighting pavement, patios, decks, etc.

(c) Demolition of Structures.

- (1) Described the structure and give the reason for demolition. Include a photograph.
- (2) Describe the proposed reuse of the site, including landscaping.

(d) Relocation of Structures.

- (1) Give the reason for the relocation. Include a photograph. If the structure is to be relocated within the District, describe any proposed changes.
- (2) Describe any site features which will be altered o may be disturbed, including foundation, walls, driveways, vegetation etc.

(e) General Information.

- (1) Property location.
- (2) Property Owner.
- (3) Owner's Address
- (4) Name, address and experience in historic restoration of the contractor, firm or person in charge of the construction.

- (f) Other data as required by the rules of the Commission.

A certificate of approval from the Commission is mandatory before the following may be undertaken within the Historic District: construction, moving, demolition, repair or alteration of any landmark, building, structure or site in any manner affecting the exterior appearance or the public space of the exterior of such landmark, building, structure or site, if such changes are visible from an adjacent publicway or in any manner affecting the interior of the structure or building if such changes are visible from the public spaces of the interior of the structure of the building. This certificate of approval is in addition to, and not in replacement thereof, of the building permit required elsewhere in this Code.

A certificate of approval from the Commission shall automatically expire, unless extended by the Commission if;

- (a) In the case of an application for the demolition or moving of a structure, the work has not commenced within six months or has not been completed within one year from the date of issuance of the certificate of approval.
- (b) In the case of an application for the construction of a new structure, the work has not commenced within six months from the date of the certificate of approval or is not completed within three years.

#### **Sec. 6. Certificate of Approval.**

Unless the Commission is satisfied that proposed construction, alteration or repair will not materially impair the historical or architectural value or significance of a landmark, building, structure or site, situated within the historic district, the Commission shall reject the application and deny the issuance of a certificate of approval.

The Commission shall file with the City Building Inspector its certificate of approval or rejection of all applications submitted to it for review. No building permit shall be issued and no work shall begin until such certificate shall have been approved. In the case of rejection, such certificate shall be binding on the City Building Inspector and no building permit shall be issued.

#### **Sec. 7. Injunctive Relief.**

Where there is any violation of this Chapter the Commission, or the City Building Inspector, shall through the City Attorney, institute appropriate action to prevent, enjoin, abate or remove such violation. In addition thereto, a violator may be required to restore the building or structure and its site to its appearance prior to the violation.

#### **Sec. 8. Cooperation with Other Agencies.**

The Commission shall cooperate with and coordinate its activities with the U.S. Department of the Interior and the West Virginia Department of Culture and History, the West Virginia Historical Society, Summers County Historical Society, and the West Virginia Antiquities Commission, with the view of developing a unified program for the identification, study, preservation and protection of all historic buildings, structures and sites in the municipality of Hinton.

#### **Sec. 9. Annual Report.**

The Commission shall submit an annual report of its activities to the City Council.

**Sec. 10. Monetary Charges.**

There shall be no monetary charge imposed on the applicant for the certificate of approval by virtue of this ordinance, however, fees associated with building permits shall apply.

**Sec. 11. Boundaries.**

The boundaries of the present Historic District shall be as follows:

ALL THAT PORTION OF THE TERRITORY EMBRACED IN THE CORPORATE LIMITS OF THE CITY OF HINTON, lying between the center line of Bluff Street, extended in a north-westerly direction to the Chesapeake and Ohio Railroad Right-of-way, following the Chesapeake and Ohio Railroad Right-of-Way (including the passenger station) along Front Street to and including the C & O Round House, thence in a westerly direction leading to and behind the C & O Freight Depot to a six-unit apartment building at the corner of Fifth Avenue and Summers Street, thence in a line behind the buildings located on the east side of Fifth Avenue to Ballengee Street, thence west behind the buildings located on the south side of Ballengee Street to the back of the buildings located on the east side of Fourth Avenue, thence behind the buildings located on the east side of Fourth Avenue to James Street; thence west behind the buildings located on the south side of James Street to the west side of Union Street at the southeast front corner of the Central Baptist Church property; thence around the left side, rear, and right side of the church property to the northwest front corner of the church property; thence north-westerly to Bluff Street to the Beginning.

**Sec. 12. Violations.**

Any person, firm or corporation, or agent of such, found guilty of constructing, altering, moving, demolishing, or repairing any landmark, building, structure or site within the Historic District where such changes are visible from a publicway or the public spaces of the interior of the structure without having secured the approval of the Commission as required by this ordinance shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars and costs, and every day any such violation shall continue to exist shall constitute a separate offense and shall be punishable as such hereunder.

**Sec. 13. Appeals.**

Any person or persons or firm or corporation, aggrieved by a decision of the Commission shall have the right of appeal concerning such decision to the Circuit Court of Summers County, West Virginia.

**CHAPTER 33. MISCELLANEOUS COMMISSIONS**

**Article I. Unsafe Building Commission**

- Sec. 1. Declaration of Nuisance.
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- Sec. 16. Board.
- Sec. 17. Term.
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**Article I. Unsafe Building Commission.**

**Sec. 1. Declaration of Nuisance.**

Any dwelling or other building unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or other conditions, or any building or structure, whether used for human habitation or not, which, because of conditions prevailing therein, is unsafe, unsanitary, dangerous or detrimental to the public welfare is declared to be a nuisance, and may be repaired, closed or demolished and such nuisance abated as provided in this Article.

**Sec. 2. Unsafe Buildings Commission; Created, Organization, etc.**

There is created an enforcement agency to be known as the Unsafe Buildings Commission. Such agency shall be composed of the Mayor, the City Inspector and one member at large, to be selected by and serve at the will and pleasure of the Mayor. The County Health Officer, or his representative, and the Fire Chief shall serve as ex-officio members of the Commission. The Mayor shall serve as Chairman and the Commission shall elect a Vice-Chairman. The City Manager shall serve as Secretary of the Commission. A majority of the Commission shall constitute a quorum. A permanent record shall be kept in the City Manager's Office and shall be open to inspection by any party in interest. The Commission shall have authority to make rules and regulations, not contrary to law, for the purpose of carrying into effect the purpose of this Article.

**Sec. 3. Right of Entry.**

In order to perform its duties effectively and protect the public interests, the Commission, or any member thereof, or any person delegated by the Commission for the purpose, shall have the authority to go upon and inspect any building or any part thereof, provided that such entrance and inspection

shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.

**Sec. 4. Same – Hearing Before.**

Upon information received from any person or as a result of its own investigation, the Commission may issue a complaint against any building and the owner thereof. Such complaint shall definitely locate the building, shall describe the conditions complained of and shall set a date and place for a hearing on the question of whether the building is unfit for human habitation or is unsafe, unsanitary, dangerous or detrimental to the public welfare. The complaint shall be served upon the owner in accordance with the law of the State of West Virginia, and shall, in addition thereto, be posted in conspicuous place on the premises affected by the complaint. Service shall be made at least ten (10) days prior to the hearing, except that in case of an emergency endangering the life or health of the occupants of the building or other parties, the time may be shortened. At such hearing the owner may appear in person or by agent or counsel, and may examine any witnesses who testify and may offer evidence in his own behalf. Either the Commission or the owner may have the entire evidence taken down and preserved and shall pay the expense thereof, but the question of who shall be finally liable therefore shall await the final determination of the cause. A lessee whose interests are substantially affected may appear and be heard in the same manner as the owner. In the case of the nonresidence of the owner or other circumstances requiring publication of notice, a copy of the complaint may be published in a newspaper published in the City once a week for three (3) successive weeks.

**Sec. 5. Same – Findings; Remedial Order; Performance.**

- (a) If the majority of the members of the Commission present at such hearing shall be of the opinion that the building in question is unfit for habitation or is unsafe, unsanitary, dangerous or detrimental to the public welfare, the Commission shall enter an order requiring that such building be closed or demolished, or, in a proper case, setting forth such repairs as are considered necessary in order to make the building reasonably suited for human habitation, or to make it safe and sanitary and not dangerous or detrimental to the public. The order shall fix a date when such work shall be begun and a date for its completion, which latter date may, for cause, be extended. The owner may, within the time fixed in the order therefore, notify the Commission of his intention to comply with the order, in which case the work shall be done under the supervision of the City Inspector. When the work has been completed in accordance with the order of the Commission, an order shall be entered approving the work and closing the case. If the owner shall fail to proceed with the work in the manner or according to the schedule set forth in the order, it shall be the duty of the Commission to take the work in hand and complete it as though the owner had never elected to perform it himself.
- (b) If within the time provided in the order the owner fails to notify the Commission of his election to do the work required, the Commission shall proceed to have such work done, either by contract or by the purchase of the necessary material and the employment of workers and equipment.

**Sec. 6. Same – Assessing and Collecting Cost.**

After the completion of the work, the Commission shall fix a date when the costs of such repairs, alterations, improvements or vacating and closing or removal or demolition shall be assessed and shall give the owner or his agent at least ten (10) days notice thereof, who may appear in person or by agent

or attorney, examine the account and question the whole of any items thereof. Such costs, after the sale of salvaged material is credited to the account, shall be personal obligation of the owner and a lien against the real property upon which such costs were incurred. A copy of the order making such assessment may be certified by the City Clerk and recorded in the Office of the Clerk of the County Court, in a book to be known as "Assessments of Costs of Repairs and Demolitions." Upon payment of the cost and interest, the owner shall be entitled to a release which may be recorded in the County Clerk's Office.

**Sec. 7. Injunction: Hearing by Circuit Court.**

The owner or lessee of the property shall have the right to apply to the Circuit Court of the County for a temporary injunction restraining the Commission pending final disposition of the cause, and a hearing shall be had by the Court within twenty (20) days, or as soon thereafter as possible, to enter such final order or decree as law and justice may require. Costs shall be imposed in the discretion of the Court.

**Sec. 8. Regulations not Exclusive.**

The authority and the procedure set forth in this Article shall not be construed as exclusive, but shall be in addition to other police powers possessed by the City for dealing with conflagrations, health conditions and other problems affecting the safety and welfare of the inhabitants of the City.

