

THE SUTTON MUNICIPAL CODE, 1989

Revised and Codified under the Authority of
the Common Council of the Town of Sutton

Mayor: Edward R. Given

Recorder: Daniel R. Grishkin

Councilmembers: Joseph McPherson
William C. Boggs
Robert "Bob" Nuzum
Kathryn Walker
Merlene B. Campbell

ADOPTING ORDINANCE

AN ORDINANCE ADOPTING AND ENACTING A CODIFICATION AND REVISION OF THE ORDINANCES OF THE TOWN OF SUTTON, WEST VIRGINIA.

WHEREAS many of the ordinances of the Town of Sutton are obsolete, and

WHEREAS many of the other ordinances of the municipality are inconsistent with each other or are otherwise inadequate, and

WHEREAS the Common Council of the Town of Sutton has caused its ordinances of a general and permanent nature to be codified and revised and the same are embodied in a codification and revision known as "The Sutton Municipal Code, 1989",

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF SUTTON, WEST VIRGINIA, THAT:

Section 1. The Common Council of the Town of Sutton may exercise all powers conferred by Chapter 8 of the official code of West Virginia for the year 1931, and all other powers conferred by later acts of the regular and extra sessions of the West Virginia Legislature or by any other laws of said state, upon cities, towns, and villages incorporated without special charter.

Section 2. The ordinances of the municipality of a general and permanent nature as codified and revised in the following "chapters", namely "chapters" 1 to 11, both inclusive, are ordained as general ordinances and adopted as "The Sutton Municipal Code, 1989", hereinafter referred to as the "Town Ordinances".

Section 3. All ordinances of a general and permanent nature hereby except contained in the Town Ordinances as were amended in 1978 are hereby repealed from and after the effective date of said code, as hereinafter provided.

Section 4. The repeal provided for in the preceding section of this ordinance shall not affect any offense or act committed or done prior to the date of enactment hereof and any such offense or act may be prosecuted under the terms of such repealed ordinance as the said terms may have provided prior to the enactment hereof, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of the Town Ordinances; nor shall such repeal affect any ordinance or resolution promising or guaranteeing the payment of money for the municipality or authorizing the

issuance of any bonds of said municipality or any evidence of said municipality's indebtedness, or any contract or obligation assumed by said municipality; nor shall it affect any right or franchise conferred by any ordinance or resolution of the municipality on any person, firm, or corporation; nor shall it affect any prosecution, suit or other proceeding pending or any judgment rendered on or prior to the effective date of said code; nor shall it affect any ordinance annexing territory to the municipality; nor shall such repeal affect any ordinance not specifically repealed by these Town Ordinances.

Section 5. Insofar as the provisions of the Town Ordinances are the same as those of ordinances existing and in force at its effective date, said provisions shall be considered to be continuations thereof and not as new ordinances.

Section 6. Wherever in the Town Ordinances, including the codes and ordinances adopted by reference, any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in the Town Ordinances the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of the Town Ordinances shall, unless otherwise provided, be punishable by a fine of not more than two hundred dollars for each separate violation; provided, however, that the infliction of a fine under the provisions of this section shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the provisions of the Town Ordinances or other applicable law.

Section 7. Any printed copy of the Town Ordinances certified under the actual or facsimile signature of the Town Recorder shall be held to be a true and correct copy of such codification and may be read in evidence in the municipal court without further proof of the provisions contained therein.

Section 8. Each section of the Town Ordinances, including the codes and ordinances adopted by reference, is hereby declared to be separable and severable and the invalidity of any section, part, paragraph, sentence, phrase, or word in the Town Ordinances shall not affect the validity of any other part of said Ordinances, and only any part declared to be invalid by a court of competent jurisdiction shall be deleted therefrom.

Section 9. Immediately upon adoption of the Town Ordinances they shall be reproduced in loose-leaf form as provided in Chapter 1, Section 311 of said code, and shall be

made available to town officers and to other persons who shall request and **par** for said ordinance book. One copy of the Town Ordinances as originally adopted and one copy of each amending ordinance adopted thereafter shall be mailed to the West Virginia Municipal League immediately after adoption.

Section 10. At least one copy of the Town Ordinances, maintained currently up to date, shall be kept available in the Recorder's Office for public use and inspection at all reasonable times.

Section 11. This ordinance shall take effect at 00:01 a.m. December 1, 1989, the public welfare requiring it, and the Town Ordinances, including all the codes and ordinances therein adopted by reference, shall be effective on and after that date.

ORDAINED AND ENACTED INTO AN ORDINANCE THIS 26th DAY OF OCTOBER, 1989.

Mayor

Recorder

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

CHAPTER ONE

ELECTIONS, ADMINISTRATION AND PERSONNEL POLICIES

ARTICLE ONE

ELECTIONS, OFFICERS AND THEIR QUALIFICATIONS

1-101. General Provisions. The regular election for town offices shall be held biennially on the second (2nd) Tuesday in June, at the Community Building in the Town of Sutton, Braxton County, West Virginia, or at such other place in said town as the council may by order appoint; said election shall be held and conducted under the provisions of the general election laws of this state, in force at the date of such election, and governed by the said general election laws of this state in every respect, insofar as the same are applicable to city elections, with the exception that the duties to be performed by the County Commission shall be performed by the Common Council of said town, and duties to be performed by the clerks of the County Commission and Circuit Court shall be performed by the Recorder of said town, and with the further exception that the ballots shall list all candidates for each office under separate headings, in alphabetical order, without reference to party affiliation, and that there shall be no separate registration required of the voters for such election, and that the election boards shall be composed as hereinafter specified.

(See West Virginia Code §8-5-5, Section Amended 1986)

1-102. Officers to be elected. At the said biennial election for town officers, there shall be elected a mayor, recorder, and five councilmen, whose terms of office shall commence on the first day of July following such election and shall be for two years and until their successors are elected and qualified, unless sooner removed in the manner hereinafter specified.

(See West Virginia Code §8-5-11)

1-103. Eligibility of candidates. No person shall be eligible to the office of Mayor, Recorder, or Councilman of said town unless at the time of his election he is a resident of said town and entitled to vote in the town election for members of the Common Council.

(See West Virginia Code §8-5-7, Section Amended 1986)

1-104. Filing of candidacy. Any person who is eligible to hold the office of Mayor, Recorder, or Councilman of said town may file with the Town Recorder a certificate declaring himself a candidate for such office. Such certificate shall be signed and acknowledged by the candidate before some officer qualified to administer oaths and shall be filed with the Town Recorder at least forty-two days (six weeks) before the date of such election, as provided by the statutes of the State of West Virginia.

(Section Amended 1986)

1-105. Vacancies. When a vacancy shall occur from any cause in the office of Mayor, Recorder, or in the council, the vacancy shall be filled by appointment upon such appointment being approved by a majority vote of those council members present at the time the vote is taken, and such person appointed shall serve until the next succeeding regular election; any such appointment by the Common Council shall be from among the citizens of said town eligible to hold said office under these ordinances. No member of council appointed or nominated to any such office shall be allowed to vote on such appointment.

(See west Virginia Code §8-5-10, Section Amended 1989)

1-106. Election Boards. The council shall, before the biennial election for town officers, appoint seven voters to act as commissioners of election and poll clerks as hereinafter specified, and it shall be the duty of the persons so appointed to attend at the place of voting and to superintend the election to be held in said town and return the results thereof as required by this chapter.

The Receiving Board shall be composed of two commissioners, of opposite politics to each other, and one poll clerk. The Receiving Board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election.

The Counting Board shall be composed of two commissioners, of opposite politics to each other, and two poll clerks. The Counting Board shall attend at the voting place not later than four hours after the opening of the polls, and shall take charge of the ballot box containing the ballots theretofore cast in said election. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots case as they shall find them deposited in the ballot box, in the manner as hereinafter specified.

The Receiving Board shall continue to receive the votes of electors in another box, until such time as the Counting Board shall have finished counting and tabulating the ballots cast in the first box. The Counting Board shall, before exchanging the ballot boxes as hereinafter provided, deposit the ballots counted in a third ballot box provided for this purpose, which shall be delivered unopened to the Board of Canvassers under the procedure hereinafter stated. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives. After the polls have been closed, the two boards shall together proceed with counting, tabulating and summarizing the votes as by this article provided.

1-107. Hours. At every election held in said town, the polls shall be opened on the day of such election at 6:30 o'clock in the morning and be closed at 7:30 o'clock in the evening, Eastern Standard Time or Daylight saving Time, whichever shall prevail in the community at the time.
(See West Virginia Code §3-1-31)

1-108. Oath of Election Board. Every commissioner and clerk so appointed as aforesaid shall, before entering upon the discharge of his duties as such, take and subscribe the oath prescribed by law for election commissioners and clerks, respectively. Said oaths may be taken before any person authorized by law to administer oaths, but if no such person be present at the place of holding such election, it may be taken before and administered by one of the commissioners so appointed, who in turn may take the same before another of said commissioners; the said oath shall appear properly certified on the poll books of every election, and in no case shall the votes taken be counted unless said oaths so appear, or unless it be proved to the satisfaction of the council, convened as hereinafter required, that such oath was taken before said commissioners and clerks entered upon the discharge of the duties of their appointment.

1-109. Residency. All persons who have been bona fide residents of the territory included in said town for sixty days next preceding any election held therein, and who are qualified voters under the constitution and laws of the State of West Virginia, and no others, shall be entitled to vote at any election held in said town, but no person shall be deemed a resident of said town by reason of being stationed therein for any temporary purpose.

1-110. Mode of voting. In all elections by the people of said town, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect.

(See West Virginia Code §3-1-4)

1-111. Absentee voters. Any person who is duly registered and otherwise qualified to vote, but who is unable to vote in person at the polls in said election by reason of illness, injury, physical disability, or who is required to be absent from the corporation during the entire time the polls are open in said election, may apply to the Recorder's office for an absent voter's ballot.

1-112. Registration records. The Recorder, not less than three days prior to every election held within the town, other than primary elections, shall procure from the Clerk of the County Commission of Braxton County the registration records, from the municipal precinct file in said Clerk's office, necessary for the conducting of the municipal election. Within ten days after the date of such municipal election, the Recorder shall return said records to the office of the Clerk of said Commission.

(See West Virginia Code §3-5-13)

1-113. Poll Books. Every poll book shall bear on the first page thereof the following heading: "Names of all persons voting in the municipal corporation of the Town of Sutton, and the County of Braxton, at the election held on the ___ day of ____." Two of such poll books with the names of all persons voting shall be kept at every election held in said town.

1-114. Voting Procedure. Any person offering to vote in an election shall, upon entering the election room, clearly state his name and residence to the poll clerk. If such person is found to be duly registered and qualified to vote, one of the Receiving Commissioners shall present to him a poll slip to be signed by the voter and presented to the second Receiving Commissioner. When the voter's signature is properly recorded, the second commissioner and the poll clerk shall each sign their own names in the places indicated on the back of the official ballot and it shall be delivered to the voter to be voted by him then without leaving the election room and in no case shall either of said officials sign the name of the other. After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the election officials thereon shall be seen. The voter shall then announce his name and present his ballot to one of the commissioners who

shall hand the same to the other commissioner, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioners of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding it or unrolling it so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return except by permission of the commissioners.

1-115. Absentee ballots. A person desiring to vote an absent voter's ballot by personal appearance may appear during regular business hours at the office of the Town Recorder not more than fifteen days before the election and on any day thereafter up to and including the Saturday next preceding the date of the election, and shall make application to vote by absent voter's ballot. Said application shall be in writing and shall contain the voter's sworn statement that he is a duly registered and qualified voter and giving the specific reason for his required absence. Upon determination by the Town Recorder that the applicant is entitled to vote an absent voter's ballot by personal appearance, the Recorder shall hand to him one absent voter's ballot, one absent voter's ballot envelope No. 1, unsealed, and one absent voter's ballot envelope No. 2, unsealed. The voter shall then retire to the place provided in said Recorder's office and there mark his ballot. The voter shall then enclose the same in envelope No. 1 and seal it; enclose envelope No. 1 in envelope No. 2 and seal it; and transmit possession of the sealed envelope to the Town Recorder. Upon receipt of such sealed envelope, the Recorder shall enter the required information into a record of persons applying for and voting by an absent voter's ballot and shall place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of the Election Laws of West Virginia.

A person desiring to vote an absent voter's ballot by mail may, not more than sixty days prior to the date of the election and on any day thereafter up to and including the fourth day next preceding the election, make application by mail to the Town Recorder for an absent voter's ballot to be voted at such election. Upon determination by the Town Recorder that the applicant is entitled to vote an absent voter's ballot by mail, the Recorder shall between the twentieth day and the fourth day next prior to the election mail the applicant one absent voter's ballot, one absent voter's ballot envelope No. 1, and one absent voter's ballot envelope No. 2. After the voter has voted his

absent voter's ballot, he shall enclose the same in absent voter's ballot envelope No. 1 and seal it; enclose envelope No. 1 in envelope No. 2 and seal that envelope; and mail, postage prepaid, sealed envelope No. 2 to the Town Recorder. Upon receipt of such sealed envelope, the Recorder shall enter the required information into a record of persons applying for and voting by an absent voter's ballot and shall place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of the Election Laws of West Virginia.

1-116. Opening and closing polls. Before any voter is permitted to vote, the Receiving Commissioners of election shall cause to be proclaimed that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the Receiving Commissioners of election to the people outside in a loud and audible tone of voice, and after such proclamation is made, no more votes shall be received.
(See West Virginia Code §3-1-32)

1-117. Ballot boxes. At the time of opening the polls, the Receiving Commissioners shall examine the ballot boxes and ascertain that there are no ballots in the same, and they shall thereupon securely lock the boxes and give one key to each of the commissioners who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives, and for that purpose. When the time to be in counting arrives, each Receiving Commissioner shall deliver his key(s) to a separate Counting commissioner who shall be in charge of the same during the counting procedure. The ballot box shall have an aperture in the lid or top thereof to receive the ballots of the voters. While the polls are opened it shall be kept where it may be seen by the voters except as otherwise provided in the counting procedures, and after the polls are closed and until the votes are counted and the certificates of the results are signed, it shall remain in the immediate custody of the commissioners, or any one of them with the consent of the others, shall not be removed from the place of voting, and shall not be opened except in the manner and for the purposes specified in this article.

1-118. Order at the polls. The commissioners of election shall preserve order at and in the vicinity of the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and if necessary and proper, to be taken and held in custody until sunrise of the next day or for any shorter time, which may be done by the Chief

of election, and no warrant or authority in writing shall be necessary; and the jail of the county or town may be used as the place of custody; but any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires, and shall be prepared to do so promptly.

(See West Virginia Code §3-1-38)

1-119. Penalties for disorder. Any person offending against the provisions of the next preceding section shall, notwithstanding his having been in custody as aforesaid, be liable to any penalty or punishment for his offense prescribed by law; and any person who, being thereto commanded by the commissioners either verbally or in writing, shall fail or refuse to assist to the utmost of his power in whatever may be necessary or proper to prevent intimidation, disorder, or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

1-120. Challenges. The commissioners holding the election at the place of voting shall permit all persons to vote entitled to do so, and reject the votes of all persons not entitled to vote at said election, and shall, in all respects, have the poll taken fairly according to law. They shall swear and examine any person (or the person examined may affirm) touching his right to vote at said election, whenever such right to vote is questioned by any person. If the vote of any person offering to vote be rejected, his name, if required by him or by any candidate at said election, shall be entered on a separate list to be kept for the purpose; and if any person be permitted to vote whose vote is challenged, the word "challenged" shall be written on the poll book opposite his name.

1-121. Voting only once. No person shall vote more than once in the same election, although he may not have voted the first time for as many persons as he might have lawfully voted for.

1-122. Counting of votes. When the time to begin counting the votes arrives, the counting Board shall take charge of the first ballot box as heretofore provided and shall proceed to ascertain the result of the election in the manner hereinafter specified, and shall not adjourn nor delay until the votes are all counted, and the result ascertained, the memorandum made, and copies thereof delivered and posted as hereinafter required.