**Sec. 9. Penalties.**

- (a) Whoever shall contemptuously and in bad faith violate or fail to comply with any order of the Building Commission, shall, for each and every such violation and noncompliance respectively, be deemed guilty of a misdemeanor and punished as provided in Chapter I, Section 4 of this Code. Provided that no conviction shall be had hereunder without such order having been entered at an open session of the Building Commission wherein the violator was present, or without personal service of the order having been made upon the violator. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all violators shall be required to correct or remedy such violations or defects in a reasonable time. When not otherwise specified, each ten (10) days that prohibited conditions continue shall constitute a separate offense.
- (b) When any such structure is owned by a corporation rather than by an individual, then the officer of the corporation responsible for the maintenance of the structure shall be jointly and severally liable with the corporation hereunder.
- (c) The above penalties shall be in addition to other remedies of the Building Commission.

**Article II. Hinton Building Commission.**

**Sec. 10. Creation and Authority.**

There is hereby created a Hinton Building Commission pursuant to the provisions of West Virginia Code 8-33 (1968) as amended.

**Sec. 11. Members.**

The Hinton Building Commission shall consist of not less than three nor more than five members who shall be approved by the City Council upon the nomination of the Mayor.

**Sec. 12. Term.**

Each member of the Commission shall serve for a term of five years with the terms staggered so that no more than one member's term expires in any one year. No member may be removed from the Commission except for cause.

**Sec. 13. Powers.**

The Hinton Building Commission shall have all powers delegated to Building Commissions as itemized in West Virginia Code 8-33 (1968) as amended now and hereafter.

**Article III. Hinton Development Authority.**

**Sec. 14. Creation and Authority.**

There is hereby created a public corporation to be known as the Hinton Development Authority pursuant to the provisions of the West Virginia Code 7-12 (1986).

**Sec. 15. Purposes.**

The purposes for which the Hinton Development Authority is created are the same as those set forth in the West Virginia Code 7-12-2 (1986).

**Sec. 16. Board.**

The management and control of the Hinton Development Authority shall be vested in a Board of five persons who shall be residents of the City of Hinton. At least 1 of the members of the Board shall be either the Mayor or a member of the City Council if the Mayor chooses not to serve. Appointments to the Board shall be nominated by the Mayor and approved by the City Council and shall be drawn from business, industry and labor after considering the requests of any person, firm, unincorporated association or corporation who resides, maintains offices or has economic interests in the City.(2003)

**Sec. 17. Term.**

Each member of the Board shall serve for a term of 3 years except for the initial Board, 1/3 of whose members shall serve for 1 year and 1/3 of whom shall serve for 2 years. The terms of the Board thereafter shall be so staggered so that approximately 1/3 of the membership's terms will expire in any given year.

**Sec. 18. Removal.**

No member of the Board shall be removed by the City Council except for cause; provided, however, the City Council may remove that member of the Board who is either the Mayor or a member of the City Council should that member leave office.

**Sec 19. Powers.**

The Hinton Development Authority shall have such powers as are set forth in West Virginia Code 7-12 (1986) and as it may be hereafter amended.

1. In 1989 these various Commissions were all placed together in this Chapter for the first time.

**CHAPTER 34 - YARD SALES**

- Sec. 1. Definitions.
- Sec. 2. Permits and Fees.
- Sec. 3. Licensing.
- Sec. 4. Information to be Filed.
- Sec. 5. Yard Sales Not in Compliance with this Chapter.

**Sec. 1. Definitions.**

- (a) Yard sale shall mean and include all sales entitled "yard sale", "garage sale", "lawn sale", "porch sale", "attic sale", "basement sale", "rummage sale", "flea market sale" or other similar casual sale of tangible personal property where the public at large is or can be aware of said sale.
- (b) Goods are meant to include any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.
- (c) Person shall mean and include individuals, partnerships, voluntary associations and corporations.
- (d) Each and every day or part thereof in which a yard sale is conducted shall constitute a separate and distinct sale.

**Sec. 2. Permits and Fees.**

It shall be unlawful for any person to conduct a yard sale in the City without first filing with the City Manager the information hereinafter specified and by obtaining from such City Manager a license to do so, to be known as a "Yard Sale License". The fee for such a license shall be \$2.00.

**Sec. 3. Licensing.**

Such license shall be issued to any person only 8 times within any 12 month period. Each license issued under this Chapter must be prominently displayed as to be seen from the street or sidewalk upon which the yard sale is conducted throughout the entire period of the licensed sale. The permit is good for 2 days. (2007)

**Sec. 4. Information to be Filed.**

The information to be filed with the City Manager pursuant to this Chapter shall be as follows:

- (a) Name of person, firm, group, corporation, association or organization conducting said sale.
- (b) Name of owner of the property on which said sale is to be conducted and written consent of owner if applicant is other than owner.
- (c) Location at which sale is to be conducted.

- (d) Date of sale.
- (e) Date and nature of any past sale.
- (f) Relationship or connection applicant may have had with any other person, firm, group, organization, association or corporation conducting said sale and the date or dates of such sale.
- (g) Whether or not applicant has been issued any other vendor's license by any local, state or federal agency.
- (h) Sworn statement or affirmation by the person signing that the information therein given is full and true and known to him to be so.

**Sec. 5. Yard Sales Not in Compliance with this Chapter.**

Any yard sale which, because of duration of sale or for any other reason, is not in compliance with this Chapter shall be construed to be a business and shall be licensed and taxed pursuant to all other applicable Sections of this Code.

Whereas, pursuant to the authority contained in Chapter 8, Article 24 of the Code of West Virginia of 1731, as amended, the City of Hinton, Summers County, West Virginia ("the City") previously created the Municipal Planning Commission for the City of Hinton (the "Commission") for the purposes, among other things, of improving the present health, safety, convenience and welfare of the citizens of the City and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highways, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that growth of the community is commensurate with and promotive of the efficient and economical use of public funds; and

Whereas, the Commission, after many meetings, discussions, and due deliberation, determined a need for a comprehensive zoning ordinance to effectuate the purpose of the Commission; and

Whereas, pursuant to Chapter 8, Article 24, Section 16 et seq., of the code of West Virginia of 1931, as amended, the Commission drafted a comprehensive zoning ordinance for the City, known as the City of Hinton Municipal Zoning Ordinance ("Zoning Ordinance") which has, its purpose, among other things, securing adequate light, air, convenience of access, and safety, comfort, morals, convenience, and general public welfare; planning the future development of the city to the end that highway systems be carefully planned, that new community centers grow only with adequate highways, utility, health, educational, and recreational facilities; that the ends of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that growth of the community is commensurate with and promotive of the efficient and economical use of public funds; and

Whereas, the Zoning Ordinance has been considered by the City Council of the City of Hinton at not less than two meetings of the Council with at least one week intervening between each meeting, and all other applicable procedures for the adoption of an ordinance, as set out in Chapter 8, Article 11, Section 4 of the Code of West Virginia of 1931, as amended, as well as those procedures for adoption of a zoning ordinance specifically set out at Chapter 8, Article 24, Section 16, et seq., have been followed.

NOW THEREFORE, BE IT ORDANIED BY THE CITY COUNCIL OF THE CITY OF HINTON THAT, the ordinance known as the City of Hinton Municipal Zoning Ordinance be adopted in its entirety and codified at Chapter 35, Section 1, through 57, of 1989 Hinton City Code.

Adopted by the City of Hinton on this \_\_\_\_\_day of \_\_\_\_\_, 1996  
James A Leslie, Jr.  
Mayor of the City of Hinton

**CHARTER 35**

**CITY OF HINTON MUNICIPAL ZONING ORDINANCE**

**Article I. Title and Purpose**

- Sec. 1. Title.
- Sec. 2. Purpose.

**Article II. Definitions**

- Sec. 3. General.
- Sec. 4. Inclusions.
- Sec. 5. Definitions.

**Article III. Interpretation and Conflicts**

- Sec. 6. Interpretation of the Ordinance.
- Sec. 7. Conflicts with Other Laws.
- Sec. 8. Existing Uses Safeguarded.

**Article IV. Zoning Districts and Map Establishment**

- Sec. 9. Names of Zoning Districts.
- Sec. 10. Official Zoning Map or Maps.
- Sec. 11. Rules for Interpretation of District Boundaries.
- Sec. 12. Application of District Regulations.

**Article V. General Provisions**

- Sec. 13. Nonconforming Uses, Structures, and Lots.
- Sec. 14. Prohibited Uses and Performance Standards.
- Sec. 15. Yard Projections and Exceptions.
- Sec. 16. Parking, Driveways and Loading Facilities.
- Sec. 17. Landscaping.
- Sec.18. Flood Plan Requirements.
- Sec.19. Waste Disposal.
- Sec. 20. Mobile Homes (See Dwelling, Portable).
- Sec. 21. Construction Materials.
- Sec. 22. Structure to Have Access.
- Sec. 23. Street Construction Standards.
- Sec. 24. Accessory Buildings.

- Sec. 25. Site Plans.
- Sec. 26. Fencing.
- Sec. 27. Satellite Dishes.
- Sec. 28. Bed and Breakfast Establishments.

**Article VI. Use Regulations**

- Sec. 29. Purpose.
- Sec. 30. Parking Regulations.

**Article VIII. Administration of the Ordinance**

- Sec. 31. Administration and Enforcement.
- Sec. 32. Requirements of Permits.
- Sec. 33. Application for Permits.
- Sec. 34. Issuance of Permits.
- Sec. 35. Compliance with Plan.
- Sec. 36. Renewal of Approval.
- Sec. 37. Fees.

**Article IX. Board of Zoning Appeals**

- Sec. 38. Creation, Membership, Team and Vacancies.
- Sec. 39. Officers and Quorum.
- Sec. 40. Rules and Regulations.
- Sec. 41. Powers and Duties .
- Sec. 42. Meetings.
- Sec. 43. Appeals .
- Sec. 44. Hearing and Appeal.
- Sec. 45. Staying of Work on Premises.
- Sec. 46. Standards for Review of Proposed Exceptions.
- Sec. 47. Appeals from Board of Zoning Appeals.

**Article X. Amendments**

- Sec. 48. Amendment.
- Sec. 49. Petitions for Change of Zoning Regulations.
- Sec. 50. Planning Commission Referral.
- Sec. 51. Public Hearing.
- Sec. 52. Amendment by Council.

**Article XI.**

- Sec. 53. Violation.
- Sec. 54. Injunctions.
- Sec. 55. Penalties.
- Sec. 56. Validity.
- Sec. 57. Effective Date.