1-123. Counting Procedures. (a) When the Counting Board has retired to the place provided for the counting of the votes, the

ballot box shall be opened and one of the Counting Commissioners taking therefrom one ballot at a time, in the presence of the other officers, shall read therefrom the designation of the office to be filled and the names of the persons voted for, for each office, and hand the ballot to the other Counting Commissioner who, if satisfied that it was correctly read, shall deposit it in the locked ballot box provided for this purpose. The contents of the ballots, as they are read, shall be entered by the Counting Clerks, separately, under the supervision of the counting Commissioners, on tally papers for the purpose, by suitable marks in ink made, opposite to or under the name of each person voted for, so as to show the name of votes received by every person for any offices to be filled. The ballots shall be counted as they are deposited in the locked ballot box and said number shall be recorded for comparison with the poll slips.

(b) If two or more ballots be found folded or rolled together and the names thereon be the same, one of them only shall be counted, but if the names thereon be different in any particular, neither of them shall be counted except if it be manifest what was intended by the voter, and in either case the commissioners shall, in writing in ink, place a common number on said ballots and state thereon that they were folded or rolled together when voted. If the ballot be found to contain more than the proper number of names for any office, such ballot shall not be counted as to such office. Any ballot, or part of ballot, from which it is impossible to determine the voter's choice of candidates, shall not be counted as to the candidate or candidates affected thereby.

1-124. Polls closed. As soon as possible after the polls are closed, the names entered on the poll books shall be counted by the Receiving Commissioners and Clerk and the number thereof set down in words at length and also in figures at the foot of the lists, which shall then be signed by the commissioners and clerk. The Receiving Board shall then join the Counting Board in counting, tabulating and summarizing the votes in the manner provided heretofore. A count of the number of ballots being kept, whenever the number of ballots counted shall be equal to the number of votes entered upon the poll books, the excess, if any, remaining in the ballot boxes shall immediately be destroyed by fire or otherwise without unfolding or unrolling the same, or allowing anyone to examine or know the contents thereof. On completing the count and recording the same on tally sheets, the commissioners of election shall immediately make a memorandum of such board, and post a copy thereof on the

front door of the polling place, and transmit a copy thereof to the Recorder of the town who shall post the same in the Mayor's office for public inspection.

1-125. Certification of tabulation. As soon as the results are ascertained, the commissioners and clerks of election shall make out and sign two certificates thereof, in the following form or to the following effect: "We, the undersigned, who acted as commissioners and clerks of the election held at the Community Building in the municipal corporation of Sutton, and County of Braxton, on the day of _____ do certify that, having been first duly sworn, we have fairly and impartially held the said election according to law and the result thereof is as follows: For the office of Mayor, _____ received ___ votes, _____ received ___ votes," and so on throughout stating the name of every person voted for, for every office, and in the words at length, and also in figures, the number of votes he received for same; and concluding as follows: "Given under our hands this _____ day of _____." The said two certificates shall contain complete returns of the polls taken for every office to be filled. When the said certificates are signed, the ballots shall be enclosed by the commissioners in an envelope, which they shall seal up, and write their names in ink, across the place or places where it is sealed, and endorse in ink on the outside of said envelope as follows: "Ballots of the election in the municipal corporation of the Town of Sutton, County of Braxton, the _____ day of _____." The ballots, sealed in said envelope, shall be returned to the ballot box together with the tally sheets, poll books and certificates, and all shall be locked therein. The Receiving Poll Clerk shall take charge of and, within twelve hours after said completion, shall deliver said ballot box with its contents intact, and the ballot box keys, to the Recorder to be preserved by him and delivered to the Board of Canvassers as hereinafter provided.

1-126. Board of Canvassers. The Common Council of the Town of Sutton shall be ex-officio a Board of Canvassers and, as such, shall keep in the "minute book" a complete record of all its proceedings in ascertaining and declaring the result of every election in said town. The said council shall convene as such Canvassing Board at the Mayor's office on the fifth day (Sunday excepted) after every election held for said town, and the Recorder shall lay the ballots, poll books, tally sheets and certificates before it. The council may, if deemed necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election, to appear and testify respecting the same, and make such other orders as shall seem

proper, to procure correct returns and ascertain the true result of the said election in said town; but in such case all of the questions to the witnesses and all the answers thereto, and evidence, shall be taken down in full and spread upon the record, or a transcript thereof filed and made a part of the record. All orders made shall also be spread upon the record. The council may adjourn from time to time, but no longer than absolutely necessary, and when a majority of the council are not present, its meeting shall stand adjourned till the next day, and so on from day to day, till a quorum be present. The council, before proceeding to canvass the returns of the election, shall open the sealed package of ballots so laid before them, count the number of ballots therein and enter the same upon the record. The ballots shall then be again sealed up carefully in a new envelope and each member of the council present shall write his name across the place where said envelope is sealed. After canvassing the returns of the election, the council, shall, upon the demand of any candidate voted for at such election, open and examine the sealed package of ballots and recount the same; but in such case they shall seal the same again along with the envelope above named, and the Recorder and each member of the council shall write his name across the lace or places where it is sealed, and endorse in ink, on the outside: "Ballots of the election in the municipal corporation of the Town of Sutton, county of Braxton, the _____ day of _____."

(See West Virginia Code §8-5-17)

1-127. Preservation of ballots. When the council has made its certificate and declared the result, as hereinafter provided, it shall deposit the sealed package of ballots, poll books, tally sheets and certificates with the Recorder who shall carefully preserve the same for sixty days, and if there be no contest pending as to any such election, said ballots, poll books, tally sheets and certificates shall be destroyed by fire or otherwise, Without opening the sealed package of ballots; if there be such contest pending, then they shall be so destroyed as soon as said contest is ended. If the result is not changed by such recount, the cost and expense thereof shall be paid by the party at whose instance the same was made.

1-128. Certification of election results. When an election is held in said town for the offices of Mayor, Recorder and Councilmen, the Common Council or a quorum thereof, under the regulations prescribed in Section 1-126 of this Chapter, shall carefully and impartially ascertain the result of said election, and shall record the same in the "minute book" in the following

form, or to the following effect: "The Common Council of the Town of Sutton, having carefully and impartially examined the returns laid before it of the election held in said town on the _____ day of _____, the members of said council in attendance at this meeting do hereby certify that in said town for the office of Mayor, _____ received ___ votes, etc.; for the office of Recorder, _____ received ___ votes, etc.; and it appearing from said returns that _____ received the highest number of votes cast for Mayor, that _____ received the highest number of votes cast for Recorder, and that _____, etc., received the highest number of votes cast for the five Councilmen, the said _____ is declared duly elected Mayor, the said _____ is declared duly elected Recorder, and the said _____ are declared duly elected Councilmen of said town for the term of two years, beginning on the first day of July, _____."

In the said certificate shall be set forth according to the truth the full name of every person voted for and, in words at length and in figures, the number of votes he received for any office, and when the same is entered of record the members of said council shall affix their signatures thereto on said record. A copy of said certificate shall also be delivered, by mail or by hand, to each newly elected officer.

1-129. Tie vote procedures. After the votes are canvassed the results certified, if two or more persons shall have received an equal number of votes for the same office in said election held in said town, if such number be the highest cast for such office, the Canvassing Board shall notify such candidates to appear before said board within seventy-two hours of said certification. At this time, in their presence, the Canvassing Board shall decide by lot which of them shall be returned elected, and shall make their return accordingly. All contested elections shall be heard and decided by the council.

1-130. Correction of returns. Though illegal votes be received or legal votes be rejected, the returns of the votes taken in such election shall not be set aside for that cause, but it may be shown, by proper evidence before the council, for whom such illegal votes or any of them were cast or for whom the legal votes which were rejected would have been given, and the returns shall be corrected only to the extent that it is so shown.
(See West Virginia Code §8-5-15)

1-131. Payment of election officials. Every commissioner and clerk of election appointed under the provisions of this article

shall be paid the sum of not less than fifteen dollars nor more than thirty dollars for each day he shall serve as such, as the council may determine. Such allowance, as well as all other expenses attending the election held in said town, shall be allowed by the council and paid out of the town treasury.

ARTICLE TWO

COUNCIL MEETINGS, THEIR CONDUCT AND ORDER OF BUSINESS

1-201. Time and place of regular meetings. The Common Council of the Town of Sutton shall hold regular meetings on the second and fourth Thursdays of each month. Such meetings shall be held in the Mayor's office and shall convene at 7:30 o'clock p.m., Eastern Standard Time or Daylight Saving Time, whichever shall prevail in said town at the time, or may be held at any other suitable hour set at the discretion of the council.

1-202. Special meetings. Special meetings may also be held pursuant to the call of the Mayor or of three or more members of the council, but before any such special meeting shall be held the Mayor or members of the council calling the meeting shall issue notice directed to the police officer on duty in which shall be stated the time, place and purpose or purposes of the meeting, and said notice or a copy thereof shall be served upon each member of the council not absent from town at the time and return of how said notice was served shall be made to the Recorder at or before the time fixed for said meeting. Said notice, together with the return endorsed thereon, shall be entered in the "minute book", and no other business shall be transacted at said meeting except that which is specified in said notice. Unless said special meeting be called due to an immediate emergency, every effort shall be made to serve notice of a special meeting at least twenty-four hours before the time stated for the meeting to take place.

1-203. Open meetings. All meetings of the council shall be open to the public unless a majority of those council members present shall vote to go into executive session. Any citizen or taxpayer or officer of the town shall have the right to be heard upon any question coming before the council in which he may be an interested party, but before proceeding to discuss any question such person must first obtain the permission of the Mayor or presiding officer to speak, and he shall conform to the recognized rules of parliamentary law in all respects.

1-204. Attendance at meetings. It shall be the duty of members of the common Council to attend every regular meeting and every special meeting of the council; the appointed officers of the town shall attend any meeting when requested to do so by the Mayor or presiding officer of the council for the time being. Whenever at the time appointed for the meetings of the council,

either in regular or special meeting, a quorum shall not be present, it shall be lawful for any three members who may be in attendance to order the Chief or any police officer of the town to summons to appear forthwith and, if necessary, to arrest the absent members or any of them and cause them to appear forthwith at the place of meeting and there to remain until the meeting adjourns or leave of absence be given. An order for bringing in an absent member shall be issued and signed by the Mayor or, in his absence, by the recorder; or, in the absence of both, by the three members of the council making such an order. Such absent member on being so arrested, unless he shall furnish a reasonable excuse for said absence, shall be fined not to exceed five dollars. No member shall leave a meeting without permission of the Mayor.

1-205. Suspension of meetings. The council may by majority of all its members suspend any one or more regular meetings, but in no case so as to prevent a regular meeting of said council at least once in every month.

1-206. Quorum. A majority of the members of the council shall be necessary to form a quorum for the transaction of business. (See West Virginia Code 8-9-1)

1-207. Presiding officer. The council shall be presided over at its meetings by the Mayor or, in his absence, by the Recorder; or, in absence of both Mayor and Recorder, by one of the councilmen selected by a majority of those present. The presiding officer shall preserve order and decorum in council, and conduct its meetings in accordance with the rules of parliamentary procedure whenever deemed necessary and so announced by the presiding officer or by upon a vote of the majority of the council members present. (See West Virginia Code 8-9-1. Section revised 1989.)

1-208. General rules of order. The rules of order and parliamentary procedure contained in Robert's Rules of Order, Revised shall govern the transaction of business by and before the Common Council at its meeting in all cases to which they are applicable and in which they are not inconsistent with provisions of the charter and this code. All questions of order shall be decided by the Mayor or presiding officer, subject to an appeal to the council; and an appeal from the decision of the presiding officer upon a question of order shall be allowed to be put only upon the demand of a member other than the member appealing. The question upon an appeal shall be put in the following form: "Shall the decision of the chair be sustained?"

Provided, that all actions and votes of the council shall be valid even though the provisions of this section requiring compliance with the rules of order be not complied with unless there has previously been an announcement or vote requiring such compliance as is provided for by Section 1-207.
(Section amended 1989)

1-209. Order of business. At each regular meeting of the Common Council the following regular order of business shall be observed unless dispensed with by a majority vote of the members present:

- (1) Call to order by the presiding officer
- (2) Roll call by the Recorder
- (3) Reading of the minutes of the previous meeting by the Recorder and approval or correction; minutes signed by the Mayor
- (4) Grievance of citizens
- (5) Communications from the Mayor
- (6) Old business
- (7) Standing committee reports and any necessary action therefrom
- (8) Special Committee reports and any necessary action therefrom
- (9) New business, including payment of bills or claims
- (10) Adjournment

1-210. Disorder. If any member transgresses the rules of the council, the mayor shall, or any member may, call him to order; in which case the member called to order shall immediately sit down and be silent, unless permitted by the council to explain, and the council if appealed to shall decide the matter.

1-211. Protests. Any member of the council shall have the liberty to protest against any order or resolution of the council which he may think injurious to the public or unfair to any citizen of the town, and have the reasons of his protest entered upon the "minute book", but such protest shall not exceed one hundred words in length.

1-212. Voting the question. All questions shall be put in the form "as many as are in favor of the motion, say aye! those opposed, say no!" and in doubtful cases, or where an affirmative vote of not less than four members of the Common Council is necessary to carry the proposition, the Mayor may direct, or any member may call for, a division of the question. No action or vote of the council shall be subject to attack for failure to comply with this section unless there has previously been an

announcement or vote similar to that provided for by Section 1-207.

(Section Amended 1989)

1-213. Recording the vote. The ayes and the nays shall be taken and recorded upon any question before the council upon the demand of any member, but such call shall not preclude amendments before the main question is put. If any member demands, the record shall show the names of those voting yea and nay.

1-214. Tabled business. All business brought before the council by motion or resolution or any other way, and laid upon the table, shall be considered as finally disposed of, unless taken from the table by order of the council by majority vote of those present at one of the three next regular meetings following the meeting at which it was tabled.

1-215. Question on the floor. When a question is before the council, no motion shall be received unless to amend, postpone, or commit the main question, or to adjourn; and a motion to adjourn shall always be in order unless the council is engaged in voting. A motion to adjourn or lay on the table shall be decided without debate and an ordinance or resolution, after commitment and report thereon, may be recommitted at any time previous to its final passage.

1-216. Enacting ordinances. All general ordinances and standing rules, and amendments thereto, shall be in the style and adopted under the procedures specified in Article Three of this chapter.

ARTICLE THREE

CONSTRUCTION AND ADOPTION OF ORDINANCES

1-301. Construction of ordinances. The style of all general ordinances and standing rules, and amendments thereto, shall be: "Be it ordained by the Common Council of the Town of Sutton:". The object of an ordinance shall be briefly expressed in its title. The following rules shall be observed in the construction of ordinances, unless a different intent be apparent from the context:

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

(b) The words "the Mayor" include any person lawfully exercising his authority.

(c) The word "person" includes individuals, corporations, partnerships and associations, if not excluded by the context.

(d) The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by ordinance.

(e) Unless otherwise specifically provided, all fines and forfeitures imposed by or under any of the provisions of this code shall accrue to the town and be applied as directed by the council.

(f) The word "council" shall in all cases be taken to mean and refer to the Common Council of the Town of Sutton.

1-302. Presentation of proposed ordinances. A proposed ordinance shall in every case be presented in writing and read by title at not less than two council meetings, with at least one week intervening between said meetings, unless a member of the council demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(See West Virginia Code 8-11-4)

1-303. Adoption of ordinances. Said proposed ordinance, after being read as specified in the previous section, shall be referred to the appropriate standing committee of the council for investigation, unless passed at the same meeting at which proposed, under suspension of the rules. The committee to whom any proposed ordinance is referred shall submit its recommendations thereon to the council at the next regular

meeting thereafter. The said proposed ordinance, when so reported by the committee, shall be again read and, if adopted, shall take effect and be in force immediately on the approval of the minutes of the meeting of the council at which adopted, unless a later date be provided in the ordinance itself or unless for sufficient reason a later date be fixed by said council for the said ordinance to take effect. Immediately after such adoption the Town Ordinances shall be revised accordingly, as provided in Section 1-311 of this article.

1-304. Amended ordinances. A proposed ordinance shall not be materially amended at the same meeting at which it is finally adopted. No ordinance shall be amended by reference to its title or section number alone, but each general ordinance shall be adopted as amending, adding, or deleting a numbered section or sections of this code.

1-305. Publication requirements. Unless required by the council or by law, it shall not be necessary to publish any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, with the following exception:

(a) If the principal object of a proposed ordinance is the raising of revenue for the town, a notice of the proposed adoption of said ordinance shall be published at least five days before the meeting at which said proposed ordinance is to be presented. Such notice is to be published as a Class I-0 legal advertisement in compliance with the provisions of the laws of the state of West Virginia in a newspaper whose area of publication shall be Braxton County, and said notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time, and place of the proposed final vote on adoption, and the place or places within the town where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(See West Virginia Code 8-11-4)

1-306. Repeal of ordinances. 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 law expired, provided that the proceedings thereafter had shall conform as far as practicable to the laws in force at the time such

proceedings take place, unless otherwise specially provided. When an ordinance which has repealed another is itself repealed, the former ordinance shall not be revived without express words for the purpose.

1-307. Computation of specified time limits. The time within which an act is to be done shall be computed by excluding the first day and including the last; or, if the last day be Sunday or a legal holiday, it shall also be excluded and the next business day shall be considered the last day.
(Section amended 1989)

1-308. Deputizing of required acts. When an ordinance requires an act to be done by an officer or person, it shall be sufficient if it be done by his agent or deputy, unless it be such as cannot be lawfully done by deputation.

1-309. Adoption of technical codes. The council may adopt by ordinance building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this section. Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the council at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the Mayor and shall be filed as a permanent record in the office of the Recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of Section 1-305 of this article, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as provided in Section 1-305(a) for ordinances the principal object of which is the raising of revenue for the town, which notice shall also state where, within the town, the code or codes will be available for public inspection. The council may, if it so desires, call for a public referendum on the adoption of any such code, consistent with other provisions

of this code and the laws of the State of West Virginia, and, if such be done and the majority of the public votes in said referendum shall be in the affirmative, the council shall by ordinance carry into effect the will of the voters.
(See West Virginia Code 8-11-4)

1-310. Adoption of emergency measures. The council may enact an ordinance without complying with the rules prescribed in this chapter only:

(a) in the case of a pressing public emergency making procedure in accordance with the provisions of this article dangerous to the public health, safety or morals, and by affirmative vote of two-thirds of the members elected to the council; or

(b) when otherwise provided by the Code of the State of West Virginia. The nature of any such emergency shall be set out in full in the ordinance.

(See West Virginia Code 8-11-4)

1-311. Ordinance book. Immediately upon adoption of the Town Ordinances they shall be reproduced in loose-leaf form and kept in a suitable binder. The Common Council by motion or resolution shall fix, and change from time to time as considered necessary, the prices to be charged for copies of the Town Ordinances and revisions thereto. After adoption of the Town Ordinances, each general ordinance shall be adopted as amending, adding, or deleting a numbered section or sections of said code; immediately thereafter those affected pages of the ordinance book shall be revised to reflect such amended, added or deleted material and shall be distributed to city officers and employees having copies of said code and to other persons who have requested and paid for current revisions. Notes shall be inserted at the end of amended or new sections, referring to the dates and numbers of ordinances making the amendments or adding the new sections, and such references shall be cumulative if a section is amended more than once in order that the current copy of the Town Ordinances will contain references to all ordinances since the adoption of the original Town Ordinances. One copy of the Town Ordinances as originally adopted and one copy of each amending ordinance thereafter adopted shall be mailed to the West Virginia Municipal League immediately upon final passage and adoption. The failure of any note to appear at the end of any section amended, revised, or deleted as is required hereby shall not void any such amendment, revision, or deletion.

(Section amended 1989)

ARTICLE FOUR

LEVY, COLLECTION, AND DISBURSEMENT OF TAXES

1-401. Meeting of council as levying body. The common council of the Town of Sutton shall hold a meeting or meetings between the seventh and twenty-eighth days of March for the transaction of business generally and particularly for the business herein required.

(See West Virginia Code 8-13-1)

1-402. Levy estimate by council; certification to tax commissioner an publication. The council shall, at the session provided for in the preceding section of this article, ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

(1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bounded indebtedness, legally incurred upon a vote of the people as provided by law, prior to or subsequent to the adoption of the tax limitation as provided by law, prior to or subsequent to the adoption of the tax limitation amendment, owing by the municipality;

(3) Other contractual indebtedness, not bonded, legally incurred prior to or subsequent to the adoption of the tax limitation amendment, owing by the municipality;

(4) All other expenditures to be paid out of the receipts of the municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;

(5) The total amount necessary to be raised by the levy of taxes for the current fiscal year;

(6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and

(7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the town.

The Town Recorder shall forward immediately a certified copy of the statement to the Tax Commissioner of the State of West Virginia, and shall publish the statement forthwith as a Class II-0 legal advertisement under the provisions of the laws of the State of West Virginia. The session shall then stand

adjourned until the third Tuesday in April, at which time it shall reconvene.

1-403. Reconvened session of council to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses. The council shall, when it reconvenes on the third Tuesday in April, hear and consider any objections made orally or in writing by the town attorney, by the tax commissioner or his representative, or by any taxpayer of the town, to the estimate and proposed levy or to any item thereof. The council shall enter of record any objections so made and the reasons and grounds therefor. The failure of any officer or taxpayer to offer objections shall not preclude him from pursuing any legal remedy necessary to correct any levy made by the council under this code.

The council, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the tax commissioner. When the same shall have been approved by the tax commissioner, the Recorder shall then enter the estimate and levy, together with the order of the council approving them and the written approval of the tax commissioner thereof, in the minute book.

The council shall then levy as many cents per hundred dollars' assessed valuation on each class of property in the town as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of the municipality incurred prior to or subsequent to the adoption of the Tax Limitation Amendment;

Second, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by the laws of the State of West Virginia unless another rate is authorized by the tax commissioner in accordance with said laws. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

1-404. Certification of the levy. Within three days after the council has laid the levies, the Town Recorder shall forward

certified copies of the order laying the levies to the tax commissioner, the state auditor, and the officer whose duty it is to extend the levies.

1-405. Order for election to increase levies; vote required; amount and continuation of additional levy; issuance of bonds. The council may provide for an election to increase the levies, by entering on the minute book an order setting forth:

- (1) The purpose for which additional funds are needed;
- (2) The amount for each purpose;
- (3) The total amount;
- (4) The separate and aggregate assessed valuation of each class of taxable property within the corporation;
- (5) The proposed additional rate of levy in cents on each class of property;
- (6) The proposed number of years, not to exceed three, to which the additional levy shall applied; and
- (7) The fact that the council will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The council shall submit to the voters eligible to vote within the town, the question of the additional levy at either a general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the council may impose the additional levy. This levy shall not exceed fifty percent of the rates authorized in Section 1-403 of this article. Levies authorized by this section shall not continue for more than three years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, the council may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of such bonds shall not extend beyond the period of such increased levy.

1-406. Special levy elections; notices; election officers; conduct or election; supplies; canvass of returns; form of ballot. The council shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the revisions of the laws of the State of West Virginia, and the publication area for such publication shall be Braxton County. Such notice shall be so published within fourteen consecutive days next preceding the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is

held, the council, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The council, however, shall provide the election supplies necessary for such election and shall canvass the returns thereof. A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled:

"Special election to authorize additional levies for the year(s) _____ and for the purpose of _____ according to the order of the Common Council of the Town of Sutton entered on the _____ day of _____."

"The additional levy shall be on Class I property _____ cents; on Class II property _____ cents; on Class III property (if any) _____ cents; on Class IV property (if any) _____ cents."

1-407. Tax commissioner to furnish forms of statements and attorney general to furnish forms for elections. The levy estimate and levy order required by this article shall be made on forms provided for that purpose by the Tax Commissioner of the state of West Virginia, and the necessary forms for the holding of any election authorized by this chapter shall be those provided for that purpose by the Attorney General of the State of West Virginia. In every case, the forms to be provided as aforesaid shall be followed so far as they are consistent with the law.

1-408. Manner of expending funds. The council in expending funds derived from the levying of taxes shall expend the funds only for the purposes for which they were raised, unless otherwise authorized by the Tax Commissioner of the State of West Virginia.

The council shall not expend money or incur obligations:

- (1) In an unauthorized manner;
- (2) For an unauthorized purpose;
- (3) In excess of the amount allocated to the fund in the levy order; or
- (4) In excess of funds available for current expenses.

Any indebtedness created, contract made, or order or draft issued in violation of this section shall be void.

1-409. Purchasing in open market or competitive bids. The council may make a purchase of commodities and printing of four thousand dollars or less in amount in the open market, but a purchase of and contract for commodities and printing of over four thousand dollars shall be based on competitive bids, except in case of emergency.

In any instance where purchase is made by competitive bids, the council shall cause to be published in a weekly newspaper published in Braxton County in three consecutive issues a notice or offer to bid, the first of said three publications being not less than thirty days prior to the date specified in the notice for closing of acceptance of bids. Said notice or offer to bid shall state at least in substance the particular specifications of the commodities or printing to be purchased and, if designated by council, the delivery date required or any other particulars required in said purchase. All bids shall be sealed and delivered to the Recorder on or before the date specified by council, which date shall not be less than thirty days immediately subsequent to the first of said publications.

At the first regular council meeting following said thirty day period, all bids will be opened by council, all bidders having the right to be present. The bid shall be awarded to the lowest responsible bidder who shall meet the stated specifications of the commodities or printing to be purchased, and at this time, in the discretion of the council, a delivery date may be specified and the successful bidder may be required to post a performance bond containing such conditions and stipulations as specified by council and such penalty for default as council may see fit to impose. If the lowest responsible bidder cannot or will not meet the said performance specifications, the bid shall be awarded to the next lowest responsible bidder who shall meet the conditions specified.

At the time of opening the bids and prior to the acceptance of any bid, council may, in its discretion, postpone the awarding of such bid for a reasonable time, more particularly for but not limited to the purpose of enabling and assisting the bidder or bidders in investigating the availability of the commodity bid on, or when the same would be obtainable, and to give council time and opportunity to investigate the responsibility of such bidder or bidders.
(See West Virginia Code 8-12-10)

1-410. Recovery of money unlawfully expended by council.

Whenever the council expends money or incurs obligations in violation of Section 1-408 of this article and by so doing be guilty of an act of misfeasance, suit may be instituted in a court of competent jurisdiction by a taxpayer of the town, the State Tax Commissioner, or any person prejudiced thereby, for recovery of the money expended or to cancel the obligation or both. All legal proceedings relative to Sections 1-408 through 1-412 of this article shall be consistent with the laws of the State of West Virginia.

1-411. Unlawful expenditure by individual official; proceedings for recovery of funds; penalties.

A person who, in his official capacity, willfully participates in the violation of Section 1-408 of this article shall be personally liable, jointly and severally, with others concurring therein, for the amount illegally expended. Such person may also be proceeded against for the recovery of the amount illegally expended. The town, any taxpayer thereof, the Prosecuting Attorney of Braxton County, the Attorney General of the State of West Virginia, or any person prejudiced thereby may bring the proceedings in a court of competent jurisdiction. All money recovered in such proceedings shall be paid into the treasury of the town and credited to the proper fund. If the plaintiff prevails, he shall recover against the defendant the costs of the proceedings, including a reasonable attorney's fee to be fixed by the trial court and included in the taxation of costs.

Such violator shall also, in addition to any and all civil liabilities, be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or confined in jail not more than one year, or both such fine and imprisonment, in the discretion of the court. Upon conviction he shall also forfeit his office.

1-412. Proceedings for removal of official from office. The state, a taxpayer of the town, or the tax commissioner, may institute and prosecute to final judgment any proceeding for the removal of a member of the council who has willfully or negligently violated any of the provisions of this article.

Upon the petition of the state, a taxpayer of the town, or the tax commissioner, the court, or in vacation the judge, shall set a time for hearing the petition. An attested copy of the petition and the charges contained therein shall be served upon the defendant at least twenty days prior to the date of hearing. No other pleading or notice of the proceedings shall be necessary.

1-413. Claims and demands for payment. All claims and demands against the town, other than those for which work is done or materials furnished under the direct supervision or control of an authorized officer of said town, when presented for allowance to the council, must be stated in the form of an itemized account and any person submitting such claim shall be deemed to have represented that each item of the claim or demand and the price charged therefor is just and correct, and that no part thereof has been paid. No claim against the town shall be allowed for any demand other than such as shall have been contracted under the authority of the council, or as otherwise provided by ordinance.

1-414. Payment of money from town treasury must be by order; forgery complaint. No money shall be paid out of the town treasury except upon an order duly signed by the municipal officers authorized to sign such order.

If any individual other than the individuals authorized so to do shall sign the name of any such municipal officer upon any warrant, order or check, he shall be guilty of forgery; and if any individual shall utter or attempt to employ as true such forged warrant, order or check, knowing the same to be forged, complaint shall be laid against him in the name of the town in any court of competent jurisdiction, subject to the laws of the State of West Virginia.

(See West Virginia Code 8-13-22)

1-415. Fiscal year. The fiscal year for the Town of Sutton shall begin on and include the first day of July in each calendar year.

1-416. Preparation, publication and disposition of financial statements. The Town Recorder, within one hundred and twenty days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing:

(a) the receipts and expenditures of the town during the previous fiscal year arranged under descriptive headings,

(b) the name of each person who received money from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and

(c) all debts of the town, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid.

The Council may require the Recorder to make such financial statement at any time during the fiscal year, for which he shall be compensated as these ordinances provide.

The town shall transmit to any resident of the town requesting the same a copy of any such statement for the fiscal year designated. The town may, if the council so elects, also publish such statement as a Class I legal advertisement in compliance with the provisions of the laws of the State of West Virginia, and in such event the area of publication shall be Braxton County.

(See West Virginia Code 8-13-23)

1-417. Classification of town funds. The public funds of the town shall be classified under two separate and distinct heads, to be designated as the general fund and the sinking fund.

The general fund shall consist of all revenues derived from licenses, fines, dog taxes, taxes levied annually on real and personal property for general and current purposes, and any and every source, other than taxes imposed on real and personal property on account of the sinking fund. The general fund may be divided into various separate accounts or subdivisions as the council may from time to time see fit. The revenue so derived therefrom shall be applied to such purposes as the council may direct consistent with the laws of this state and the provisions of this code.

The sinking fund shall consist of all revenues derived from taxes required to be levied annually on real and personal property for the purposes of paying the interest on the bonded debt of said town, and the principal of said bonds within and not exceeding forty years from the date thereof. Such portion of said revenues as shall be required for the purpose shall be applied to the discharge of the interest coupons falling due on said bonds subsequent to the date of such annual levy and before the next succeeding annual levy therefor; and the balance thereof shall be set apart, and kept exclusively to pay the principal of said bonds as aforesaid, and shall be used for no other purpose whatsoever unless authorized by the West Virginia State Sinking Fund Commission, which is hereby authorized to act as the fiscal agent for the administration of the sinking fund. All income and revenue accruing for the purpose of the sinking fund shall be held and expended in accordance with the laws of the State of West Virginia.

(See West Virginia Code 8-13-20)

1-418. Special accounts may be authorized. The council shall have the power and authority to establish a special fund known as the Capital Reserve Fund. This fund shall consist of the unexpended balances of other funds which may be transferred to the Capital Reserve Fund at the end of the fiscal year with the approval of the state tax commissioner, and any other moneys authorized by law to be used for the purpose of this fund.

The Capital Reserve Fund shall be used from time to time for construction, reconstruction, purchasing or replenishing of, or addition to, municipal buildings, public works, equipment, machinery, motor vehicles, or other capital assets. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget.

If the town accumulates such Capital Reserve Fund for more than two years, the proceeds of the fund shall be transmitted to the state sinking fund commission on or before the first day of September of each year. The proceeds of the fund may be withdrawn by the town upon reasonable notice in writing to the state sinking fund commission.