**Article I. Title and Purpose.**

**Sec. 1. Title.**

This Ordinance shall be known, cited and referred to as the City of Hinton Municipal Zoning Ordinance.

**Sec. 2. Purpose.**

The zoning regulation and districts as herein described have been established for the purpose of securing adequate light, air, convenience of access, and safety from fire, flood and other danger; that congestion in the public streets may lessened or avoided; that the public health, safety, comfort, morals, convenience and general public welfare may promoted; that the future development of the Municipality may be planned to the end that highway systems be carefully planned, that new community centers grow only with adequate highways, utility, health, educational, and recreational facilities; that the needs of agriculture, industry and business be recognized in future growth; that residential areas provide healthy surroundings and family life; and that the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

**Article II. Definitions.**

**Sec. 3. General.**

Unless a contrary intention clearly appears, the following words and phrases shall have for the purpose of this ordinance the meanings given in the following clauses.

**Sec. 4. Inclusions.**

For the purposes of the Ordinance, words and terms used herein shall be interpreted as follows:

- (a) Words used in the present tense include the future.
- (b) The singular includes the plural.
- (c) The plural includes the singular.
- (d) The word “person” includes a corporation, unincorporated associated, or a partnership as well as individual.
- (e) The word “lot” includes the word “plot” or “parcel”.
- (f) The term “shall” is always mandatory
- (g) The word “ building” includes the word “ structure” and shall be construed as if followed by the phrase “or part “thereof” .
- (h) The word “street” means a way for vehicular traffic, whether designated as a court, boulevard, avenue, expressway, highway, lane, and road, or however otherwise designated.
- (i) The word “watercourse” includes channel, creek, drain, dry run, spring and streams.

**Sec. 5. Definitions.**

- (a) **Accessory Building:** A building subordinate to the principal building on a lot, used for purposes customarily incidental to those of the principal buildings, and not to be used for residential purposes unless such building was originally designated for residential use, as conjunction with institution.
- (b) **Accessory Use:** A use subordinate to the principal use of land or of a building on a lot and customarily incidental thereto.
- (c) **Apartments:** A room or group of rooms in an apartment house or an apartment hotel designated for and occupied exclusively as a residence for only one family.
- (d) **Apartment House:** See Dwelling, Multiple.
- (e) **Attached Dwelling:** See Dwelling, Attached.
- (f) **Board:** The Board of Zoning Appeals of the Municipality.
- (g) **Building:** A building is any structure which is built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- (h) **Building Area:** The ground area utilized by the buildings on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than 18 inches from the walls of the buildings; steps, one story open porches, bay windows, and balconies not extending through more than one-story and not projecting more than 5 feet from the walls of the buildings; balconies and terraces.
- (i) **Building Line:** The line which establishes the minimum depth of front yard for the particular district as measured from the right-of-way line.
- (j) **Commission:** The word “Commission” shall refer to the Municipal Planning Commission.
- (k) **Council:** The word “Council” shall refer to the City Council.
- (l) **County Commission:** The term “County Commission” shall refer to the County Commission of Summers County.
- (m) **District:** An area of the Municipality delineated by the Planning Commission.
- (n) **Duplex:** A two-family residential structure, the residential units arranged side by side having a common or party wall.
- (o) **Dwelling:** A dwelling unit.
- (p) **Dwelling, Attached:** One of two or more residential buildings having common or party wall separating dwelling units.

- (q) Dwelling, Detached: A residential buildings entirely surrounded by open space on its own building lot.
- (r) Dwelling, Multiple: A building constructed to contain three or more dwelling units, with the number of families in residence not exceeding the number of dwelling units provided. For purpose of this Ordinance, apartment houses and townhouses are multiple dwellings.
- (s) Dwelling, Portable: A modular unit built on a chassis, having wheels or designed to be transported on wheels, designed to be used as a dwelling when attached to a permanent foundation and when connected to the required facilities.
- (t) Double-Wide or Triple-Wide Portable Dwelling: A portable dwelling consisting respectively of two or three sections combined horizontally at the site to form a single dwelling, while still retaining their individual chassis for possible future movement.
- (u) Dwelling, Single: A residential dwelling unit, other than a portable dwelling, designed for and occupied by one family only.
- (v) Dwelling, Two Family: A residential building containing not more than two dwelling units, arranged side by side, designed to be occupied by not more than two families.
- (w) Dwelling Unit: One room, or rooms connected together, constituting a separate independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.
- (x) Exception: See Special Exception.
- (y) Family: Any number of individuals living together and sharing meals as a single housekeeping unit.
- (z) Floor Area, Gross: The sum of the gross horizontal area of the several floors of the building measured form the exterior faces of the exterior walls, to include basements but not to include unfinished attics. Floor area for use in determining off-street parking requirement shall not include space devoted to storage. Gross floor area includes covered porches, decks and patios.
- (aa) Floor Area, Habitable: The floor area within outside walls, exclusive of basements and open porches, and excluding garages, accessory buildings and hallways serving more than one dwelling unit.
- (bb) Floor Area, Ratio: The ratio of the floor area to the lot areas.
- (cc) Height of Building: A building's vertical measurements from the main level of the ground surrounding the building to a point midway between the highest and lowest points of the roof, provided that chimneys, spires, towers, elevator penthouses, tanks, and similar projections shall not be included in calculating the height.

- (dd) Home Occupation: Any occupation or profession carried on by a member of the immediate family residing on the premises, without advertising, in connection with which there is used no sign or display that will indicate from the exterior that the building is being used in whole in part for any purpose other than that of a dwelling; that there is not commodity sold upon the premises; no person is employed other than a member of the immediate family residing on the premises. A professional person may use his residence for infrequent consultation, emergency treatment, or performance of religious rites, but not for the general practice of his profession.
- (ee) Lot: For the purposes of this Ordinance, a lot is a parcel of land of at least sufficient size to meet minimum zoning requirements for the zoning district within which it lies for use, coverage and area, and to provide such yards and other open spaces as are herein required, Such lot shall have frontage on an “improved public street” or “approved private street”.
- (ff) Lot Area: The lot area is the area of a horizontal plane bounded by the front, side and rear lot lines of building lot, and for purposes of this Ordinance, shall include any portion of an easement which may exist within such property lines.
- (gg) Lot Depth: The lot depth is the length of lines connecting the mid-points of the front and rear lot lines.
- (hh) Lot Lines: A lot line is a boundary line of a lot.
- (ii) Lot Width: The lot width is the length of a line (drawn perpendicular to the lot depth line) connecting the side lot lines.
- (jj) Mall: Group of two or more business establishments bordering on and having customer entrances from an enclosed common area. See also: Shopping Center.
- (kk) Mobile Home: See Dwelling, Portable.
- (ll) Modular Unit: A factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure, The term is intended to apply to major assembles, and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub-elements incorporated into a structure at the site.
- (mm) Municipal: The word “Municipal” or “Municipality” shall refer to the City of Hinton.
- (nn) Nonconforming: A building use, or lot, which by reason of design, size or use does not conform with the requirements of the district, or districts, in which it is located.
- (oo) Open Spaces: Open spaces is that part of the including courts or yards which is open and unobstructed from its lowest level to the sky, which is accessible to all residents upon a building lot and which is not part of a roof.
- (pp) Parking Spaces: A reasonable level space available for the parking of one motor vehicle, not less than 9 feet wide and having an area not less than 180 square feet exclusive of passageway, driveways, or other means of circulation or access.

- (qq) Public Service Corporation: A private utility corporation franchised to supply utility services to the public.
- (rr) Sectional Home: A dwelling made of two or more modular units transported to the home site, put on a foundation and joined to make a singular dwelling.
- (ss) Shopping Centers: Group of two or more business establishments each having its outside customer entrance to a shared parking area, which has limited designated entrance points. See also: Mall.
- (tt) Sign: A sign is any name, nameplate, billboards, poster, panel, display, illustration, structure or device used for visual communication, which is affixed, painted or represented directly or indirectly upon a building the subject thereof to the attention of the public or advertising business, structure, or use of land.
- (uu) Special Exception: A special exception is use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in such zoning district as special exceptions in accordance with Section 46 herein.
- (vv) Street: A public or privately owned right-of-way, serving as a mean for vehicular and pedestrian travel, and furnishing access to abutting properties.
- (ww) Street or Right-of-way Line: The line dividing a lot from a street.
- (xx) Structure: Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things structures include buildings, mobile homes, walls, fences, billboards and poster panels.
- (yy) Variance: A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.
- (zz) Yard: The required open, unoccupied space on the same lot with a building, open unobstructed from the ground to the sky, except for obstruction by projections permitted under Section 15.
- (aaa) Yard, Front: A yard extending the full width of the lot along the street line, and not less in depth, measured from the street line, than the minimum required in each district.
- (bbb) Yard, Side: A yard extending along the side lot line from the front yard to the rear yard, and not less in width, measured from the side lot line, than the minimum required in each district.

(ccc) Yard, Rear: A yard extending the full width of the lot along the rear lot line, and not less in depth, measured from the rear lot line, than the minimum required in each district.

(ddd) Zone: See District.

Article III. Interpretation and Conflicts.

**Sec. 6. Interpretation of the Ordinance.**

In interpretation and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety, morals, or general welfare.

**Sec. 7. Conflicts with Other Laws.**

Where the provisions of this Ordinance issue greater restrictions than those of any other Ordinance or regulations, the provisions of the Ordinance shall be controlling. Where the provisions of any statute, other Ordinance or regulations impose greater restrictions than this Ordinance, the provisions of such statute, ordinance or regulations shall be controlling.

**Sec. 8. Existing Uses Safeguarded.**

Nothing in this ordinance shall be deemed to prohibit the continuance of the use of any land, building or structure for the purpose for which such land, building, or structure is used at the time the ordinance takes effect, as provided in Section 13: Nonconforming Uses, Structures and Lots, of this ordinance.

**Article IV: Zoning Districts and Maps Establishment.**

**Sec. 9. Names of Zoning Districts.**

The City is divided into following districts:

Recreational	R-
Residential	R-1
Office and Institutional	O-1
Commercial I	C-1
Commercial II	C-2
Industrial	I-1
Flood Plain	F-P

**Sec. 10. Official Zoning Map or Maps.**

The City of Hinton is hereby divided into districts as shown on the Official Zoning Map or Maps of the City of Hinton which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this ordinance.