In addition to the Capital Reserve Fund, the council shall have the power and authority to establish in a special account for the deposit of funds received from and granted by the United States of America or the state of West Virginia. Such funds shall be appropriated and expended in accordance with the applicable laws and regulations promulgated by the governmental authority making such grants. The funds so received and held in such special account shall not be considered as revenue in determining the amount of real and personal property taxes to be levied for the regular fiscal budget of the town.

(See West Virginia Code 8-13-19, 8-13-19a)

ARTICLE FIVE

SOCIAL SECURITY, GROUP INSURANCE, AND WORKMEN'S COMPENSATION FOR OFFICERS AND EMPLOYEES

1-501. Policy and purpose as to coverage. It is hereby declared to be the policy and purpose of the Town of Sutton to provide for all eligible employees and officials of the municipality, whether employed in connection with a governmental or proprietary function, the benefits of the system of social Security, a retirement program which conforms to state and federal law, the system of public employees group life and medical insurance, or the approximate equivalent thereof, and the system of workers' compensation. In pursuance of said policy, and for that purpose, the town shall take such action as may be required by applicable state and federal laws or regulations.

(See West Virginia Code 8-12-8)

1-502. Necessary agreements to be executed. The Mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with those persons, corporations, or entities as may be reasonably necessary to secure coverage of employees and officials as provided in the preceding section.

(See West Virginia Code 8-12-7)

1-503. Withholdings from salaries and wages. Withholdings from the salaries or wages of employees and officials for the purposes provided in the first section of this article are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations and shall be paid over to the state or federal agency designated by said laws or regulations.

1-504. Appropriations for employer's contributions. There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations or by order of the council for employer's contributions, and the same shall be paid over to the state or federal agency or private or corporate entity designated by said laws or regulations and the program being then subscribed to by the town.

1-505. Records and reports to be made. The municipality shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.

ARTICLE SIX

VACATIONS, SICK LEAVE, AND PAID HOLIDAYS

1-601. Applicability of article. This article shall apply to all full-time (those working 40 hours per week) municipal officers and employees except those operating under the jurisdiction of a school, utility or other separate board or commission or those employed under temporary contract.

1-602. Vacation leave. All requests for vacation leave must be approved by the employee's department head with final approval by council, and all such requests must be made at least two weeks before the first day of vacation requested. All officers and employees shall be given two (2) full weeks of vacation leave with pay for each full fiscal year of employment. If their period of employment on July 1 is less than twelve months, they are entitled to one day of vacation leave for each full month they have worked for the Town of Sutton prior to the time of taking vacation. No credit for the first month will be given if the employee starts between the 16th and 31st of the month. At no time shall a person's total credit for vacation leave exceed two (2) weeks. Upon the termination of employment, whether voluntary or otherwise, all vacation accumulated will be cancelled as of the date of exit and the employee shall not be entitled to any extra compensation or wages.

(See West Virginia Code 8-5-12)

1-603. Sick leave. All officers and employees shall be given a credit of one (1) working day of sick leave with pay for each full calendar month of employment. Sick leave shall be taken only when approved by the Mayor or by the department head and shall be approved, up to the number of days accrued, for all officers and employees whose absence from duty is due to illness, bodily injury, exposure to contagious disease, death in the immediate family of the officer or employee, illness in the immediate family of such a critical nature as to require the presence of the officer or employee, or illness due to pregnancy of the officer or employee. A permanent employee may continue to work until the date of expected delivery if her doctor determines her physically able to perform her regular duties. A doctor's statement to this effect is to be presented to the department head or the Mayor. The Mayor may, in his discretion, require doctor's certificates or other satisfactory evidence that absences are properly chargeable as sick leave. The maximum credit for accrued sick leave under the provisions of

this section shall be eighteen (18) working days, provided that when the employee is off due to illness lasting longer than the accrued sick leave, such employee may petition council for additional sick leave beyond the days accumulated, presenting such evidence of illness as may be pertinent; and at discretion of council, said additional leave may be granted, with or without compensation, or at such compensation as council may from time to time determine. Upon the termination of employment, whether voluntary or otherwise, all sick leave accumulated will be cancelled as of the date the employee last works for the town and the employee shall not be entitled to any extra compensation or wages.

(Section amended 1989)

1-604. Civil leave. Regular compensation shall be granted without charges on either annual vacation leave or sick leave for employees who are required to perform jury duty.

1-605 Maternity leave. Sick leave may be charged for illness due to pregnancy; however, a pregnant employee may continue to work as stated in section 1-603 of this article. Annual leave may be applied to the period six weeks prior to or after expected delivery as the employee may desire, Further compensation shall not be granted except under conditions provided in section 1-603.

1-606. Leave of absence. Leave of absence will not be approved under any circumstances.

1-607. Paid Holidays. Employees will receive the following legal holidays at full pay: New Year's Day, January 1; Memorial Day; West Virginia Day; Independence Day, July 4; Labor Day; Presidential Election Day (every four years); Thanksgiving Day; and Christmas Day, December 25; and such addition holidays as council, shall from time to time determine by proper order.

1-608. Compensatory time. Any employee who is required by the Mayor or department head to work overtime or on a holiday will be allowed compensatory time off, with the approval of the Mayor or department head. Such compensatory time off must be taken consistent with other provisions of this code, with the laws of the state of West Virginia, and as ordered by the council from time to time. No employee or officer of the town shall be permitted by his superior to work overtime except in an emergency without prior authorization from the mayor and no employee or officer shall be permitted to earn compensatory time without prior authorization by his superior.

(Section amended 1989)

1-609. Leave records. The Mayor shall cause to be kept, for each officer and employee, a record currently up to date at all times showing credits earned and leave taken for all vacation, sick leave, compensatory time, or any other type of credit or leave allowed under the provisions of this article.

ARTICLE SEVEN

MISCELLANEOUS RESTRICTIONS ON PERSONNEL

1-701. Business dealings. Except for the receipt of such compensation as may be lawfully provided for the performance of his municipal duties, it shall be unlawful for any town officer or employee to be privately interested in or to profit, directly or indirectly, from business dealings with the Town of Sutton. (See West Virginia Code 8-9-1)

1-702. Acceptance of gratuities. No municipal officer or employee shall accept any money or other consideration or favor from anyone other than the municipality for the performance of an act which he would be required or expected to perform in the regular course of his duties; nor shall any officer or employee accept, directly or indirectly, any gift, gratuity, or favor of any kind which might reasonably be interpreted as an attempt to influence his actions with respect to city business. (See West Virginia Code 61-SA-6)

1-703. Outside employment. No full time officer or employee of the Town of Sutton shall accept any outside employment without written authorization from the Mayor council. The Mayor or council shall not grant such authorization if the work is likely to interfere with the satisfactory performance of the officer's or employee's duties, or is incompatible with his municipal employment, or is likely to cast discredit upon or create embarrassment for the municipality.

1-704. Political activity. Municipal officers and employees may individually exercise their right to vote and privately express their political views as citizens. No municipal officer or employee shall solicit political campaign contributions or engage in or actively participate in any political campaign. These restrictions shall not apply to elective officials. (See West Virginia Code 8-14-19)

1-705. Use of municipal time, facilities, etc. No municipal officer or employee shall use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself of any other private person or group; provided, however, that this prohibition shall not apply where the council has authorized the use of such time, facilities, equipment, or supplies, and the municipality is paid at such rates as are normally charged

1-706. Use of position. No municipal officer or employee shall make or attempt to make private purchases, for cash or otherwise, in the name of the municipality, nor shall he otherwise use or attempt to use his position to secure unwarranted privileges or exemptions for himself or others.

1-707. Strikes and unions. No municipal officer or employee shall participate in any strike against the municipality nor shall he join, be a member of, or solicit any other municipal officer or employee to join any labor union which authorizes the use of strikes by government employees.

1-708. Violations. A violation of any section of this article shall be punishable by a fine of not more than fifty dollars for each separate violation and shall, if the council so determine, be grounds for immediate dismissal.

1-709. Removal of elected officials, appointed officers and employees. All elected officials, appointed officers, and employees of the town shall be subject to removal as provided for by section 2-107 and 2-108 of these ordinances.

CHAPTER TWO

POWERS AND DUTIES OF COUNCIL AND ELECTED AND APPOINTED OFFICIALS

ARTICLE ONE

POWERS AND DUTIES OF COUNCIL; COMMITTEES; APPOINTMENT AND
REMOVAL OF OFFICIALS FROM OFFICE

2-101. Municipal authorities. The municipal authorities of said town shall be the Mayor, Recorder, and five Councilmen, who together shall form a Common Council, and all the corporate owners of said corporation shall be exercised by said Common Council or under its authority, except where otherwise provided. The said Mayor, Recorder, and Councilmen, and their successors in office, shall be a body politic and corporate, by the name of the Town of Sutton, and shall have perpetual succession and a common seal; and by that name may sue and be sued, plead and be impleaded, purchase and hold real estate necessary to enable them the better to discharge their duties and needful for the good order, government and welfare of said town.
(See West Virginia Code 8-5-7, 8-12-1)

2-102. Power to ordain and penalize. To carry into effect all powers conferred upon said town by the laws of this state, the council shall have power to make and pass all needful orders, by-laws, ordinances, resolutions, rules and regulations not contrary to the constitution and laws of this state; however, no ordinance shall be passed or enacted by less than a majority vote of the entire council. The council shall also have power to prescribe, impose and enact reasonable fines, penalties and imprisonments in the county jail or place of imprisonment in said town, for a violation thereof. Such fines, penalties and imprisonments shall be recovered and enforced under the judgment of the Mayor of said town or the person lawfully exercising such functions.
(See West Virginia Code 8-11-1)

2-103. Appointment of town officials. There may be appointed by the council, at its first regular meeting in the month of July, in each election year or as soon thereafter as may be practical, with the concurrence of a majority of said council, a Street Commissioner, City Attorney, Municipal Judge, Chief of Police, and such police officers as the council may deem necessary, which number may be increased or decreased from time to time as council may see fit. No incumbent or former

incumbent appointed to any office by the council shall be eligible for a second appointment to an office unless he shall have fully settled up the business of his former term or terms and shall have fully accounted to the satisfaction of the outgoing council for all money received by or chargeable to him by virtue of his said office at the time of said second appointment. The officers so appointed as aforesaid shall continue in office until their successors are appointed and qualified, unless sooner removed, which right of removal may be exercised by the council at its pleasure, or under its authority as hereinafter provided.

Council shall also have the power to employ such office staff or other employees as deemed necessary for the orderly and efficient performance of the business of the town, which number may be increased or decreased from time to time as council may see fit. Council may delegate to said employees such authority and responsibilities as deemed necessary for the performance of their duties, and for those employees whose duties include the receiving or taking charge of any funds, assets, or other property of the town, the council shall require bond as specified hereinafter for town officials.
(See West Virginia Code 8-5-11)

2-104. Council to fix compensation and duties. The council shall prescribe the powers and define the duties of all officers of the town whether elected or appointed, except insofar as the same are otherwise defined by law, and shall fix the compensation they shall receive for their services, which shall not be increased nor diminished for any elected officer during the term for which he shall have been elected.
(See West Virginia Code 8-5-12)

2-105. Officials to be sworn. Every person elected or appointed to an office in said town shall, within twenty days after his election or appointment, and before he shall enter upon the duties of his office, take and subscribe the oath of office prescribed for district officers; which may be done before any person authorized to administer oaths, or before the Mayor or Recorder of said town, which oath, together with the certificate of the officer administering the same, shall be filed with the Recorder of the town and included in the minute book. A true copy of said oath and certificate shall be filed with said officer's bond in the office of the Clerk of the Braxton County Commission, as provided hereinafter.

2-106. Officials and employees to be bonded. Council shall require and take from all officers authorized to carry weapons and all officials and employees whose duties include the receiving or taking charge of any funds, assets, or property belonging to the town, such bonds, obligations, or other writings as are necessary and proper to secure the faithful performance of their several duties. All bonds, obligations and other writings taken in pursuance of this provision shall be made payable to the Town of Sutton, with such sureties and in such penalties as shall be sufficient and proper, conditioned for the faithful discharge of their duties, and for the accounting and paying over, as required by law, of all moneys coming into their hands by virtue of their offices, and said bond shall be presented and approved by said council before such officer shall assume the duties of his office. All such bonds as provided for in this section shall be filed by the finance committee as stated in Chapter 2 Section 310 of this code, and a true copy thereof filed in the office of the Clerk of the Braxton County Commission and, if recordable, shall be recorded and indexed in the records therein.
(See West Virginia Code 8-12-5(46))

2-107. Impeachment of elected officials. The council shall have power and authority to remove from office any elected officer of said town for incompetency, immorality, misconduct, or neglect of duty, or any nonfeasance, misfeasance, or malfeasance in office, upon written charges under oath, setting forth in particularity the complaint, preferred by a member of the council or by any responsible citizen of the town, and upon a hearing of the charges preferred, at which he shall have the right to appear in person and assisted by counsel and defend himself. No such officer shall be removed until he shall have been served with notice in writing, specifying the charges and reasons for removal, together with a copy of the complaint, and notification of the time and place of said hearing; which notice and complaint shall be served upon said officer not less than fifteen nor more than thirty days prior to said hearing. The officer making service shall make return of service to the Recorder on a copy of said notice, stating the time, place and manner of service. If such person proceeded against demand, such proceedings and testimony of witnesses shall be recorded and transcribed, and a copy thereof delivered to such person on his request. In the event any officer or council member shall file charges against another elected official seeking such official's removal, the charging official shall not have a vote upon final consideration of the question by the council. In the

event charges are filed against the mayor of the town, the recorder shall preside over any hearing upon such charges. (See West Virginia Code 8-5-9, 8-5-11, Section amended 1989)

2-108. Removal of appointed officers. All officers or employees of the town appointed by the council may be removed from office at the pleasure of the council upon good cause being shown therefor, a majority of the members of the council concurring in such removal; and any officer appointed by the council may be suspended, for cause, by the Mayor at his pleasure. In the case of any suspension the Mayor shall report the same to the next regular meeting of the council, and after an investigation by the council said officer so suspended shall not be re-instated unless with concurrence of four members of the council. The salary of such officer shall cease at the time of suspension; provided, however, that if such suspended officer be re-instated the salary shall remain the same as though there had been no suspension. The officer or council member instituting such removal shall not vote upon consideration of the question by council.

(See West Virginia Code 8-5-9, 8-5-11)

2-109. Holding more than one office. No member of the council may hold more than one elective office at any one time. No member of council may be appointed to any other town office unless he shall first vacate his position on the council.

2-110. Conflict of interest. No member of the council nor any other officer shall become interested directly or indirectly in the purchase of an claim against the town, or of any voucher or order on the treasury; nor shall any member of the council nor any other officer of the town sell to the town or purchase from the town, in other than public auction, anything of value. For every offense against the provisions of this section the person so offending shall be liable to a fine of not less than five or more than fifty dollars and/or removal from office by council or in manner provided by law or ordinance.

2-111. Debt authority. No officer or employee of the town or committee or member of the council of said town shall contract any debt or debts either for labor or materials in the name of the town and chargeable to the town unless authorized to do so by ordinance or by proper resolution of the council, which resolution shall distinctly state the person or committee authorized to contract such debt, for labor or materials or both, and authorizing the expenditure of a maximum amount therefor. In no case shall such expenditure exceed such maximum

amount. In case such officer or employee or committee contract such debt, unless authorized to do so, the town shall disclaim any liability therefor, and shall refuse payment thereof; provided that, in cases of extreme necessity where the interests of the town would be injured by delay, the Mayor may authorize such expenditure as to him may seem necessary, but in all such cases he shall report the same to the council at its next regular meeting.

(See West Virginia Code 8-12-2, 8-13-22)

2-112. Minute book. The council shall cause to be kept by the Recorder in a well bound book to be called the "minute book" an accurate record of all its proceedings, acts, orders and resolutions, in which shall also be recorded all contracts entered into in the name of the town, the bonds of all officers, and such other matters as the council may require. Such book shall be accurately indexed and open to the inspection of any resident of the town.

(See West Virginia Code 8-10-3)

2-213. Committees. All standing committees shall be appointed by the Mayor and all special committees shall be appointed by the presiding officer of the meeting at which authorized, unless otherwise ordered by the council. The standing committees of the council and their duties shall be as follows:

(1) Committee on Finance: It shall be the duty of this committee to pass on all bills and claims against said town, unless otherwise ordered by the council; to make out and submit to the council a budget of the probable receipts and expenditures of the town not later than the date of the council meeting required in Chapter 1 Section 401 of this code; to pass on all contracts to which the town is or may become a party; and to perform such other duties as may properly come before it.

(2) Committee on Roads, Streets and Alleys: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the laying out, closing, naming, caring for, maintaining and improving of the streets and alleys of the town; to pass upon and recommend to the council all matters pertaining to the lighting of the streets, alleys, an public squares of said town; to pass upon and recommend to the council all matters pertaining to the repair, construction and extension of the public sewerage system of the town and all applications and permits for the same; and to perform such other duties as the council may from time to time direct.

(3) Committee on Public Health and Safety: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the public health and safety

of said town and the inhabitants thereof and to the correction and elimination of hazardous conditions which may endanger said public health and safety. It shall also perform such other duties as the council may from time to time direct.

(4) Committee on Police and Fire Protection: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the police, to the maintenance of order and the enforcement of the laws and ordinances in force in said town. It shall also be the duty of this committee to pass upon and recommend to the council all matters pertaining to the equipping and maintaining of the fire department, and to the location of the fire plugs or hydrants of said town, and to see that said plugs or hydrants are kept and maintained in good, perfect and serviceable condition; and shall also perform such other duties as the council may from time to time direct.

(5) Committee on Garbage Collection and Disposal: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the collection and disposal of all garbage, trash, rubbish, and/or other refuse whether by the Sutton Garbage Department or any other authorized agent. Said committee shall see that collections are made on a regular basis in accordance with the manner specified by council and this code; that all equipment necessary for the maintenance and operation of the Sutton Garbage Department is kept and maintained in good, perfect and serviceable condition; and that the disposal of said refuse is accomplished as the council or law may require. It shall also perform such other duties as the council may from time to time direct.

(6) Committee on City Buildings: It shall be the duty of this committee to pass on and recommend to the council all matters pertaining to the Community Building and/or any other building or structure under the jurisdiction of the town. Said committee shall see that such buildings are maintained in a clean and orderly condition and kept in a state of good repair; shall (or in lieu thereof, the Mayor with the approval of the chairman of said committee) see that all meetings or other functions which take place in said buildings are properly scheduled and a record kept of the same; and shall also perform such other duties as the council may from time to time direct.

2-114. Committee members. Each of said standing committees shall consist of three members of the council, unless otherwise ordered at the time of appointment. The Recorder shall be ex-officio a member and chairman of the finance committee, and the first member appointed upon each of the other five committees shall be the chairman thereof. Any committee may be called to meet by the chairmen or any two members. All formal reports of

committees shall be in writing, signed by the members or a majority thereof, and if action by the council be required, they shall specify, in the form of a resolution or ordinance at the close of the report, such action in the premises as the committee may recommend as proper for the council to adopt.

2-115. Franchise agreements. No franchise shall hereafter be granted by the council of said town where the application for such franchise has not been filed with the Recorder of said town at least thirty days prior to the time when it is to be acted upon by the council, and where notice of such application, stating the object of such franchise, has not been given by publication thereof as a Class II legal advertisement, for which publication the publication area shall be Braxton County. No such franchise shall be granted within thirty days after the application has been filed, nor until an opportunity has been given any person interested in the granting or refusing of such franchise to be heard. No such franchise shall hereafter be granted by the council for a longer term than fifty years; provided that nothing in this section shall prevent the renewal of any such franchise for a term not to exceed fifty years, when the same shall have expired. No such franchise hereafter granted for any longer term than fifty years shall be of any force or validity. Notwithstanding the provisions of this section or any other provisions of general law or any charter, the failure or inability of any person to obtain from the council a franchise for the rendering of a public service shall in no way whatever affect the power and authority granted to, and the duties and obligations imposed upon, such person under the provisions of the West Virginia state Code or by the Public Service Commission.

2-116. Meeting place. The council shall, at the expense of the town, provide a room or building to be designated as the Mayor's Office, in which all meetings shall be held, unless for some good cause some other place be designated temporarily; and in said room or building he Mayor and Recorder shall keep all records and papers belonging to the town, unless otherwise provided by this code. All trials for violation of the ordinances shall be held in a place so designated by the council, unless for good cause in special cases a trial may be had at some other place in the town. The council shall also, at the expense of the council and officers of the town, and may have such printing done as may be deemed necessary or required for the benefit of the town.

ARTICLE TWO

POWERS AND DUTIES OF THE MAYOR

2-201. General executive authority. The Mayor shall be the chief executive officer of the town and shall take care that the public peace is preserved and that the orders, by-laws, ordinances acts and resolutions of the council are faithfully executed.

(See West Virginia Code 8-10-1)

2-202. Statement of town condition. It shall be the duty of the Mayor to submit to the Common Council at a meeting, on or before the second regular meeting of the council in June of each year, and at such other times as he may deem necessary, a communication in relation to the interests of the town generally, with such recommendations touching the management of its affairs for the current year, as to him may seem necessary and proper.

(See West Virginia Code 8-10-1)

2-203. General supervision of town officers. The Mayor, under the advice of the council, shall have general supervision of all town officers and shall see that they faithfully perform the duties of their respective offices; and he shall examine the grounds of all reasonable complaints made against any of them and cause all their violations of duty to be promptly punished or reported to the council.

2-204. Maintenance of order. It shall be the duty of the Mayor especially to see that the peace and good order of the town is preserved, that persons and properties therein are protected, and he shall cause the arrest and detention of all riotous and disorderly persons in the town, and if any offense be committed in his presence he may cause their arrest and detention without first having a warrant issued against them.

(See West Virginia Code 8-10-1)

2-205. Police authority. The Mayor shall have control of the police of the town, except as otherwise provided by law, and may, whenever he deems it necessary, appoint special police officers who shall take oath of office and give bond as required of police officers as hereinafter specified; provided, however, that if said special police officers shall not carry a gun or other deadly weapon, then they shall not be required to give bond after having taken the oath of office.

(See West Virginia Code 8-10-1)

2-206. Council meetings. The council shall be presided over at its meetings by the Mayor or, in his absence, by the Recorder or, in the absence of both Mayor and Recorder, by one of the councilmen selected by a majority of the council present. A majority of the council shall be necessary to form a quorum for the transactions of business. No member of the council shall vote upon any order, measure, resolution or proposition in which he may be interested other than as a citizen of such town. The Mayor and Recorder shall have votes as members of the council, and in case of a tie the presiding officer for the time being shall have the casting vote unless he has previously voted.

(See West Virginia Code 8-9-1, 8-9-2)

2-207. Special meetings. The Mayor shall have power to call special meetings of the council whenever such meetings shall by him be deemed necessary; and it shall be his duty to see that all members of the council have notice thereof as provided in Chapter 1 Section 202 of this code.

2-208. Seal of the town. The Mayor shall have charge of the seal of the town and shall affix the same without fee or reward to all contracts, deeds, and other writings to which the town is a party.

2-209. Mayor as conservator of the peace. The Mayor shall be ex-officio a conservator of the peace within the town and shall within the same have, possess and exercise all the powers and perform all the duties vested by law in a conservator of the peace with respect to the ordinances of the town, as provided by the statutes of the State of West Virginia. The Mayor shall also have forfeiture, penalty or imprisonment imposed upon any person, firm, or corporation by the Mayor, municipal judge, or council for any violation of the ordinances of the town or acts in relation thereto.

2-210. Declaration of civil emergency and or martial law. In the event of any emergency, whether national, state, or local, the Mayor as the chief law enforcement officer of the town shall have full power and authority, if the emergency within the town and/or to take all reasonable and necessary action to protect the lives, health, safety and property of the residents and citizens of said town, and, in addition to the employment of the city police, if necessary to call to his assistance members of the West Virginia Department of Public Safety, the Sheriff of Braxton County and his deputies, and/or members of the state and

county civil defense units and members of the fire department of the town. Having once been declare, said state of martial law or emergency shall continue until the Mayor, having determined that said emergency conditions have abated, shall declare the said martial law or state of emergency to be terminated and void.

2-211. Other duties. In addition to the duties of the Mayor herein enumerated, he shall perform such other reasonable services as may be required of him by law, by ordinance of the town, and/or by the council thereof.

2-212. Compensation. The Mayor shall receive for his services such compensation as the council may determine and prescribe by order, which compensation shall be neither increased nor diminished during his term of office.

ARTICLE THREE

POWERS AND DUTIES OF THE RECORDER

(Office of recorder required by West Virginia Code 8-5-7(a))

2-301. Minute book. It shall be the duty of the Recorder of the town to keep in the minute book a record of the proceedings of the council and to keep the same fully indexed and open to the inspection of any taxpayer of the town; in such minute book shall be kept an accurate record of every action taken by the council at any regular or special meeting thereof, upon any matter whatever. He shall have charge of and preserve all records of said town, other than those belonging to the Mayor's office, and shall so arrange all papers as to render them readily accessible. He shall also perform such duties in relation to municipal elections as required by law and ordinances of the town.

(See West Virginia Code 8-10-3)

2-302. Checks and vouchers. The recorder shall issue all checks and vouchers previously allowed by the council and duly recorded in the minute book; said checks and vouchers are to be signed by the Recorder and the Mayor. Before issuing such vouchers or check, the Recorder shall first ascertain whether the party to whom it is payable is indebted to the town for any fines, taxes, levies, special assessments, or any sum for any purpose. If the payee be so indebted, the Recorder shall deduct the amount so due the town and if any sum be then owing to such payee he shall then issue a voucher or check for the same. The Recorder shall then deliver the check or voucher to the payee together with a receipt signed by him for the amount so deducted. No money shall be paid out of the treasury by the Recorder to any person on any claim or demand whatsoever against the town until and after such claim or demand shall first have been presented to and allowed by the council.

If the Mayor or Recorder be absent and out of the jurisdiction of the town, or physically incapacitated, for as much as or more than fourteen consecutive days, then in that event said check or voucher may be signed by the remaining one of said two officers and by a member of the council so designated by a majority vote of the council, this provision to be limited to only those accounts necessary for the day to day transaction of town business.

2-303. Account books. It shall be the duty of the Recorder to keep regular books of account of the different funds provided for by the council, in which be entered, under proper heads and titles, all pecuniary transactions of said council. He shall debit each fund for the amount of revenue accruing thereto for each fiscal year, itemizing as far as practicable the sources of such revenue. He shall also credit each of said funds with all the expenditures therefrom, or other proper credits, itemizing the same as far as practicable, so as to show the amount expended by the town during that year from each of the funds provided for.

(See West Virginia Code 8-10-3)

2-304. Financial statement. It shall be the duty of the Recorder to prepare according to law the annual financial statement of the town, as provided in Chapter 1 Section 416 of this code, and before the close of his term of office to make out and present to the council a correct and complete statement of the financial condition of the town. Said last financial statement, when presented to and approved by the council, shall, by appropriate order, be recorded in the minute book. Upon approval of said financial statements, the council, by order, may allow unto the Recorder a reasonable fee.

2-305. Assistance to County Assessor. The Recorder shall render unto the Braxton County Assessor such assistance as may be necessary to effectuate a just and reasonable assessment of all property within the town.

2-306. Levy estimate. Upon receiving, from the official whose duty it is to make out the land books, the necessary information concerning the aggregate value of the property in the town, as provided by law, the Recorder shall convene a meeting of the finance committee to consider the levy estimate and prepare a recommended estimate to present to the council. The recorder shall present said estimate to the council, together with all information upon which the recommendation was based, at the meeting or meetings of the council required by Chapter 1 Section 401 of this code. When the council has prepared and approved the levy estimate, as provided for by this code and by state law, the Recorder shall forward immediately a certified copy of the estimate to the state tax commissioner and shall cause the same to be published forthwith according to law. After council has laid the levy, as provided by this code and by state law, the Recorder shall, within three days thereafter, forward certified copies of the order laying the levy to the state tax

commissioner, the state auditor, and the officer whose duty it is to extend the levy.

2-307. Ordinance book. The Recorder shall keep book, to be called the ordinance book, and shall make therein a correct record of all ordinances and standing rules passed by the council, in the manner specified in Chapter 1 Section 311 of this code. Immediately after each ordinance and standing rule he shall record the date of its passage.
(See West Virginia Code 8-10-3)

2-308. Publication and printing. It shall be the duty of the Recorder to publish, or cause to be published, any and all legal notices, legal advertisements, notices of ordinances proposed, and/or any other information required by law to be published by the town, under the provisions of this code or the code of the State of West Virginia. It shall also be the duty of the Recorder to superintend all printing to be done for the town under the direction of the council.

2-309. Licenses. The Recorder shall make out and prepare all certificates of license granted by the authority of the council and shall keep a record thereof as provided in Chapter Four of this code. He shall also make out and prepare all commissions and permits granted by authority of the council, and shall furnish without cost to the town all copies of transcripts, whenever deemed necessary by the city attorney, to be used in any suit or proceeding.

2-310. Bonds. It shall be the duty of the Recorder, whenever any bond shall be given by any officer or employee of the town or other person and accepted by the council, to make out at the time an entry in the minute book containing the proceedings of the council, showing the giving of such bond and by whom and its acceptance, giving the name of the principal, each of the sureties to it, and also showing by such entry, if the bond be that of an officer, that the officer assumes upon himself the oath of office and that his sureties, if the bond be a personal one, were examined touching their sufficiency. Upon acceptance and approval of official bond by council, the finance committee, excluding its chairman the Recorder, shall take immediate possession of such bonds for safekeeping and shall cause the original documents to be placed in a secure and safe depository and a true copy thereof shall be delivered to the Clerk of the Braxton County Commission to be recorded and filed as provided in Chapter 2 Section 106 of this code. Any expense incurred

pursuant to the provisions of this section shall be allowed and payable by council.

2-311. Vote. The Recorder shall at all times have a vote as a member of council.

(See West Virginia Code 8-9-2)

2-312. Acting Mayor. The Recorder shall, in the absence from the town, sickness, or inability of the mayor, or during any vacancy in the office of mayor, perform all duties of the Mayor and be invested with all his powers. In addition to the duties of the Recorder herein enumerated, he shall perform such other reasonable services as may be required of him by law and by the ordinances of the town and by the council thereof.

(See West Virginia Code 8-10-3)

2-313. Treasurer. The Recorder shall be ex-officio treasurer of the town, and shall continue in office until his successor is elected and qualified.

2-314. Oath and bond. Before entering upon the duties of his office, the Recorder shall take the oath prescribed by law of district officers, and also, before receiving into his hands any funds belonging to the town, he shall enter into bond with one or more sureties, to be approved by the council, in a penal sum to be fixed by the council but in no case less than the sum of money which shall during his term of office be in his hands at any one time, which penalty may be increased and additional sureties required from time to time as the said sum of money may increase, and which bond shall be payable to the Town of Sutton and shall be conditioned as prescribed by law; nor shall he be released from liability thereon until said Recorder has faithfully accounted for and paid over unto his successor all funds which came into his hands as such officer and treasurer, and for which he is held to account, as provided by law, and has made a final settlement of his accounts and the same has been accepted by council.

2-315. Deposit of funds. It shall be the duty of the Recorder to collect and deposit to the credit of the town, in some bank to be designated by the council, all the money, sums, or accounts due and owing to the town, with which he shall be charged as of the date it is paid into his hands. Upon the expiration of his office he shall immediately account for and pay over to his successor, as soon as his successor shall have qualified and given bond, the money then in his hands and belonging to the town, and for which he is held to account as

recorder. In the event of any fees or expenses to which he is entitled, he shall present his claim in an itemized statement to the council which shall be allowed by the council by proper order, and shall then be drawn from said bank on a check or voucher properly issued by said Recorder payable to his own order and signed by himself and the Mayor.