The Official Zoning Map or Maps shall be identified by the signature of the Mayor, attested by the City Clerk, and bearing the seal of the City of Hinton under the following words:

This is to certify that this is the Official Zoning Map or Maps referred to in Section 10, Hinton Zoning Ordinance.

No changes of any nature shall be made in the Official Zoning Map or Maps or matter shown thereon except in conformity with the procedures set forth in this ordinance.

Regardless of the existence of copies of the Official Zoning Map or Maps which may from time to time be made or published, the Official Zoning Map or Maps which shall be located in the office of the City Clerk shall be final authority of the current zoning status of land and water areas, buildings, and other structures in the Municipality.

**Sec. 11. Rules for Interpretation of District Boundaries.**

Where uncertainly exists as to the boundaries of districts as shown on the Official Zoning Map, the following rule shall apply:

- (a) Boundaries indicated as approximately following the center lines of the streets, highways, or alleys shall be construed to follow such centerlines;
- (b) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (c) Boundaries indicated as approximately following Municipal limits shall be construed as following Municipal limits;
- (d) Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 3 above shall be so construed. Distance not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;
- (e) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or Maps, or in other circumstances not covered by Subsections (a) through (d) above; the Board of Zoning Appeals shall interpret the district boundaries.

**Sec. 12. Application of District Regulations.**

The regulations set by this Ordinance within each district shall minimum regulations and shall apply uniformly to each class or kind of structure or land, and particularly, except as hereinafter provided;

- (a) No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, and reconstructed, moved or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.
- (b) No building or other structure shall hereafter be erected or altered:
  - (1) To exceed the height;
  - (2) To accommodate or house a greater number of families;
  - (3) To occupy a greater percentage of lot area;

- (4) To have narrower or smaller rear front yards, side yards, or other open spaces; than herein required; or in any other manner contrary to the provisions of this ordinance.
- (c) No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building or for the purpose of complying with the ordinance, shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building.
- (d) No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

### **Article V. General Provisions**

#### **Sec. 13. Nonconforming Uses, Structures, and Lots.**

- (a) The lawful use of any building, structures, or land existing on the effective date of this ordinance, or authorized by an improvement location permit issued prior thereto, may be continued, although such use does not conform with the provisions of this ordinance.
- (b) Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restriction on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such may be continued so long as it remains otherwise lawful. Subject to the following provisions:
  - (1) No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity
  - (2) Should such nonconformity structure or nonconformity portion of structure be destroyed by any means to any extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
  - (3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to zoning regulations.
- (c) If a nonconformity use has been abandoned, any future use of such land, building or structure shall be in conformity with the provisions of the ordinance regulating the use in the district in which such land, building or structure may be located; provided, however, that abandonment of any particular agricultural or manufacturing process shall be construed as abandonment of agricultural or manufacturing use.
- (d) In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lot must be in separate ownerships

and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Zoning Appeals. If two or more lots, combinations of lots and portions of lots, with continuous frontage in single ownership are record at the time passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for purpose of this ordinance.

**Sec. 14. Prohibited Uses and Performance Standards.**

- (a) No use shall be permitted which is noxious, or offensive in the immediately surrounding area by reason of odor, dust, smoke, gas, vibration, illumination, or noise, or which constitutes a public hazard whether by fire, explosion or otherwise. In determining whether a proposed use is noxious, hazardous, or offensive, the following standards shall apply. The proposed operations shall not:
- (1) Constitute any nuisance whatsoever beyond the boundary of the site on which the use is located by reason of dissemination of noxious, toxic, or corrosive, fumes, smoke odor, or dust.
  - (2) Result in noise or vibration exceeding the average intensity of noise or vibration occurring from other causes at the boundary line.
  - (3) Endanger surrounding areas by reason of fire or explosion.
  - (4) Produce objectionable heat, glare, or radiation beyond the property line.
  - (5) Result in electrical disturbance in nearby residence, or adversely affect the operation of equipment other than on the property on which the disturbance is located.
  - (6) Discharge any untreated sewage, or industrial waste into any stream, or otherwise contribute to the pollution of surface or underground waters.
  - (7) Create any other objectionable condition in an adjoining area which may endanger public health and safety or be detrimental to the proper use of the surrounding area.
- (b) Where requested by the Municipality, an applicant for a proposed use shall demonstrate as a condition of approval that adequate provisions will be made to reduce and minimize any objectionable elements to a degree necessary to insure that the proposed use will not be noxious, hazardous or offensive as defined above. If required, the applicant shall submit supplemental information, plan and impartial expert judgments, and the Municipality may require that experts advise of official agencies or private consultants and such reasonable test as are deemed necessary, the costs of which shall be borne by applicant.

**Sec. 15. Yard Projections and Exceptions.**

- (a) No building and no part of a building shall be erected within or shall project into the front yard except: cornices, eaves, gutters or chimneys projecting not more than 18 inches; steps and terraces, except as otherwise provided in this ordinance.
- (b) No building and no part of a building shall be erected within or shall project into the side yard except: cornices, eaves, gutters or chimneys projecting not more than 18 inches; steps and terraces, except as otherwise provided in this ordinance.
- (c) No building and no part of a building shall be erected within or shall project into the rear yard except: cornices, eaves, gutters or chimneys projecting not more than 18 inches; steps, bay windows, porches and balconies, not projecting more than 5 feet onto required set back.
- (d) No building and no part of a building shall be erected within or shall project into a front setback, rear yard or side yard as established by prevailing conditions in the majority of the structure in the block where said conditions are erected except as provided by this ordinance.

**Sec. 16. Parking, Driveways and Loading Facilities.**

In order to minimize traffic and hazard, control street access in the interest of public safety and encourage the appropriate development of street or highway frontage:

- (a) No parking lot or area for off-street parking or for the storage or movement of motor vehicles shall abut directly onto a public street or highway and each such area shall be separated from the street or highway by a raised curb, planting strip, wall or other suitable barrier against unchanneled motor vehicle entrance or exit, except for necessary access ways.
- (b) Each separate use, planned business center or similar grouping of buildings shall have not more than two access ways to any one public street or highway for each 300 feet of frontage and, where practicable, access to parking areas shall be provided by a common service driveway or minor street in order to avoid direct access on a major street or highway. No such accessway shall be less than 20 feet or more than 30 feet in width, and the location of any accessway or driveway to a public street shall be in accordance with regulations of the Municipality. Such access way shall comply with any more restrictive requirements of the West Virginia State Department of Highways relative thereto.
- (c) In the case of a required buffer area, no more than one entrance and one exit shall be permitted from a lot to each street on which the lot abuts, except that an additional entrance and exit through a buffer area may be permitted when authorized as a special exception.
- (d) Where practicable (1) all parking, loading, or service areas used by motor vehicles shall be located entirely within the lot lines of the property, (2) all accessways to a public street or highway shall be located not less than 50 feet from the intersection of any street lines, and (3) all streets and access ways shall be designed in a matter conducive

to safe exit and entrance and shall conform to the highway specifications and subdivision requirements of the Municipality.

- (e) An outdoor parking space is part of the open space on the lot on which it is located, except parking spaces in front yards of a residential use are permissible only as special exceptions.
- (f) Adequate off-street loading and unloading space with proper access from a street, highway, common services driveway, or alley shall be provided on any lot on which a building requiring frequent service by delivery-type trucks is located. All such areas for the loading and unloading of delivery trucks and other vehicles and for the servicing of establishments or shops by adequate and unobstructed access from the street, service driveways or alley and shall be so arranged that they may be used without blocking or otherwise interfering with the use of automobile accessways, parking facilities or pedestrian ways.
- (g) Automotive vehicles, recreational vehicles, boats, trailers, or other similar equipment of any kind or type without current license plates and current state inspection stickers shall not be parked or stored on any residentially zoned property other than in a completely screened space, garage, or carport.

**Sec. 17. Landscaping.**

The land surrounding any permitted use shall be landscaped except for paving areas, such as walkways, accessways, play areas, and necessary parking and service areas, and such apartment house or nonresidential use shall make such other suitable screening provisions as is necessary safeguard the character of an adjacent residential area or development. All plants, fences, walls or similar structures used for screening shall be installed in such a manner as to maintain the intent of the yards' areas and shall be in harmony with the general architectural design of the principal building or buildings on the lot; and shall not interfere with safe movement or vehicular and pedestrian traffic by obstructing vision.

**Sec. 18. Flood Plan Requirements.**

In any area located within 100 feet of a stream, pond, or similar body of water, or in any other location subject to periodic flooding or inundation, the following regulations shall apply:

- (a) No use other than those permitted by and in compliance with the flood plan ordinance previously adopted by the City of Hinton.
- (b) Any use other than agriculture, a park, or any outdoor recreational use shall be subject to review and approval by the Board of Zoning Appeals and shall be authorized only as a special exception, provided that it shall be determined that any such use or structure as is authorized is appropriate to the area and will not unduly obstruct the natural passage of flood water or result in damage to persons or property.

**Sec. 19. Waste Disposal.**

In the case of any use other than a single or two-family dwelling, all trash, rubbish and debris of every kind and nature shall be stored within the buildings or screened from public view until such time as it

shall be scheduled for collection and disposal and shall be collected and disposed of as often as may be necessary.

**Sec. 20. Mobile Homes** (See Dwelling, Portable).

- (a) Mobile homes (portable dwelling) shall not be used for residential, business, storage or other purposes except in a mobile home park specifically created for that purpose, as defined by Chapter 23, Section 1, et seq. of the City of Hinton Code.
- (b) An application for creation of a mobile home park will be made to City Council through the Municipal Zoning Officers and will be accompanied by a Site Plan. The Zoning Office is charged with the task of reviewing the Site Plan in light of FHA requirements, West Virginia State Board of Health Regulations and The Hinton City Code and with presenting specific comments on the proposal to Council.

**Sec. 21. Construction Materials.**

Exterior cement and concrete block construction at and above first floor levels shall be faced with other construction materials, such as metal, wood, stone and brick. Plastics, fiber, glass, and similar materials are not permitted either as facing or as outer wall materials except as Special Exceptions (e.g., solar heating usage). Vinyl siding, in simulation of wood or aluminum siding, is permitted. Exterior cinder and concrete block surfaces of walls (retaining and privacy), foundations, or basements shall be faced with other permitted materials or be painted.