2-316. Failure to account. The Recorder shall, if he fail to collect, account for and pay over all or any of the money with which he is chargeable, according to the conditions of his bond and the orders and ordinances of the council, be liable, together with his sureties on said bond; and said Recorder and his sureties, or either or any of them, or his or their personal representatives, may be proceeded against in the name of the Town of Sutton in the Circuit Court of Braxton County, by action or motion, or, if the amount demanded does not exceed three thousand dollars, before a magistrate of Braxton County. (See West Virginia Code 8-12-5(46), Section amended 1989)

2-317. Safekeeping of funds. It shall be the duty of the Recorder to keep all moneys which shall come into his hands belonging to the town in proper, safe, and responsible depositories, as designated, and to pay out the same on order of the council and as provided by law. He shall keep a correct account of all his receipts and disbursements, showing the amount of each, and the names of persons, partnerships, or corporations by and to whom paid, and on what accounts.

2-318. Receipts. It shall be the duty of the Recorder, or of any town employee who shall receive any such funds, to issue duplicate receipts for the money paid to him belonging to the corporation on all fines, assessments and levies and on debts of every kind due the town. One of said duplicate receipts, if said money be paid to him on account of a fine, shall be filed with the Mayor, and if paid to him on account of any other matter, shall be kept or filed in the Recorder's office.

2-319. Compensation. The Recorder shall receive for his services as recorder and as treasurer such compensation as the council may determine and prescribe by order for each office, which compensation shall be neither increased nor diminished during his term of office. (See West Virginia Code 8-5-12)

ARTICLE FOUR

POWERS AND DUTIES OF POLICE OFFICERS AND CHIEF OF POLICE

2-401. Appointment. The council shall, at its first regular meeting in July of each election year, or as soon thereafter as practicable, appoint an officer to be called the Chief of Police, and such officer shall be the chief officer of the police department of said town, and shall continue in office during the pleasure of the council and until his successor is appointed and qualified; unless he be earlier removed as provided for by these ordinances, in which case the mayor may appoint a temporary replacement, upon which appointment the council shall vote at its next regularly scheduled meeting. The police department of the town shall consist of the Chief of Police and such additional regular policemen as the council may deem it necessary to appoint, and such special policemen as may be appointed by the Mayor or the council. The police shall always be under the control of the Mayor and shall be subject to his instructions. Any police officer or the chief of police may be removed by the council for good cause, and may, for cause, be suspended by the Mayor subject to the provisions of other ordinances of the town.

(See West Virginia Code 8-5-11, 8-14-3, Section amended 1989)

2-402. Oath and Bond. Before entering upon the duties of such office, the chief or any police officer shall take the oath prescribed by law for district officers and shall enter into bond with one or more sureties, to be approved by the council, in a penal sum to be fixed by the Common Council but in no case less than three thousand five hundred dollars, which bond shall be payable to the Town of Sutton and shall be conditioned as prescribed by law.

(See West Virginia Code 8-5-8)

2-403. Authority. The chief and any member of the police department of the town shall have all of the powers, authority, rights and privileges with the corporate limits of the town with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest, or other process, which can legally be exercised or discharged by a deputy sheriff of a county. In order to arrest for the violation of town ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of the chief or any policeman shall extend anywhere within Braxton County. For an offense

committed within the town in his presence, any such officer may arrest the offender without a warrant and take him before the municipal judge or a magistrate of the county in the event of a violation of state law to be dealt with according to law, and for such offense the chief or any such policeman shall have the same authority of fresh pursuit and arrest beyond the corporate limits of the town as has a sheriff. He and his sureties shall be liable to all the fines, penalties and forfeitures which a deputy sheriff is liable to, for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties and forfeitures are recovered against a deputy sheriff. It shall be the duty of the Mayor and police officers of the town to aid in the enforcement of the criminal laws of the state within the town, and to arrest or cause the arrest of any offender and take him before a magistrate to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this section shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a magistrate, and the same authority to arrest without a warrant for offenses committed in his presence, as a deputy sheriff. It shall also be the duty of the chief of police or his designated officer to attend all trials of the municipal court when so requested by the municipal judge, preserve order at such trials, and execute warrants or other process, including summons and subpoena. Any warrants or process issued by the mayor or municipal judge may be executed by him at any place within Braxton County.

(See West Virginia Code 8-14-3, Section amended 1989)

2-404. Command of the department. The whole police force of the town shall obey the orders of the chief of police in pursuance of the authority conferred upon him by law and the ordinances of this town. The chief of police shall have immediate command of the police department and be subject to the direction of the mayor, subject to the laws and ordinances of the town, and shall have general charge of the peace and good order of the town and see to the observance thereof; he shall enforce the ordinances of the town and the acts of the legislature relating to it, and in an emergency he may direct the whole police force, or any part thereof, to any place in the town he may deem proper. He shall from time to time report to the Mayor or council such suggestions for the improvement of the police department as he may deem advisable.

2-405. Peace and good order. The whole police force of said town shall at all times interfere to prevent the commission of any offense within said town and shall preserve the good order and peace thereof, and shall secure its inhabitants from personal violence and their property from loss or injury. They shall earnestly endeavor, when any offense is committed in the town, to detect and arrest the offender; and shall enforce all ordinances prescribing any fine or punishment; and also any acts of the legislature relating to offenses in the town or to the police thereof. Any officer applied to in the case of an emergency, whether in the day or night and whether it be during his official hours of duty or not, shall provide all possible assistance that said emergency may require. Police officers when on duty shall be diligent and constant in preserving the peace and good order of the town, and in preventing any violation of its ordinances. They shall not allow any persons to assemble on the streets or anywhere else in the town in such manner as to obstruct the free passage of pedestrians or automotive or other means of travel; and when any fire breaks out in the town they shall promptly raise an alarm and shall promptly attend such fire, rendering such assistance as necessary and as required by the ordinances of the town, and shall maintain order at the fire.

(See West Virginia Code 8-14-3, Section amended 1989)

2-406. Arrest of offenders. It shall be the duty of each police officer to report to the Mayor every offense known or believed by him to have been committed against the ordinances of the town; and whenever he knows by sight or from reliable information that an ordinance of the town is about to be or is being violated, to promptly exert his authority to prevent such violation, and to arrest the person or persons committing any offense and bring such person or persons before the municipal judge or county magistrate for trial; and to this end he may call to his assistance any by-stander, who shall assist in making such arrest; and in case of refusal, such by-stander so refusing may be punished as prescribed by ordinance of the town. No police officer shall abuse any prisoner he may have in his charge, nor use force unless it be necessary to do so in self-defense, or to prevent escape, or to convey such prisoner to prison.

(Section amended 1989)

2-407. Written reports required. Every police officer shall make a written report of every crime or other violation of town ordinances which is reported to him or otherwise comes to his attention, including there all facts and particulars relating

thereto, the name or names of persons suspected or arrested by him, and all such particulars in each case as may be important in the investigation and/or trial.

2-408. Uniform and badge. Every police officer, when on duty, shall wear such uniform and badge, and carry such equipment, as the council shall authorize and provide, unless expressly directed by the chief for a special assignment.

2-409. Officers shall be temperate. The chief and every policeman appointed for regular duty shall devote his whole time and attention to the business of the town in maintained order and quiet therein, and shall be prepared to act whenever his services are required. No police officer while on duty, shall loiter in any place wherein intoxicating liquor and/or so-called non-intoxicating beer is sold, or enter any house of ill fame or similar house, or gambling place, except in the immediate discharge of his duty; and shall not drink any intoxicating liquor or so-called non-intoxicating beer of any kind while on duty, or be of intemperate habits, or get intoxicated at any time during his continuance in office, and any such violation of duty shall render it obligatory upon the Mayor to immediately suspend such officer, and the council to remove from office such officer guilty thereof, and such violation shall be sufficient cause therefor.

2-410. Political activity officers. Police officers shall not engage in political or religious argument while on duty, nor shall they engage in any political activity concerning the election of officers and members of the council of the town, State, or federal government or take any part in any controversy or agitation by word or deed that would tend to lessen their usefulness in preserving good order in the community. Neither the chief nor any policeman appointed for regular duty shall be a delegate or representative to any political or partisan convention or connected with any primary or other election or perform any political or partisan service, except to vote.
(See West Virginia Code 8-14-19, Section amended 1989)

2-411. Conduct of officers. There shall not be permitted in the Mayor's office, or in any room or building used by the town, any loafing, card-playing, political (unless during the course of a meeting of council), or religious argument, profane or vulgar language, or quarreling. The members of the police force must at all times be respectful to superiors, equals and citizens, and courteous to subordinates. Any member of the police force using profane, abusive or ungentlemanly language to

any citizen or other person, or refusing or neglecting to obey the orders of his superior officer, shall be liable to suspension and dismissal.

(Section amended 1989)

2-412. Gratuities or rewards. No police officer shall accept from any person, while such person is in his custody or after such person shall have been discharged, any gratuity or reward; nor shall any police officer receive from any person without the permission of the council any reward for the arrest of any offender or recovery of any goods or money.

(See West Virginia Code 61-5A-6)

2-413. Leave of absence. If the chief desires leave of absence from duty, he must obtain such leave from the Mayor; and if any policeman desires such leave of absence, he must obtain the same from both chief and Mayor; but neither the chief nor any policeman appointed for regular duty shall leave the town during his duty hours without the permission of the Mayor, except in the performance of his official duties.

(See West Virginia Code 8-5-11, 8-5-12)

2-414. Public property. Police officers shall carefully protect from waste or a use all public property whenever opportunity to exercise such protection occurs.

2-415. Confiscated or abandoned property. Whenever personal property shall come into the hands of the police which shall not be returned with three days to the owner or owners thereof, it shall be delivered over to the chief who shall return it to the owners thereof if such owners be known; or if the owners be unknown, he shall within no earlier than thirty days and no greater than one hundred eighty days from the receipt thereof sell said property at public auction to the highest bidder for cash, having first published a notice of such proposed sale by posting the same on the exterior entrance door of the building in which the police office is located, describing the property to be sold and giving the day and time of the proposed sale, which notice shall be so published not less than two weeks prior to the time of sale. The proceeds of any such sale shall be paid by the chief of police into the general fund of the county, after the costs of such sale are first paid out of the proceeds thereof. Provided that any property seized as evidence in a criminal investigation by any member of the police department shall not be subject to the terms hereof until such time as such investigation and any prosecution in connection therewith has been completed or such property is otherwise disposed of

pursuant to law. The owner of any property sold hereunder shall have no claim against the chief of police or town for damages or loss of any property sold pursuant to this section.

(Section amended 1989)

2-416. Attendance at meetings. When so required by council, it shall be the duty of the chief to attend any meeting of the council and execute the orders of the council and Mayor.

(Section amended 1989)

2-417. Dog list. When so required by the council, the chief shall cause to make a list of all dogs in the municipality and of the names of the owners thereof, the original of which list shall be returned to the council and a copy thereof delivered to the assessor of Braxton County not less than thirty days nor more than sixty days prior to the date said assessor or his deputy assesses the individual and property in said municipality.

2-418. Inspection of property. When so required by council, it shall be the duty of the chief to inspect the premises in and about any dwelling, business house, shop, or other building or any vacant lot in the town, whenever there is reason to believe the same to be unsanitary, offensive, or dangerous due to hazards of fire or hazards of health or possible injury, and to report his findings to the Mayor or council at its next meeting.

(See West Virginia Code 8-12-15)

2-419. Other duties of the chief. It shall be the duty of the chief to act as jailer of said town when necessary. The chief of police is authorized to house prisoners in such jail or jails as may be at the time approved by the appropriate state agency for the housing of prisoners. In addition to the other duties enumerated within this article, he shall perform such other reasonable services as may be required of him by law and by the ordinances of the town or by the council.

(Section amended 1989)

2-420. Arrest powers of town officials. The Mayor, Chief of Police, Recorder, members of the council, municipal judge, and every police officer of the town are hereby empowered to arrest on view any person found violating or offending against any ordinance of the town.

(See West Virginia Code 8-14-3)

2-421. Officers required to report offenses. It shall be the duty of the chief and every police officer, upon receiving

reliable information that an offense against any ordinance of the town has been committed, to promptly make complaint of such alleged offense to the municipal judge who, if he believes there be probable cause based upon such information that such alleged offense has been committed, shall forthwith issue a warrant for the arrest of the alleged offender; and if such officer shall fail to so discharge his duty in this regard he shall forfeit and pay to the town the sum of twenty-five dollars and in addition thereto shall be disciplined by the council as otherwise provided in this code, including, but not limited to discharge from the plaice force.

(See West Virginia Code 8-14-3, Section amended 1989)

2-422. Neglect of duty; penalties. For every failure or neglect to perform any duty require of him by any ordinance of the town or order of the council, the police officer so failing or refusing to perform such duty shall, upon conviction thereof, be fined not less than one nor more than twenty dollars, and such failure or neglect of duty may be considered cause for suspension or dismissal.

(See West Virginia Code 8-14-3)

2-423. Compensation. The chief and/or all police officers shall receive for their services such salary or other compensation as the council may from time to time establish and order.

(See West Virginia Code 8-5-12)

2-424. Eligibility for council. If the chief or any policeman shall become a member of the town council, his office or position on the police force shall thereby become vacated. No member of the council shall be eligible for the office of chief or police officer, or any other office requiring police duties.

2-425. Vacancy in office. If the office of chief should at any time become vacant by death, resignation, or otherwise, or is vacant by the failure of any person to qualify and give bond promptly, the Mayor may appoint a chief temporarily to hold said office until a regularly appointed chief is inducted into said office. Such appointee of the Mayor shall take the oath and give bond as prescribed by law, and shall have the same powers and perform the same duties as an appointee of the council.

2-426. Police headquarters. Council shall provide a suitable office or offices to be known as police headquarters in said town, which shall be in the charge of the chief of police but

subject to the control of the Mayor, unless otherwise provided by the council.

ARTICLE FIVE

MUNICIPAL COURT AND JUDGE

2-501. Municipal court. There is hereby established a court which shall be called the municipal or city court. The municipal judge of the Town of Sutton shall preside over said court. The mayor shall preside over the said court in the absence or unavailability of the municipal judge. The Town of Sutton, or other complaining party in any proceeding in the municipal court may appear either with or without council. The same rules of evidence as apply in magistrate courts shall apply in the municipal court.

(See West Virginia Code 8-10-2, Section amended 1989)

2-502. Appointment of municipal judge; compensation. The council shall, at the first regular meeting thereof in July of each election year, or as soon thereafter as practicable, appoint a qualified person to the office of municipal judge. As compensation for his services, said judge shall be paid a fixed salary to be determined from time to time by proper order of council. No member of council or any police officer shall be eligible for said office.

2-503. Powers and authority of municipal judge. When not otherwise provided by charter provision or general law, the municipal judge shall have jurisdiction to hear and determine any and all alleged violations of the town ordinances and to preside over the trial of, and sentence persons convicted therefor. Upon complaint he shall have authority to issue a search warrant, arrest warrant, subpoena, or criminal summons in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest, or other process issued by him may be directed to the chief of police or any member of the police department of the town, and the same may be executed at any place within Braxton County for offenses committed within the corporate limits of the town. The expense of maintaining any individual committed to a county jail or other place of imprisonment by him shall, or the cost of serving any subpoena or other process be paid by the town and taxed as part of the costs of the proceeding. He shall also, from time to time, recommend to the council such measures as he may deem needful for the welfare of the municipality. In addition, the municipal judge shall have the same judicial power and authority as a magistrate, unless such power or authority be otherwise restricted.

(See West Virginia Code 8-10-2 and 8-10-1)

2-504. Maintenance of docket. The municipal judge shall keep, or cause to be kept, a complete docket of all matters coming before him in his judicial capacity. The docket shall include for each defendant such information as his name, warrant and/or summons numbers, alleged offense, disposition, fines and costs imposed and whether collected, whether committed to jail, and all other information that may be relevant, and shall be open to the inspection of the public at reasonable hours of the day.

2-505. Issuance of arrest warrants. In addition to the municipal judge, the Mayor and the Town Recorder shall have the authority as herein set forth to issue warrants for all offenses committed against this code and its amendments hereinafter adopted. Any provision of these ordinances making reference to the municipal judge shall be interpreted to include the mayor and recorder when such officers are performing duties of the municipal judge. Upon information under oath of some credible person, reduced to writing and signed by the party complaining, constituting probable cause to believe that an offense has been committed by any person against any ordinance of the town, the said official shall issue a warrant in the name of the Town of Sutton, setting forth the nature of the charge and sufficient description thereof to allow the person charged to be informed of the charge against him or her, and directed to the chief or any policeman of the town, commanding him to forthwith apprehend and bring before the judge the party accused, to answer the said charge.

(See West Virginia Code 8-10-2, 8-10-1, Section amended 1989)

2-506. Issuance of summonses. When a complaint of an alleged ordinance violation is made to the municipal judge or such other official as specified in Section 2-505 of this article, the judge may in his discretion, in lieu of issuing an arrest warrant, issue a summons, ordering the alleged offender to personally appear before the city court at a time specified therein to answer to the charges against him. The summons shall contain a brief description of the offense charged sufficient to inform the person charged of the allegations against him and of the ordinance provision violated, but need not set out verbatim the provisions of the ordinance alleged to have been violated. Upon failure of any person to appear before the city court as commanded in a summons lawfully served on him, a warrant may be issued for his arrest, returnable as the court may direct.

2-507. Issuance of subpoenas. The city judge, or those officials as specified in Section 2-505 of this article, may subpoena as witnesses all persons whose testimony he believes will be relevant and material to matters coming before his court, and which are requested by either party and may proceed against them as if for contempt if they fail or refuse to attend or testify. Any witness served with such a subpoena, other than the complaining party shall be entitled to a ten dollar appearance fee, plus mileage traveled within Braxton County in response thereto, both of which costs shall be assessed as part of the costs of the proceeding.
(Section amended 1989)

2-508. Trial and disposition of cases. Every person charged with violating a municipal ordinance shall be entitled to an immediate trial and disposition of his case, provided the city court is in session or the city judge is reasonably available. However, the provisions of this section shall not apply when the alleged offender, by reason of drunkenness or other incapacity, is not in a proper condition or is not able to appear before the court. When the accused has been apprehended and brought before him, the judge may immediately proceed to try the case; but he may grant continuances from time to time if the circumstances of the case require it. If a continuance be granted at the instance of the accused, the judge, if he sees fit, may require him to enter into a recognizance, with surety deemed sufficient, conditioned for his appearance at the time and place appointed for trial, to answer for the offense of which he is charged, and if such recognizance be not given, may commit him to jail until the time appointed for trial, but such confinement shall not exceed five days. The accused, if such continuance be not at his instance, shall be discharged from custody on his own recognizance, or without a recognizance, or upon the posting of such surety as the judge shall deem proper. The Judge may render judgement on any recognizance taken by him pursuant to this section. The trial of every person accused of any offense shall be held as speedily as possible by the judge without a jury unless the person charged requests a jury trial, in which event such jury trial shall be within ten days of a request for jury trial should the person charged be in jail awaiting trial, and within twenty days in the event the person charged is not held in jail awaiting trial; and after hearing all the evidence as to the alleged offense, the judge shall render judgment accordingly. If the judgment be against the accused, it shall be for the costs of the proceeding, in addition to any fine and term of jail imposed; and when the accused is sentenced to a term of jail, whether a fine be also imposed or not, the jail

fees shall be included in the costs. The term "imprisonment" shall be interpreted wherever it may appear throughout the ordinances of the Town of Sutton to apply to a sentence to the Braxton County Jail, or such other jail as is being at the time concerned used by the Sheriff of Braxton County for the purpose of housing prisoners.

The council is hereby directed to designate some person as clerk of the municipal court. Such clerk shall be responsible to assist the municipal judge and such duties shall include the selection of jury panels in the same fashion as such panels are chosen by the magistrate clerk.
(Section amended 1989)

2-509. Appearance bonds authorized. When the municipal judge is not available or when an alleged offender requests and has reasonable grounds for a delay in the trial of his case, he may, in lieu of remaining in jail pending disposition of his case, be allowed to post an appearance bond with the city judge or, in the absence of the judge, with the police officer on duty at the time, provided such alleged offender is not under the influence of some drug or have a blood alcohol content of .05 percent, by weight or otherwise in need of protective custody. The arresting officer or officer on duty at the time may in his discretion take a cash bond, or may release the alleged offender on his own recognizance, or into the custody of some responsible person, to appear before the municipal Judge at the time fixed by such officer, the amount of such bond or recognizance to be in a reasonable sum as such officer may determine.
(Section amended 1989)

2-510. Imposition and remission of fines and costs. All fines and costs shall be imposed and recorded or caused to be recorded by the municipal judge on the court docket in open court. After any fine and costs have been so imposed and recorded, the judge shall have no power to remit or release the same or any part thereof except when necessary to correct an error.

2-511. Appeals. Every person sentenced under the ordinances of the Town of Sutton by the municipal court judge to serve a sentence in jail or to the payment of a fine shall be allowed an appeal de novo to the Circuit Court of Braxton County, upon entering into an appeal bond as conditioned hereinafter. Any such appeal must be perfected within ten days from and after the date upon which the sentence is imposed, Sundays and legal holidays excepted. If such appeal be taken, the municipal court judge shall forthwith deliver, or cause to be delivered, the

appeal bond and other papers in the case to the Clerk of the Circuit Court, and such court shall proceed to try the case as upon indictment or presentment, and render such judgment, without remanding the case, as the law and the evidence may require. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the municipal court judge as well as in the said court.

2-512. Bond amounts, conditions and forms. An appearance bond in any case before the City court shall be in such amount as the city judge or other authorized officer shall prescribe and shall be conditioned that the defendant shall appear for trial before the city court at the stated time and place. An appeal bond in any case shall be with surety deemed sufficient in a penalty double the amount of fine and costs imposed by the municipal court and shall be conditioned that if the circuit Court shall find against the appellant the fine and all costs of the trial and appeal shall be promptly paid by the defendant and/or his sureties. An appearance or appeal bond in any case may be made in the form of a cash deposit or by any corporate surety company authorized to do business in West Virginia or by two private persons who individually own real property located within Braxton County. No other type of bond shall be acceptable.

2-513. Cost of proceedings upon insufficient cause for complaint. Whenever any persecution shall be instituted before the judge for any violation of the ordinances of the town for the recovery of fine, penalty, or forfeiture imposed by the ordinances thereof, the name of the person, except he be an officer of the town, at whose instance such prosecution was instituted shall be designated on the record of the case, and if the person charged shall not upon final hearing be convicted, and the judge shall be of the opinion that no sufficient or probable cause existed for the institution of such proceedings, then the judgment for the costs shall be rendered against the person at whose instance such prosecution was instituted.

2-514. Bond required from certain complainants. Where the person or persons (except an officer of the town) applying to the judge or other authorized official for a warrant in the name of the town against one or more individuals, for any violation of the ordinances of this town against one or more individuals, for any violation of the ordinances of this town or for any offense against the same, shall be insolvent or not an inhabitant of the state or shall be about to remove from the state, or where good cause shall exist, it shall be lawful for such official to refuse to issue such warrant until good

security be given to pay such costs, fine, penalty, or forfeiture to which the person or persons so applying for such warrant shall be liable, if upon final hearing it shall appear that no sufficient or probable cause existed for the institution of such prosecution or that the same was instituted from mere malice.

2-515. Execution for fines; voluntary labor in lieu of fine.

On any judgment for a fine, forfeiture or pecuniary penalty and costs imposed by the judge, he shall have no power to issue execution. Whenever any person shall be convicted for any violation of the ordinances of the town and a fine imposed for such violation, he may voluntarily consent to perform labor upon the streets and alleys of the town, or in and upon the buildings, grounds, bridges and public works of the town, or to do any other work required to be done for the benefit of the town, under the direction of a police officer of the town, and the judge shall allow to him a reasonable sum commensurate with the services rendered, to be credited to the payment of the fine or indebtedness owing. While such person is so being worked for the town, the officer, if necessary, shall provide for him necessary food and lodging if he be not confined in the jail during the period while he is so employed, and which shall be paid from the treasury of the town. The consent of the prisoner to perform such work shall be in writing, properly signed and duly acknowledged before the Mayor, chief, or any official authorized by law to take acknowledgments.

2-516. Contempt proceedings. The judge shall have the same power to punish for contempt as is conferred by law upon a magistrate. An order of arrest may be issued by the judge on which the person so guilty may be taken and brought before him, or such person may be taken in custody by any officer or other person present on the oral order of the judge and held to answer for contempt. But no person shall be fined or imprisoned upon such charge without being given an opportunity to be heard in defense of or explanation of his conduct, and upon such hearing the judge may discharge such person or adjudge him guilty of contempt, and punish him by fine or imprisonment, or both. The conviction, specifying the particular circumstances of the offense and judgment thereon, must be entered by the judge in his docket. A warrant of commitment for the term of imprisonment adjudged may be issued by the judge, commanding an officer to take the offender to jail of the county or town to be imprisoned there. The judgment shall include, in addition to the fine, all costs in the case including costs of arresting and

keeping in prison the offender. The fine under this section shall not exceed ten dollars or the imprisonment five days.

2-517. Entrance of property. For the purpose of executing any warrant of arrest or other execution or order of the judge or council, or of preventing the commission of any offense, or arresting a person in the act of committing an offense or a fugitive from justice, or for the purpose of abating any nuisance, it shall be lawful for the Mayor or chief or other officer to enter any building, house, outbuilding, garden, lot, or place of amusement of said town, in manner provided by law.

2-518. Witness fees. Neither the chief nor any police officer nor any complainant shall be allowed to claim or receive any fee for attendance and testifying as a witness in any case arising under the penal ordinances of the town.

2-519. Disposition and report of fines and costs. All funds coming into the hands of the city judge in the form of fines, costs and forfeitures shall be recorded by him and paid over to the municipality. At the end of each month he shall submit to the council a report accounting for the collection or non-collection of all fines and costs imposed by his court during the current month and to date for the current fiscal year.

2-520. Disturbance of proceedings. It shall be unlawful for any person to create any disturbance of any trial before the city court by making loud or unusual noises; by using indecorous, profane, or blasphemous language; or by any distracting conduct whatsoever.

2-521. Court hours. Court shall be held by the judge at any hour of the day between the hours of 9:00 o'clock a.m. and 4:00 o'clock p.m. or at night between the hours of 7:00 o'clock p.m. and 10:00 o'clock p.m., at such hour as may be fixed by the judge. It shall be held in the judge's office, unless for good reasons a trial may be had at some other place in the town designated by the judge.

2-522. Violations. A violation of any section of this chapter shall be punishable by a fine of not more than fifty dollars for each separate violation, unless otherwise specified.

ARTICLE SIX

POWERS AND DUTIES OF THE CITY ATTORNEY

2-601. Appointment. The council may at the first regular meeting thereof in July in each election year, or as soon thereafter as practical, appoint an officer who shall be called the city attorney, who shall be a practicing attorney-at-law of Braxton County, with office therein, and who shall continue in office at the pleasure of the council until his successor is appointed and qualified, unless he be earlier removed upon vote of council.

(See West Virginia Code 8-10-1)

2-602. Disqualification or vacancy in office. In the event there be no city attorney for any reason whatsoever, or in the event the town does have a city attorney but he be disqualified to represent the town in any legal matter or would refuse to do so or be incapacitated and unable to represent the town, or the town in its discretion would decide that it would be improper or undesirable to have the city attorney to represent the town, the council may employ another attorney-at-law licensed to practice in the State of West Virginia, be he a resident of Braxton County or otherwise, to represent the town, and may by agreement with such attorney fix his fees in any reasonable amount.

2-603. Duties. It shall be the duty of the city attorney to give legal opinions, when required by the council, and to give legal advice when required by the officers of the town in relation to their respective duties; to draft all ordinances, contracts, and other legal papers required by the council; and to examine and pass upon the legality of all official or other bonds, proposed ordinances, ordinances, or standing rules, when requested by council, and, when approved, to endorse his approval thereon. When he learns of the bringing of any suit against the town, he shall report the fact to the council at its first meeting thereafter. Also, when required by the council, he shall act as prosecuting officer on behalf of the town in any criminal prosecution undertaken by the town.

2-604. Litigation. It shall be his duty to control and manage for the town all litigation of which it is a party, and to defend all suits brought against the town, and to perform such other services as the council may require, and he shall attend such meetings of the council as it may require him to attend.

2-605. Compensation. The city attorney, or such other attorney(s) as may be employed by the council, shall receive for his services such compensation as the council may from time to time prescribe by proper order.

ARTICLE SEVEN

POWERS AND DUTIES OF THE STREET COMMISSIONER

2-701. Appointment. The council shall, at the first regular meeting thereof in July of each election year, or as soon thereafter as practical, appoint an officer to be called the commissioner of streets, Roads, and Alleys, who shall continue in office at the pleasure of the council and until his successor is appointed and qualified. Said officer may, at the discretion of the council, be the Chief of Police of the municipality. (See West Virginia Code 8-12-5(1), (4))

2-702. Bond. Before entering upon the duties of such office, the said commissioner shall enter into bond with one or more sureties to be approved by the council, in a penal sum to be fixed by the council but in no case less than five hundred dollars, which bond shall be payable to the Town of Sutton and shall be conditioned as it prescribed by law for district officers; provided that if such commissioner is also the chief of police and has given bond as provided by law, then shall not be necessary for him to give any further bond. (See West Virginia Code 8-12-5(46)).

2-703. General supervision of roads. The commissioner shall exercise a general care and supervision over the roads, streets and alleys, and public grounds of the town. It shall be his duty to enforce the several ordinances and orders of the council in relation to said roads, streets and alleys, and public grounds, and to superintend the making of any improvements or repairs thereto or any grading or paving under the orders of the council, whenever required to do so by the council, and to report from time to time as to the progress and completion of the work. He shall from time to time report to the council all matters and things in relation to said streets, alleys and public grounds which, in his judgment, he may deem useful and advantageous to the town or necessary to the public convenience. He shall further report to the council all plans, estimates and information within his power in relation to any proposed improvement, when required to do so by the council. (See West Virginia Code 8-12-5(4))

2-704. Overseer of work on roads. The commissioner shall oversee all work being done on the roads, streets and alleys of the town; and all laborers and equipment employed thereon shall

be under his direction and supervision, unless otherwise ordered by council.

2-705. Contract of debt for streets. It shall be the duty of the commissioner, and he is hereby empowered, to remove or cause to be removed obstructions to the free passage through and over the roads, streets and alleys of said town and the pavements thereof, and to keep the same in good repair as far as he is able to do so with the labor and materials at his disposal, but he shall not contract any debt either for labor, implements or material without first getting permission of the council if the amount required be more than two hundred dollars, and if the amount be less than that sum, without first getting permission of the Mayor or the committee on roads, streets and alleys or the chairman of said committee, with the exception that if the amount be less than fifty dollars said debt shall be at the discretion of the commissioner.

2-706. Removal of obstruction from property. It shall be the duty of the commissioner when directed by the Mayor or council, upon the failure or refusal of the person whose duty it is to do so, to remove from property in said town any accumulation of garbage or any kind of filth offensive in character or injurious to the health, or stagnant water, or boxes and other rubbish dangerous on account of liability to take fire. He shall also, when directed by said Mayor or council, remove any obstruction to the roads, streets or alleys, sidewalks, pavements, crossings, drains, or gutters within the town by filling up, unfencing, or otherwise clearing away said obstruction, as the nature of the case may require. For the purposes aforesaid, the commissioner may employ such aid as may be reasonable, at the expense of the town; and upon the completion of the work shall immediately report to the council the cost thereof. Said cost shall be assessed by the council to the owner or occupant of the property, or the person causing the obstruction, as the case may be, and the same shall be collected by the chief of police in the same manner provided by law for the collection of other taxes and assessments, or the same may be collected from such person by suit in the name of the town.