**Sec. 22. Structures to have Access.**

Every building hereafter erected or moved shall be on a lot adjacent to a public street or improved private street and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

**Sec. 23. Street Construction Standards.**

- (a) Streets hereinafter constructed in the City shall meet the following standards prior to being accepted by City Council as an “improved public street”, or an “approved private street”, such designation being necessary before the Zoning Officer may issue building permits and before municipal service vehicles may operate over said streets.
- (b) All streets shall have:
  - (1) A minimum wearing surface 18 feet wide, not including shoulders.
  - (2) An aggregate base of crusher run stone at least six (6) inches deep, to include shoulders.
  - (3) A surface of at least two (2) inch base bottom and one (1) inch wearing course of asphalt or a wearing surface of at least three(3) inches of asphalt or concrete construction of comparable strength with crown of at least one-fourth (1/4) inch per foot.
  - (4) A shoulder at least two (2) feet wide on either side.

- (5) An adequate drainage system.
- (6) An overall right-of-way width at least thirty (30) feet wide.
- (7) The approval of the City Engineer or Street Supervisor concerning each of the above.

**Sec. 24. Accessory Buildings.**

Use of accessory buildings is permitted in all districts. Front and side yard size limitations apply with the further provision that no accessory or detached structure is permitted to be closer to a street than the principal structure. A setback of three (3) feet from the rear and side boundary is required. No accessory building shall be erected in any required yard and no accessory building shall be erected within five (5) feet of any main building. A building permit is required for each accessory building.

**Sec. 25. Site Plan.**

- (a) As a prerequisite to the issuance of a building permit, a site plan is required for any construction in a commercial district, for any multiple dwelling, and for any multiple construction. A site plan shall also be required for a single family dwelling when the Municipal Zoning Officer determines there is a need for one.
- (b) A site plan shall portray the existing site conditions, to include terrain relief, existence of rock ledge, sink holes, structures, and trees six (6) inches in diameter and greater. It shall portray the planned end result, including landscaping, screening or buffering, disposition of excess materials from the site and measures to prevent any harm to other area properties.

**Sec. 26. Fencing.**

Fencing and retaining or privacy walls in excess of four (4) feet in height require a permit, for which a fee shall be paid. If, in the judgment of the Municipal Zoning Officer, the proposed fence or wall will not be in consonance with proper neighborhood development, the permit will be denied. Materials for permanent fences shall be durable; materials such as fencing and poultry wire are not permitted.

**Sec. 27. Satellite Dishes.**

A satellite dish shall be considered an accessory structure and, as such require a building permit and approval of the Zoning Officer in the same manner as an accessory building.

**Sec. 28. Bed and Breakfast Establishments.**

A Bed and Breakfast Establishment shall be a home occupation as defined in this Zoning ordinance, shall be further defined as a private home which offers no more than three bedrooms per night public accommodation.

**Article VI. Use Regulations.**

**Sec. 29. Purpose.**

The purpose of this Article is to define the permitted principal, accessory and special uses of each Zoning District in The City of Hinton.

<u>District</u>	<u>Development Objective</u>	<u>Permitted Principal</u>	<u>Permitted Accessory</u>	<u>Special</u>
Recreational	To identify areas of the city when predominantly recreational development has taken place will be encouraged in accordance to The Comprehensive Plan	Open areas or recreational areas	Athletic fields, basketball courts, tennis courts, picnic shelter, swimming pools or any other Similar improvement	Other recreational uses
Church, R-1 Sunday and Residential	To identify those areas in in the City where predominantly low-density residential development has taken and will be encouraged in accordance with the Comprehensive Plan	Any use permitted in recreational pools and structures customarily appurtenant to a principal permitted use, including home gardening but not the raising of livestock or poultry, or any any similar objectionable activity.	Private Single-Family detached dwelling	Swimming in recreational other places of worship Planned Residential Development public park, playground firehouse and library.
Home Occupation. Bed and Breakfast	To protect the areas from the intrusions of incompatible land uses.	With 3 bedrooms. Public schools, community buildings, and other similar uses.	Duplex.	

<u>District</u>	<u>Development Objective</u>	<u>Permitted Principal</u>	<u>Permitted Accessory</u>	<u>Special</u>
O-1 Office and Institutional	To identify areas within The City where office institutions, and higher density residential construction will be encouraged.	Any use permitted in R-1 Multi-family residential development professional and business offices. Banks and investments houses. Hospitals, nursing homes, medical clinics florist shops. Club or lodge halls private or commercial schools. Drug stores and eating establishments. Veterinarian, animal hospitals.	Accessory uses incidental to the principal permitted use.	Recreation uses.

District: C-1 Commercial

Development Objectives: To identify and concentrate retail commercial activity to serve the needs of the residents of the city.

Permitted Principal: Any permitted in O-1 Appliance sales and repairs. Banks and other financial institutions. Barber shops and beauty parlors. Book and stationary stores. Cigar stores. Department stores and specialty stores. Drug stores. Dry goods and variety stores. Dry cleaning and clothes pressing establishments provided that nonflammable cleaning agents are used. Eating and drinking places. Entertainment facilities. Florist. Funeral Homes. Hotels. Motels. Indoor amusement enterprises including theaters, billiards, or pool parlors, bowling alleys or similar places of assembly. Laundries, coin operated or commercial. Locksmiths. Offices, business and professional. Paint and wallpaper stores. Photographic, equipment, supplies and services. Professional, business and technical schools, and schools and studios for photography, art, music and dance. Radio and television sales and repair. Parking lots and parking garages. Shoe repair shops. Soda fountains. Sporting and athletic goods. Tailors and dressmakers. Telephone exchanges and installations. Wearing apparel stores. Commercial/residential mixed use buildings. Automobiles entirely within buildings.

Permitted Accessory: Accessory uses and buildings customarily appurtenant to a principal permitted use, such as incidental storage. Off-street parking and loading facilities. Signs. Locksmiths. Paint and wallpaper. Photographic equipment, supplies and services.

Special: Multi-family dwelling. Rooming house. The following limited light industrial uses when totally conducted within enclosed buildings: Manufacturing apparel, jewelry, toys, and novelties, photo processing, printing and laboratories. Club or lodge halls. Advertising signs. Car washing establishments, gasoline stations, automobile repair garages, automobile service stations. Churches of assembly. Small manufacturing firms, in an enclosed building. Garden apartments. Day care centers. Nursing homes. Social organizations.

District: C-2 Commercial:

Development Objectives: To identify those areas in the City generally within walking distance of major residential areas for convenience goods and services to everyday needs to the residents, as well as areas along highways, traffic routes for automobiles and highway related retail and commercial.

Permitted Principal: Any use permitted in C-1. New and used car dealers and show rooms. Liquor stores and establishments and/or clubs selling beer, wine and/or other alcoholic beverages for consumption on the premises.

Permitted Accessory: Accessory uses and buildings customarily appurtenant to a principal permitted use, such as incidental storage. Off-street parking loading facilities. Signs.

Special: Any C-1 Special Use. Car washing establishments Gasoline stations automobile service stations.

I-1 Industry:

Development Objective: To identify those areas in the City best suited for industrial development by virtue of location, topography, supporting facilities, and relationship to other land uses.

Permitted Principal: Any use permitted in C-2. Including general industrial use and manufacture, assembly, packing, storage or treating of merchandise. The Following uses are Specifically Prohibited From Locating In the City. Abattoirs or slaughterhouses. Junkyards. Fertilizer manufactures. Mobile Offices.

Permitted Accessory: Accessory storage within a wholly enclosed permanent building, of materials, goods and supplies, intended for sale, processing or consumption upon the premises, customary buildings and uses accessory to the main use or building. Private garage or private parking area. Truck loading space subject to recommended standards. Signs.

Special: Storage of materials, goods and supplies outside of a building as an accessory to a permitted use provided that no storage shall be located within the front yard nor within twenty-five feet of a side lot line, or a rear lot line, and further that no such outside storage shall be for the primary purpose of displaying for sale or advertising benefit, other than signs.

District: F-P Flood Plan:

Permitted Principal: In accordance with National Flood Insurance Program of the U.S. Department of Housing and Urban Development.

### **Sec. 30. Parking Regulations.**

- (a) Each building in use in every district shall provide sufficient off-street parking areas to serve its users. In the event that a particular use requires more parking area than is prescribed in this Section, and additional area is available for parking on the lot on which such use is conducted, the Municipality may require that all or part of such area be provided for parking, even if the total area for parking exceeds the minimum specified in this Section.

- (b) Off-street parking spaces, with proper access from a street, alley or driveway, shall be provided in all districts in the amount indicated below. Such parking space shall be provided on any lot which a dwelling is hereafter erected or converted, or in the case of any other use, on or near the lot on which any main building is hereafter erected or converted.
- (c) Table of Off-Street Parking Requirements:
- | Usage  | Required Spaces   |
|--|---|
| (1) One-Family dwelling  | 2 (1 of which may be located on a driveway)   |
| (2) Multiple dwelling  | 1 /12 per dwelling unit   |
| (3) Mobile Home  | 1 ½ per site  |
| (4) Motel, tourist home  | 1/guestroom plus 1/two employees  |
| (5) Hotels, clubs with overnight accommodations  | 1/per two guest rooms   |
| (6) Nursing Homes/Rest Home  | 1 space per five beds plus 1 space for each two employees                                     |
| (7) Restaurant   | 1 space per four customer seats plus 1 space for each two employees                           |
| (8) Theatre, church, recreational establishment or place of public or private assembly | 1 space per five seats  |
| (9) Dance halls and assembly halls without seats                                       | 1 space for each 100 sq. ft. used for assembly or dancing                                     |
| (10) Retail stores, services or repair shops   | 1 space/300 sq. ft. area  |
| (11) Banks and offices   | 1 space/300 sq. ft. area  |
| (12) Medical and dental clinics  | 1 space/200 sq. ft. area.   |
| (13) Industrial establishments   | 1 space per 1000 sq. ft. or 1 space per four employees on largest shift, whichever is greater |
| (14) Warehouse and terminals   | 1 space per 5000 sq. ft. or 1 space per four employees on largest shift, whichever is greater |
| (15) Middle and More Junior Schools  | 2 spaces per classroom  |
| (16) Junior High School  | 2 spaces per classroom  |
| (17) Building or use other than Specified above  | Provisions of a similar use shall apply   |
- (d) Two or more establishments may join in meeting the requirements of this section, provided that the total area for parking is the sum of the individual requirements.

- (e) All such parking area existing at the effective date of this ordinance shall not be subsequently reduced to an amount less than required under this ordinance. Off-street facilities for parking provided to comply with the provisions of this ordinance shall subsequently be reduced below the minimums or requirements of this ordinance.

### **Article VIII. Administration of the Ordinance.**

#### **Sec. 31. Administration and Enforcement.**

This ordinance shall be enforced by an Administration Zoning Officer to be designated by the Council. It shall be his duty to (1) enforce the provisions of this ordinance, (2) accept applications for permits, and (3) issue permits

#### **Sec. 32. Requirements of Permits.**

A permit shall be required prior to the erection or alteration of any building, structure, or portion thereof, prior to the change or extension of nonconforming use.

It is the land owners or lease holders responsibility to apply for a permit, which responsibility he retains even when the actual preparation of the application is undertaken by someone else. No permits shall be required in these cases where no change in total spaces is made nor where there is not change in usage.

#### **Sec. 33. Application for Permits.**

Applications for permits shall be made to the Zoning Officer on such forms as may be furnished by the Municipality. Each application shall contain all information necessary to ascertain whether the proposed erection, alteration, use, or change in use complies with the provision of the ordinance.

#### **Sec. 34. Issuance of Permits.**

No improvement location permit or use permit shall be issued until the officer designated by the Municipality has certified that the property complies with all the provisions of this ordinance.

#### **Sec. 35. Compliance with Plan.**

Following the issuance of a permit for construction and use in accordance with approved plans, no change, deviation, or alteration shall thereafter be permitted except when authorized by the Zoning Officer upon written application, which application shall be in the nature of an original application for permit. If the lot or tract for which the development has been approved is sold, the original conditions upon which approval was granted shall be fulfilled by the new owners.

#### **Sec. 36. Renewal of Approval.**

If construction of an approved development is not undertaken within 18 months from the time that approval was last granted by the Municipality, the application for development must be reviewed, and renewal of approval must be obtained.

#### **Sec. 37. Fees.**

Fees required in the administration of this ordinance shall be paid in accordance with a fee resolution as shall be adopted by the Council and shall be paid into the Municipality treasury by the permit applicant.

### **Article IX. Board of Zoning Appeals.**

#### **Sec. 38. Creation, Membership, Terms and Vacancies.**

The Mayor and Council approval shall create a Board of Zoning Appeals consisting of three members to be appointed by the Mayor and Council approval.

The members of the Board of Zoning Appeals shall be freeholders and residents of the Municipality and at least one of such members shall have been residents of the Municipality for at least ten years preceding the time of their appointments. No member of the Board of Zoning Appeals shall be a member of Planning Commission nor shall any member hold other elective or appointive office in the Municipal government. Members of the Board shall serve without compensation, but shall be reimbursed for actual expenses incurred in the performance of their official duties.

Upon the creation of the Board of Zoning Appeals, the members shall be appointed for the following terms: One for a term of one year; One for a term of two years; One for a term of three years. The terms shall expire on the first day of January of the first, second and third year respectively. Following appointments shall be for a term of three years.

If a vacancy occurs, by resignation or otherwise, among the members of the Board of Zoning Appeals, the Mayor, with Council approval shall appoint a member for a unexpired term.

#### **Sec.39. Officers and Quorum.**

- (a) The Board of Zoning Appeals shall elect a chairman and secretary from its members in July of each year. The secretary shall have Authority to act as Chairman during the absence or disability of the Chairman.
- (b) A majority of members of the Board of Zoning Appeals shall constitute a quorum. Any action of the Board which constitutes a reversal of a decision by the Municipal Zoning Officer requires approval by four Board members.

#### **Sec.40. Rules and Regulations.**

The Board of Zoning Appeals shall adopt such rules concerning the filing of appeals and applications for variance and exceptions, giving notice and conduct of hearing as shall be necessary carry out their duties under the terms of this ordinance.

The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions and shall record the vote of all action taken. All minutes and records shall be filed in the Office of the City Recorder and shall be a public record. The Board shall make a written report to the City Council each July covering the period July 1<sup>st</sup> previous year through June 30<sup>th</sup> current year.

#### **Sec. 41. Power and Duties.**

- (a) Hear and determine appeals from and review order, requirement, decision or determination made by administrative officials or Boards charged with enforcement of this ordinance.
- (b) Permit and authorize exceptions to the district regulations only in cases of classes or in particular situations as specified in this ordinance.
- (c) Hear and decide special exceptions to the terms of this ordinance upon which the Board is required to act under this ordinance, according to criteria established in Section 46.
- (d) Authorized upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

In exercising its power, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the power of an Officer or Board from whom the appeal is taken.

**Sec. 42. Meetings.**

Meetings of the Board of Zoning Appeals shall be held at the call of the chairman, and such other times as the Board may determine. Such chairman, or in his absence, the acting chairman may administer oaths, and compel the attendance of witnesses.

All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Office of the City Recorder and shall be a public record.

**Sec. 43. Appeals.**

- (a) An appeal taken from a requirement, decision or determination made by the Zoning Officer shall be filed in writing with the Board on forms as prescribed by the Board. The Zoning Officer shall give assistance as needed in the completion and forwarding of the appeal. However, the applicant is responsible for adhering to the requirements of Section 46 (h).
- (b) Prior to the required public hearing, members of the Board shall acquaint themselves with the facts of the case, to include site visitation.
- (c) After the required public hearing, the Board shall notify the Zoning Officer of its decision on forms as prescribed by the Board.
- (d) Any appeal shall be accompanied by a fee payable to the City in an amount to be determined by the City Council.

**Sec. 44. Hearing of Appeals.**

The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal. Thirty days public notice shall be given of the hearing and the same notice shall be given additionally to interested parties.

The Board of Zoning Appeals may require the party taking the appeal to assume the cost of public notice and due notice to interested parties.

Upon the hearing, any party may appeal in person, by agency or by attorney.

**Sec. 45. Staying of Work on Premises.**

When an appeal from the decision of any official or Board has been taken and filed with the Board of Zoning Appeals, all proceedings and work on the premise concerning the decision which was made, shall be stayed unless the official or Board from whom the appeal was taken shall certify to the Board of Zoning Appeals that, by reason of facts stated in the certificate, a stay would cause eminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Circuit Court of Summers County.

**Sec. 46. Standards for Review of Proposed Exceptions.**

In any instance where the Board of Zoning appeals is required to consider a request for a special exception or variance in accordance with the provisions of this ordinance, the Board shall:

- (a) Give full consideration to the size, scope, extent and character of the exception desired and assure itself that such request is consistent with the Comprehensive Plan and will promote the harmonious and orderly development of the district in which it is located.
- (b) Consider the suitability of the property for the use desired.
- (c) Take into consideration the character and type of development in the area surrounding the location for which the request is made and determine that the proposed change or modification, as permitted, will constitute an appropriate use in the area and will not substantially injure or detract from the use of surrounding property or from the character of the neighborhood. Consider, among other things: the zoning classification of the area affected; the effect, if any, on other properties in the area; and the presence or the absence in the neighborhood of conditions or uses which are the same or similar in character to the condition or use for which the applicant seeks approval.
- (d) Consider the suitability of the proposed location of a use with respect to traffic and streets in the area, and insure that adequate access and off street parking arrangements are provided in order to protect major streets from undue congestion and hazard. Guide the development of major street frontage insofar as possible so as to limit the total number of access points, and encourage the frontage of buildings on parallel marginal roads or on roads perpendicular to the major street.
- (e) Make certain that the proposed change is reasonable in terms of the logical, efficient, and economical extension of public service and facilities, such as public water, sewer, police protection, fire protection, and public schools, and assure adequate arrangements for sanitation in specific instances.

- (f) Impose such conditions, in addition to those required, as are necessary to insure that the general purpose and intent of this ordinance is complied with and that the use of the property adjacent to the area included in the proposed change or medication is adequately safeguarded, which conditions may relate to, but are not limited to harmonious design of buildings, aesthetics, planting and its maintenance as a site or sound screen landscaping, hours of operation, lighting, number of persons involved, allied activities, ventilation, noise, sanitation, safety, smoke and fume control and the minimizing of noxious, offensive or hazardous elements.
- (g) Determine that the proposed change will serve the best interest of the Municipality, the consonance of the community and the public health, safety, morals and general welfare.
- (h) In case of a requested variance, require the applicant to show that enforcement of the provisions of this ordinance would result in unnecessary hardship. The written application for a variance shall demonstrate that:
  - (1) Special conditions and circumstance exist which are peculiar to the land, structure or building involved and which are applicable to other lands, structures, or buildings in same district.
  - (2) Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
  - (3) The special conditions and circumstance do not result from the action of the applicant.
  - (4) Granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

**Sec. 47. Appeals from Board of Zoning Appeals.**

Any appeal of decision of the Board of Zoning Appeals must be taken first to City Council of the City of Hinton and then to the Summers County Circuit Court. Said appeals shall be based solely on the record made before the Board of Zoning Appeals.

**Article X. Amendments.**

**Sec. 48. Amendments.**

The Council may, from time to time amend, supplement, or change the rules and regulations and districts fixed by this ordinance.

**Sec. 49. Petitions for Change of Zoning Regulations.**

Petitions, duly signed, may be presented to the Council requesting an amendment, supplements or change of the regulations of this ordinance by:

- (a) The Planning Commission.

- (b) By the owners of fifty percent or more of the real property area to which the petition relates. When a landowner requests a change in the zoning classification of his land, his request will be accompanied by the fee payable to the City in an amount to be determined by City Council.

**Sec. 50. Planning Commission Referral.**

Amendments, supplements or change of the rules and regulations of this ordinance shall be considered as amendments to the comprehensive plan. Any proposed ordinance not originating upon petition of the Planning Commission shall be referred to the Planning Commission for consideration and report before any final action is taken by the Council.

**Sec. 51. Public Hearing.**

Prior to the submission to the Council of a Planning Commission petition or a report on a proposed ordinance referred to it for an amendment, supplement, change or repeal of this ordinance, the Planning Commission shall give notice of and hold a public hearing. At least fifteen days prior to the date set for hearing, the Commission shall publish in a newspaper of general circulation in the Municipality a notice of the time and place of the hearing, as a Class 1 legal advertisement in compliance with the provision of Article 3, Chapter 59, of the Code of West Virginia.

**Sec. 52. Amendment by Council.**

After a public hearing has been held, the Planning Commission may by resolution, authorized by the majority of the Commission, endorse the amendment and recommend its adoption to the Council.

**Article XI. Violation, Injunctions, Penalties and Validity.**

**Sec. 53. Violations.**

Failure to secure an improvement location permit, when required, previous to the erection, construction extension or alteration and addition, to a building or the change of use shall be one of the violations of this ordinance.

**Sec. 54. Injunctions.**

The City Council, the Planning Commission, the Board of Zoning Appeals or any designated enforcement official may institute a suit for injunction in the Circuit Court of the County to restrain an individual or a governmental unit from violating the provisions of this ordinance or of an ordinance enacted pursuant to its terms. The City Council, the Planning Commission or the Board of Zoning Appeals may also institute a suit for a mandatory injunction directing an individual or governmental unit to remove a structure erected in violation of the provisions of this ordinance. If the City Council, the Planning Commission or the Board of Zoning Appeals is successful in its suit, the Respondent shall bear the costs of the action.

**Sec. 55. Penalties.**

A person who violates any provision of this Article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars and not more than three hundred dollars for each and every offense, and each day that he shall continue such violations after notification shall constitute a separate offense punishable by like fine or penalty.

**Sec. 56. Validity.**

If any article, section, subsection, paragraph, clause, or provision of this ordinance be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of this ordinance as a whole or any other part thereof.

**Sec. 57. Effective Date.**

This ordinance shall become effective immediately upon its passage by the Council.

Enacted and Ordained by the City Council of the City of Hinton, West Virginia.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Attest: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

**Chapter 36**  
**TREE ORDINANCE**  
**Article I. TREE ORDINANCE**

An Ordinance of the City of Hinton, Summers County, West Virginia pursuant to the provisions of WV Code 8-12-5, et. seq. to protect and maintain a quality of life and an environment that is both safe and pleasant. A Community’s trees, often called the “urban forest”, are very much the kind of community asset that deserves to be protected and managed for the common good.

**ARTICLE I: PURPOSE**

IT IS THE PURPOSE OF THIS ORDINANCE TO PROMOTE AND PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY PROVIDING FOR THE REGULATION OF THE PLANTING, MAINTENANCE AND REMOVAL OF TREES, SHRUBS, AND OTHER PLANTS WITHIN THE CITY OF HINTON.

**ARTICLE II: AUTHORITY AND POWER**

There is hereby created and established a *City Tree Board* for the City of Hinton, which shall consist of five members, citizens and residents of this city, who shall be appointed by the Mayor with the approval of the City Council. Members of the board serve without compensation.

**ARTICLE III: TERM OF OFFICE**

The term of the five (5) persons to be appointed by the Mayor shall be three (3) years, except that the term of two (2) of the members appointed to the first board shall be for only one (1) year and the term of two (2) members of the first board shall be for two (2) years. In the event that a vacancy shall occur

during the term of any member, his/her successor shall be appointed for the unexpired portion of that term.

**ARTICLE IV: APPLICABILITY**

This ordinance provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places of the city of Hinton; and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.

**ARTICLE V: DEFINITIONS**

For purposes of this Ordinance, the following definitions shall apply.

“City” shall mean the City of Hinton, Summers County, a political subdivision of the State of West Virginia.

“Right-of-Way” shall mean any public street, alley, easement owned by the City of Hinton.

“Tree” shall mean any perennial woody plant supported by a trunk with branches and foliage growing at the same distance above the ground to include shrubs and various woody plants.

“Urban Tree” or “Urban Forest” shall mean all trees located on city-owned or controlled property.

“Landmark Tree” shall mean a tree whose species is rare, a tree of old age or abnormality, a tree with scenic enhancement or a tree associated with a historical event or person.

“Arborist” shall mean a person with special skills, training or certification to apply knowledge on urban trees.

“Topping” shall mean the severe cutting back of limbs to stubs within the tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

“Removal” shall mean the cutting down or damaging, whether by deliberate or negligent act or omission, or any act which causes the tree to die within three (3) years.

“Public Nuisance” shall mean any tree with an infectious disease or insect problem; dead or dying trees; a tree or limb (s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; or a tree that poses a threat to safety.

“Contractor” shall mean any individual, corporation or firm who agrees to supply labor or material to the City of Hinton.

**ARTICLE VI: LICENSING**

It shall be unlawful for any person to engage in the business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees, shrubs or vines within the City without first producing evidence of certification/license before the Mayor and City Council. Any person, business firm or corporation providing any such tree services within the City must have a business license, pay B & O taxes and show proof of certification as an arborist. The City Tree Board may impose specific tests, licensing requirements, certification or other methods of determining the professional status of those individuals, business firms or corporations engaging in work on urban trees within the City.

**ARTICLE VII: INSURANCE**

Before any license shall be issued, each applicant shall first file evidence of possession of Workers Compensation and liability insurance in the minimum amounts of \$1,000,000. For bodily injury or death and \$100,000. Property damage indemnifying the City or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

**ARTICLE VIII: LANDSCAPING**

In new subdivisions or when the development of commercial property occurs, the City Council will review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided.

**ARTICLE IX: TREE PLANTING, MAINTENANCE, AND REMOVAL**

Good tree care and management is possible only if people have specific information about practices that result in safe, healthy trees that contribute to a quality environment rather than create problems. Therefore, adopted herein is the standards and requirements set forth by both the *National Association of Arborists* and the *American Standard for Nursery Stock* to include, but not be limited to the following:

*Tree Species* – the City Tree Board develops and maintains a list of desirable trees for planting along streets in three (3) size classes: small, medium and large. A list of trees not suitable for planting will also be created and enforced by the City Tree Board.

*Spacing* – the spacing of street trees will be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer together than the following, except in special plantings designed or approved by a landscape architect:

Small trees:	30 feet
Medium trees:	40 feet
Large trees:	50 feet

*Utilities* – no street trees other than those species listed herein as small trees may be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line or other utility.

*Distance from Curb and Sidewalk* – the distance trees may be planted from curbs or curblines and sidewalks will be in accordance with the three species size classes determined by the City Tree Board and no trees may be planted closer to any curb or sidewalk than the following:

Small trees:	2 feet
Medium trees:	3 feet
Large trees:	4 feet

*Topping* – it shall be unlawful as a normal practice for any person, business firm, corporation or city department to top any street tree, park tree, or other tree on public property.

Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the City Tree Board.

**ARTICLE X: ADJACENT LANDOWNER RESPONSIBILITY**

No person shall plant, remove, cut above the ground, or disturb any tree on any street, park or other public place without first filing an application and procuring a permit from the City Council. The person receiving the permit shall abide by the standards set forth in this ordinance.

**ARTICLE XI: TREE PROTECION**

Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the City Council shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated. The notice shall require such property owner to eradicate, remove or otherwise control such condition with reasonable time to be specified in such notice, including removal and billing for costs by the City if action is not taken by the property owner.

The City Tree Board shall have as one of its duties to locate, select and identify trees that qualify as "Landmark Trees".

**ARTICLE XII: PRIVATE TREES**

The City Council, or its official designee, has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part that is suspected to be a public nuisance and to order its removal if necessary. The City Council shall at once cause written notice to be served upon the owner of the property upon which such public nuisance is situated. The notice shall require such property owner to eradicate, remove or otherwise control such condition with reasonable time to be specified in such notice, including removal and billing for costs by the City if action is not taken by the property owner.

**ARTICLE XIII: PERMITS**

No person, business firm or corporation, except the arborist or contractor hired by the City Council, may plant, trim, spray, prune, or remove a public tree without first obtaining a permit from the City Council for which no fee shall be charged.

**ARTICLE XIV: ENFORCEMENT**

The City Council shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the City.

**ARTICLE XV: PENALTIES, CLAIMS AND APPEALS**

Any person, business firm or corporation who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to the provisions of this ordinance, upon being found guilty of violation, shall be subject to a fine not to exceed \$500. for each separate offense.

Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation.

The value of trees and shrubs shall be determined in accordance with the latest revision of *A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens*, as published by the International Society of Arboriculture.

In the event that a nuisance is not abated by the date specified in the notice, the City Council is authorized to cause the abatement of said nuisance. The reasonable cost of such abatement shall be filed as a lien against the property owner on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

Any person, business firm or corporation shall have the right of appeal within five (5) days of any decision of the City Council relating to its enforcement of the provisions of this ordinance.

### **WIRELESS TECHNOLOGY ORDINANCE OF THE CITY OF HINTON**

WHEREAS, the City of Hinton recognizes wireless technology as a contributor to community and economic development and a foundation for growth and competitiveness for any area in which it exists by being available anytime and anywhere; and

WHEREAS, the City of Hinton actively seeks high technology companies to locate in its community in order to improve the standard of living by providing good paying jobs for residents; and

WHEREAS, the City of Hinton wishes to provide for infrastructure that will enhance operation of business and promote e-commerce within this community; and

WHEREAS, wireless technology can be utilized for enhanced law enforcement capabilities by equipping police cars and other emergency response vehicles with the capability for streaming video, providing insight and tools for better decision making regarding incident response and documentation of violators at a crime scene; and

WHEREAS, wireless technology can enhance surveillance, security and monitoring capabilities; and

WHEREAS, wireless technology provides use and communications via the internet without a physical connection, thus providing availability of communication services while on the move and in practically every location within the wireless zone; and

WHEREAS, wireless technology can provide entertainment in practically any place within the wireless zone; and

WHEREAS, the possibilities for use of wireless technology in a covered zone will increase as new devices, technologies, frequencies and software become available.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HINTON THAT, the ordinance known as The City of Hinton Wireless Technology Zone Ordinance for the development and promotion of wireless technology be adopted in its entirety.

## 9-1-1 ADDRESSING AND MAPPING ORDINANCE

### **An ordinance to provide for the cooperation of the City of Hinton with the Summers County Commission for the implementation of 9-1-1 addressing and mapping within the City of Hinton, West Virginia, in connection with the West Virginia Statewide Addressing and Mapping Project.**

In order to provide for the uniform assignment and maintenance of street addresses and to provide for easy identification of those numbers for various purposes and to promote the health, safety and welfare of the citizens of the City of Hinton, West Virginia, and the Council of the City of Hinton enacts this Ordinance as follows:

WHEREAS, pursuant to West Virginia Code Article 8-12-5, the City of Hinton has the authority to regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the City of Hinton, including the naming or renaming thereof, and to consult with local postal authorities, the division of highways and the directors of county emergency communications centers to assure uniform, no duplicative addressing on a permanent basis, and,

WHEREAS, pursuant to West Virginia Code Articles 7-1-3 and 7-1-3cc, and consistent with West Virginia Code Article 24E-1-1 et seq., the Summers County Commission has the authority to provide for the elimination of hazards to public health and safety; to establish and regulate the naming or renaming of roads, ways, streets, avenues, drives and the like, in cooperation with local postal authorities, the division of highways and the directors of Summers County emergency communications centers; and to assure uniform, non-duplicative conversion of all rural routes to city-type addressing on a permanent basis; may cooperate with other governmental units, shall maintain and update the addressing and mapping framework within their jurisdictions, and,

WHEREAS, the establishment of an Enhanced 9-1-1 Emergency Telephone System in Summers County has been approved and implemented by the Summers County Commission, and ,

WHEREAS, the establishment of such system requires the assignment of names to all streets and roads in Summers County, the assignment of building numbers to all buildings having telephones and/or occupancies, the erection of appropriate street signs at intersections; and the maintenance of a statewide mapping system, and,

WHEREAS, the City of Hinton has the authority to delegate, contract or cooperate with other governmental units, including, without limitation, Summers County Commission, and,

WHEREAS, the Summers County Commission has elected to participate in the Statewide Addressing and Mapping Project, pursuant to Title 169, Series 2 of the code of State Rules, thus promoting the goal of prompt and accurate dispatch of emergency services or 9-1-1 personnel in Summers County, and thereby enhancing the safety of the lives and property of the citizens and residents of Summers County, and,

WHEREAS, the Summers County Commission has adopted a County Addressing Ordinance effective, providing for municipalities within the County to adopt cooperative ordinances, and,

WHEREAS, the City of Hinton wishes to cooperate with the Summers County Commission, thereby enhancing the safety of the lives and property of the citizens and residents of the City of Hinton, and,

NOW, THEREFORE, BE IT ORDANED this 17<sup>th</sup> day of May, 2005 by the Council of the City of Hinton, West Virginia, and Ordinance Number\_\_\_\_\_.

**Sec. 1. Applicability.**

Section 1.1 The provisions of this Ordinance apply to all areas of the City of Hinton, except as may be expressly set forth below.

Section 1.2 Pursuant to the Emergency Rules of the West Virginia Statewide Addressing and Mapping Board on file with the office of the Secretary of State, Title 169, Series 2 of the Code of State Rules, the City of Hinton hereby elects to participate in the West Virginia Statewide Addressing and Mapping Project.

**Sec. 2. Coordination with county Addressing Program; Adoption of Addressing Program; Penalties for Non-compliance.**

Section 2.1 All provisions of the 9-1-1 Addressing and Mapping Ordinance of the Sample County Commission, dated May 17, 2005, including the penalties for non-compliance, hereby apply within the City of Hinton, as if fully set forth herein, except as set forth in Section 2.2 below.

Section 2.2 Nothing in this ordinance affects existing city-type addresses, which are satisfactory for 9-1-1 and emergency services purposes, provided that those addresses are consistent with the Statewide Addressing and Mapping Project and otherwise comply with the Rules and Regulations of the West Virginia Statewide Addressing and Mapping Board.

**Sec. 3. Appointment and Duties of Addressing and Mapping Coordinators.**

Section 3.1 The Summers County Addressing Coordinator shall act as the Addressing Coordinator for the City of Hinton. The Addressing Coordinator may not, however, take any official action not expressly authorized in this Ordinance or in the 9-1-1 Addressing and Mapping Ordinance of Summers County, dated July 21, 2003, without the approval of the Council of the City of Hinton.

Section 3.2 The Summers County Mapping Coordinator shall act as the Mapping Coordinator for the City of Hinton. The Mapping Coordinator may not, however, take any official action not expressly authorized in this Ordinance or in the 9-1-1 Addressing and Mapping Ordinance of Summers County, dated July 21, 2003, without the approval of the Council of the City of Hinton.

**Sec. 4. Interpretations and Application.**

This Ordinance is to be interpreted and applied consistent with the West Virginia Statewide Addressing and Mapping System. The Addressing Coordinator and the Mapping Coordinator of the City of Hinton shall make any necessary application to the Statewide Addressing and Mapping Board for a waiver or for local modifications of the Statewide Addressing and Mapping System in order to tailor it to this Ordinance.

**Sec. 5. Adoption and Signatures.**

Section 5.1 This Ordinance is effective 5-17-05.

Adopted this 17<sup>th</sup> day of May, 2005.

Council of the City of Hinton, West Virginia

**AN ORDINANCE APPROVING THE EXTENSION OF AN AGREEMENT BETWEEN THE CITIES OF HINTON, WHITE SULPHUR SPRINGS AND PHILIPPI, WEST VIRGINIA; AUTHORIZATION TO THE MAYOR TO EXECUTE AND CITY CLERK/RECORDER TO ATTEST THE SAME ON BEHALF OF THE CITY.**

WHEREAS, the City of Hinton, West Virginia, the City of White Sulphur Springs, West Virginia and the City of Philippi, West Virginia entered into the Second Amended and Restated Intergovernmental Agreement on the 11<sup>th</sup> day of December, 2001 (the "Agreement"), establishing the Tri-Cities Power Authority (the "Authority"), whose purpose was for the joint development of the hydroelectric power potential at the Bluestone Dam in Summers County, West Virginia (the "Project");

WHEREAS, the Agreement is authorized under Chapter 8, Article 16 of the West Virginia Code, which provides for the joint enterprise of two or more municipalities;

WHEREAS, under Section 8 of the Agreement, the initial term of the Agreement was one year and may thereafter be renewed by the Cities for additional terms of one year each. Though each of the constituent cities has continued to actively participate in the business of the Authority, no formal action has been taken to extend the term of the Agreement;

WHEREAS, the Authority has entered into a "Memorandum of Understanding and Agreement Regarding No. 136 – Hydroelectric Generating Facility at Bluestone Dam" with the West Virginia Economic Development Grant Committee and West Virginia Economic Development Authority to aid in performing work upon the Project;

WHEREAS, City of Hinton desires to approve, ratify and confirm the acts of the Authority from December 11, 2001 through the date of this ordinance, and to renew the term of such Agreement until August 1, 2005, unless otherwise extended or terminated.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HINTON:

RESOLVED, that the development of the Project is hereby found to be for a public purpose and is a municipal public work, and on behalf of the general welfare of the City of Hinton, West Virginia.

RESOLVED, that the City of Hinton hereby approves, ratifies and confirms the acts of the Authority from December 11, 2001 up to and including August 1, 2005 and further approves, ratifies and confirms the continual participation by the City of Hinton in the Authority during such time and the City of Hinton hereby approves, ratifies and confirms the existence of the Authority from December 11, 2001 to the date of the adoption of this ordinance, as fully and completely as if such renewal had been agreed to each year in the interim.

RESOLVED, the City of Hinton hereby agrees to now renew the term of the Agreement and the City of Hinton's continued participation therein, until August 1, 2005 unless such date is extended by further act of this City or the Agreement is otherwise terminated.

RESOLVED, that Mayor Cleo Mathews and Ralph Wilson shall continue to represent the City of Hinton, West Virginia, on the Board of the Authority.

PASSED FIRST READING: 08-17-04

PASSED SECOND READING AND ADOPTED: 08-24-04

### **ANTI-HATE CRIMES ORDINANCE**

The City of Hinton hereby recognizes and declares that all persons within the City of Hinton have the right to be free from any violence, or intimidation by threat of violence, committed against their person or property because of their actual or perceived race, color, religion, ancestry, national origin, political affiliation, physical or mental disability, sex or sexual orientation.

The State of West Virginia has enacted legislation (WV Code 61-6-21, 1987) deeming certain “hate crimes” felonious conduct. The purpose of this Ordinance is to expand and create additional classification against with hate crimes will not be tolerated within the City of Hinton as set forth in subsections (a), (b), (c), (d) and (g) hereof.

- (a) If any person does force or by threat of force willfully injure, oppress, threaten, intimidate or interfere with, or attempt to injure, oppress, threaten, intimidate or interfere with any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Ordinances of the City of Hinton, the Constitution and laws of the State of West Virginia, and/or by the Constitution and laws of the United States, because of such other person’s actual or perceived race, color, religion, ancestry, national origin, political affiliation, physical or mental disability, sex or sexual orientation, he or she shall be guilty of a misdemeanor, and upon conviction thereof, shall be jailed not more than thirty (30) days and fined not more than five hundred dollars.
- (b) If any person conspired with another person to willfully injure, oppress, threaten, intimidate or interfere with, or attempt to injure, oppress, threaten, intimidate or interfere with any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Ordinances of the City of Hinton, the Constitution and laws of the State of West Virginia, or by the Constitution and laws of the United States, because of such other person’s actual or perceived race, color, religion, ancestry, national origin, political affiliation, physical or mental disability, sex or sexual orientation, and in willful furtherance thereof to assemble with one or more persons for the purpose of teaching any technique or means capable of causing property damage, bodily injury or death which such person or persons intend to employ to violate this section each person shall be guilty of a misdemeanor, and upon conviction thereof, shall be jailed not more than thirty (30) days and fined not more than five hundred dollars.
- (c) The fact that a person committed a felony or misdemeanor, or attempted to commit a felony or misdemeanor, because of the victim’s actual or perceived race, color, religion, ancestry, national origin, political affiliation, physical or mental disability, sex or sexual orientation, shall be considered a circumstance in aggravation of any crime in imposing sentence.

- (d) Nothing contained in this section makes unlawful the teaching of any technique in self-defense.
- (e) In any prosecution under this section, evidence providing the defendant's mere abstract beliefs or evidence of the defendant's mere membership in an organization shall be admissible to establish any element of an offense under this section, unless such evidence bears a direct relationship to the underlying crime. Thus, this subsection will not bar all evidence of membership or belief, but would assure that a minimum, any such association that is not contemporaneous with the crime must be of the chain of events that led to the crime.
- (f) If any part of this section is deemed unconstitutional or unenforceable, the remaining provisions will remain in effect.