2-707. Payment of hired labor. No time check or other evidence of debt against the town shall hereafter be issued by the commissioner to any employee on account of labor performed for the town. When so required by council, it shall be the duty of said commissioner to make out and present to the council, at each regular meeting thereof, a written report of the work in progress and under his control, the number and names of the

laborers employed by him, and such other matters as he may deem necessary, or as the council may from time to time require. Said report shall show the number of days labor performed by each employee or team, the rate per day, and the total amount due each at the date of such report. The council shall thereupon examine said report, and if the same be approved, or when the same shall have been corrected if erroneous, shall allow to each person entitled the amount due such person; and a draft signed by the Mayor and Recorder shall be delivered to such person.

2-708. Purchase of equipment. Whenever the commissioner shall purchase implements or materials for the use of the town, by order of the council or Mayor or by direction of the committee on roads, streets and alleys or the chairman thereof or at his own discretion, he shall obtain from the person or company furnishing such implements or materials an itemized statement thereof and shall deliver to the council or the Recorder such statement along with any report required of him by Section 2-707 of this article, to be filed and preserved by the Recorder.

2-710. Inventory of Property. In the month of June next preceding the expiration of their term of office, the Mayor and the commissioner shall make an exact and detailed inventory of all implements, tools, and other public property belonging to the town. Said inventory shall be signed by the Mayor and the commissioner and executed in triplicate; one copy thereof shall be retained by the Mayor, one copy thereof shall be retained by the commissioner, and one copy thereof shall be delivered to the Recorder. The commissioner shall deliver his copy to his successor in office together with the property inventoried therein, and his successor in office shall execute a duplicate receipt to the commissioner for said property. The original receipt shall be retained by the commissioner and the copy thereof shall be delivered to the Recorder. Said inventory and said receipt shall be presented by the Recorder to the council at its first meeting after he so received the same, and the council, upon examination thereof and if the receipt of the property corresponds with the inventory, shall by order have the same recorded in the minute book, and the order shall credit the outgoing commissioner with the property listed therein and shall charge his successor therewith. Upon receipt of said property and upon entering on the discharge of his duties, the commissioner then in office shall report periodically to the council during his term of office, giving updated inventories of said property belonging to the town and accounting for any and all shortages and other discrepancies therein. A final

inventory shall be made upon his termination in office according to the procedure stated heretofore. If the receipt delivered by his successor in office does not correspond with the inventory and if the Mayor and commissioner fail to account to their successors in office for the property covered in the inventory, or if said commissioner fails to account to the satisfaction of the council for any shortages or discrepancies in any periodic inventory, the Mayor and commissioner and the sureties on their official bonds shall be jointly and severally liable for the deficit and the council shall immediately institute suit for the collection thereof, unless council in its judgment believes either or both officials should be exonerated from liability for any or all charges thereof.

2-711. Construction materials on roadway. The commissioner shall, on application, assign to any person erecting a new building or repairing an old one a reasonable portion of any street or alley clear of the footway and water courses in front of any lot on which said building is being erected or such repairs are being made, to deposit implements and materials necessarily used in making such buildings and repairs, for three months (unless such building be sooner completed), and shall, if requested, give a permit therefor, but the implements and materials so deposited shall not be allowed to obstruct the pavements from the free passage of pedestrians or motor vehicles or other ordinary use thereof, nor the gutter from the flow of water.

2-712. Supervision of sewers. The commissioner shall have supervision of the sewers in or upon the roads, streets, alleys and public grounds of the town, and shall make report to the chairman of the street committee at such times as he shall deem necessary as to any alterations, repairs, or additions thereto, which he shall consider advisable. The owners or occupiers of private property within the corporate limits of the town may have connection made with such sewers for the purpose of drainage, on first getting permission from the commissioner and under the provisions specified in Chapter 6 Article 4 of this code; provided that the commissioner shall give no permission to make any connection which shall necessitate the digging into or taking up of any pavement between curbs. The work of making such connection and refilling the excavation occasioned shall be done in a manner satisfactory to said commission, and if not so done, said commission shall repair any defect or damage at the expense of the owner or occupant. The commissioner may at all times, when deemed necessary by him, enter upon the private lots

in said town for the purpose of inspecting private sewers to see that the same are kept in proper condition and repair.
(See West Virginia Code 8-12-5(32))

2-713. Public toilets. The commissioner shall oversee any public toilets built by the town, or other similar convenience which may hereafter be maintained by the town for the use of the public, and shall see that the same are kept clean and free from vulgar prints, pictures or impressions. He may arrest and bring before the municipal judge any person found violating the ordinance relating to the injury to or the pollution of the same; and in order to carry out this provision he may employ some reliable person at reasonable wages to be paid by the town to perform the labor necessary to keep said building clean, but shall himself see that the work is properly and carefully done.

2-714. Vacancy in office. Should a vacancy occur in the office of street commissioner, and at any time prior to his appointment and qualification, all of the duties of such office shall devolve upon the Mayor, and he shall be vested with and exercise all the authority and power conferred upon the commissioner by the ordinances of the town, and during such time he shall serve as commissioner without additional compensation for such services unless otherwise ordered by council.

2-715. Penalty for neglect of duty. For every failure or neglect to perform any duty required of him by any ordinance of the town or order of the council, the commissioner shall be fined upon conviction thereof not less than one nor more than twenty dollars.

2-716. Compensation. The street commissioner shall receive for his services and labor such salary or other compensation as the council may from time to time establish and order.

CHAPTER THREE

ALCOHOLIC BEVERAGES

ARTICLE ONE

IN GENERAL

The Town of Sutton is authorized by West Virginia Code 8-12-5{20) to prevent the illegal sale of intoxicating liquors, drinks, mixtures, and preparations; and by 8-13-7 to tax any such activity within the Town.

3-101. Definitions to apply. Words and phrases defined in the applicable sections of the Nonintoxicating Beer Act and the Alcohol Beverage Control Act of the Code of West Virginia shall have the same meanings as therein defined wherever such words and phrases are used in this chapter.
(See West Virginia Code 60-1-5)

3-102. Tax imposed on purchase prices. Pursuant to the provisions of Section 8-13-7 of the Code of West Virginia, there is hereby imposed a tax of three percent on the purchase price of any and all intoxicating liquors sold within the town; provided, that such tax shall not apply to intoxicating liquors sold by or purchased from holders of private club licenses issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia.

3-103. Intoxication in public places; illegal possession of alcoholic liquors. It shall be unlawful for any person within the Town of Sutton to:

- (a) Appear in public in an intoxicated condition;
- (b) Drink alcoholic liquor, including so-called nonintoxicating beer, in public;
- (c) Drink alcoholic liquor, including so-called nonintoxicating beer, in a motor vehicle on any street or alley or in a public garage;
- (d) Tender a drink of alcoholic liquor, including so-called nonintoxicating beer, to another person in public;
- (e) Possess alcoholic liquor in the amount in excess of one gallon in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commission, without first having obtained written authority from the commission therefor;

(f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.

(g) Possess an open container containing an alcoholic beverage, wine, or nonintoxicating beer in a public place, unless such place has been licensed for consumption on the premises.

(Section amended 1989)

3-104. Penalties for violation of above sections. A violation of any of the preceding sections of this article shall be punishable by a fine of not more than fifty dollars, or confinement in jail not to exceed five days, or both, in the discretion of the court, for each separate offense.

3-105. Tendering alcoholic liquor to certain persons, penalties. It shall be unlawful for any person to buy for, or give to, any person under the age of twenty-one years, habitual drunkard, intoxicated, or under the influence of intoxicating liquor including so-called nonintoxicating beer, addicted to the use of narcotic drugs, or mentally incompetent, any alcoholic liquors, ale, beer, or drink of like nature, or to carry the same to such person from any place where the same may be served or sold, privately or to the public, and for any violation of this section the offender shall, upon conviction, be fined not less than ten nor more than five hundred dollars or be confined in jail not less than five days nor more than thirty days, or both such fine and imprisonment, in the discretion of the court.

ARTICLE TWO

"NONINTOXICATING" BEER

3-201. Acts prohibited without city license. No person with the city shall manufacture for sale, sell, or possess for sale, any "nonintoxicating" beer without a city license to do so as provided in this article: provided, that nothing contained in this chapter, and no license or payment under the provisions thereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation.

(See West Virginia Code 8-13-4)

3-202. Annual license required; issuance; display and transferability of license. Every person licensed by the state pursuant to the provisions of the Nonintoxicating Beer Act of the Code of West Virginia, whether as a retailer, private club, wholesaler, or brewer of "nonintoxicating" beer and who does business as such within this city shall pay to the city an annual license tax as provided in this article. Upon the payment of each such annual license tax to the town the licensee shall be issued a city license corresponding to the state license, which shall be displayed at all times in a conspicuous place upon the premises thereby licensed. City licenses under this article shall not be transferable.

3-203. License tax imposed; license year; classes of dealers and amount of tax. (a) Retail dealers shall be divided into three classes, Class A, Class B, and Class C.

Class A licenses shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption on or off the licensed premises. The license fee for such Class A license shall be set by proper order of council, not to exceed one hundred dollars.

Class B license shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption off the licensed premises. The license fee for such Class B license shall be set by proper order of council, not to exceed fifteen dollars for each place of business. Such Class B license may be issued only to the proprietor or owner of a grocery store, and sales under this license to any person at any one time must be in less quantities than five gallons. For the purpose of this section the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen,

where food or food products are sold for consumption off the premises.

Class C license shall be issued for social, fraternal or private clubs not operating for profit and having been in continuous operation for two years or more immediately preceding the date of application and shall authorize the licensee to sell "nonintoxicating" beer at retail for consumption only on the licensed premises where sold. The license fee for such Class C license shall be set by proper order of council, not to exceed one hundred dollars for each place of business.

(b) In the case of a wholesaler the license fee shall be set by proper order of council, not to exceed two hundred fifty dollars.

(c) In the case of a brewer with its principal place of business located in this town, the license fee shall be set by proper order of council, not to exceed five hundred dollars for each place of manufacture.

3-204. Application for and issuance of license; false swearing; display of corresponding state license. All licenses under the provisions of this article shall be issued by the Town Recorder upon a showing of proper entitlement thereto, upon written application therefor verified by the applicant under oath. Application forms shall be furnished by the town, designed to elicit all information necessary for the Recorder to determine the eligibility of the applicant for the license applied for; the amount of the license fee; the location within the town of the premises to be licensed and whether or not such premises and structures comply with all applicable provisions of state law, this code and other ordinances; and it shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for license under this article. Before issuing any license hereunder, the Recorder may require the applicant to display his corresponding state license.

3-205. Unlawful acts of licensees; penalties. It shall be unlawful:

(a) for any licensee, his servants, agents, or employees, to sell, give, or dispense, or for any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, "nonintoxicating" beer on weekdays between the hours of 12:00 midnight and 7:00 a.m. or before 2:00 p.m. on any Sunday, except in private clubs licensed under the provisions of article 7, chapter 60 of the Code of West

Virginia, where the hours shall conform with the hours for dispensing alcoholic liquors;

(b) for any licensee, his servants, agents, or employees, to sell, furnish, or give any "nonintoxicating" beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of twenty-one years;

(c) for any brewer or distributor to transport or deliver "nonintoxicating" beer to any retail licensee on Sunday;

(d) for any licensee to permit in his premises any lewd, immoral, or improper entertainment, conduct, or practice;

(e) for any licensee to manufacture, import, sell, trade, barter, assess, or acquiesce in the sale, possession, or consumption of, any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided that the prohibitions contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a Class C license;

(f) for any Class A or Class B licensee to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing such licensee to sell liquor or alcoholic drinks;

(g) for any licensee to print, paint, or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or similar words to be used in any advertisement by the licensee;

(h) for any retail licensee to permit loud, boisterous, or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any thereof may disturb the peace and quietude of the community wherein such business is located; provided that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises;

(i) for any person whose state license has been revoked, as provided in the applicable section of the Code of West Virginia, to obtain employment with any retailer with the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time;

(j) for any distributor to sell, possess for sale, transport, or distribute "nonintoxicating" beer except in the original container;

(k) for any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(l) for any Class B retailer to permit the consumption of "nonintoxicating" beer upon his licensed premises;

(m) for any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents, or employees, to allow, suffer, or permit any person under the age of twenty-one years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of twenty-one years is in, on, or upon such premises in the immediate company of his parent, or where and while such person under the age of twenty-one years is in, on, or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink, or soft drink therein lawfully prepared and served or sold for consumption on such premises.

Any person who violates any provision of this section, upon conviction, shall be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars, or imprisoned for not more than thirty days, or by both such fine and imprisonment, in the discretion of the court.

3-206. Revocation of license. The Common Council shall revoke the license granted to any licensee under this article, subject to an appeal of any licensee to a court of competent jurisdiction as is provided for by section 3-207, whenever such licensee has his, her or its license revoked by the West Virginia Nonintoxicating Beer Commissioner pursuant to the provisions of Chapter 11, Article 16 of the West Virginia Code of 1931, as last amended.
(Section amended 1989)

3-207. Suspension of license. For the violation of any of the provisions of this article the council may suspend the city license of such offender for the residue of the term of said license, or for any portion of time thereof, or may in its discretion revoke such license; provided, however, such licensee shall be first given notice in writing stating therein the alleged grounds for suspension or revocation, to be served in person upon said licensee, fixing the time for such licensee to appear before the council to be heard on such charge, and which shall be served not less than ten days prior to the day of said hearing. Continuance may be granted upon motion of the offender as justice and the circumstances of the case would indicate. In the event of suspension or revocation, the licensee shall have

the right to appeal such suspension or revocation to the Circuit Court of Braxton County. During the pendency of any such appeal, the suspension or revocation order shall only be stayed upon a vote of two-thirds of the council members.
(Section amended 1989.)

ARTICLE THREE

PRIVATE CLUBS

3-301. License fee imposed amounts. All private clubs, as defined in Section 60-7-2 of the code of West Virginia, the premises of which are situated within the corporate limits of the Town of Sutton, shall pay to the city an annual license fee for a license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia, as follows:

(a) The annual license fee for a license issued to a fraternal or Veterans' organization or a nonprofit social club shall be fifteen dollars.

(b) The annual license fee for a license issued to a private club other than a private club of the type specified in subsection (a) of this section shall be five hundred dollars.

(c) The fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one-half of the annual license fee prescribed by subsections (a) and (b) of this section.

3-302. Duty of local holders of state licenses; sales prohibited if city fee not paid. Each licensee holding a state license issued under the provisions of Article 7, Chapter 60 of the Code of West Virginia, for a private club the premises of which are situated within the corporate limits of the Town of Sutton, shall, upon first obtaining such license and at the time of each renewal thereof, report to the Town Recorder and display such state license to him and pay the city license fee which is imposed upon him by this article, and it shall be unlawful for any such licensee or any officer, member, or employee of any private club so licensed, the premises of which being situated within the city limits of this city, to sell intoxicating liquor upon such premises unless all fees due to the city, as provided in this chapter, have been paid.

All such fees shall be due on the first day of July of each year and shall be paid in the Town Recorder's office not later than the fifteenth day of July for the ensuing fiscal year, whereupon a license shall be issued by the Town Recorder, which shall be on such form or forms as prescribed by him.

3-303. City records of state licenses; receipts issued for fees; licensees to display receipts. The Town Recorder, upon display to him of a state private club license, shall make a record thereof and reserve such record in his office and, upon

payment to him of the city license fee as prescribed in this article, he shall issue to the licensee a receipt for such payment which shall indicate the amount paid, the type of private club and its address within the city, and the expiration date of the license for which such city license fee has been paid. It shall be the duty of each such licensee to maintain such city receipt on display in a conspicuous place on the premises of the private club to which it relates.

3-304. Automatic revocation of city license when state license revoked. In the event that any private club license issued by the State of West Virginia, or any agency thereof, is revoked, then in such event, any license issued under this article shall be likewise revoked and shall be null and void, without the necessity of further proceedings hereunder, and the Town Recorder shall note the fact in his records. Nothing within this section shall be construed so as to restrict the town council from voting to suspend or revoke a license issued by the town. In the event the council votes to suspend or revoke such license, the licensee shall have the right to appeal such revocation or suspension to the Circuit Court of Braxton County. In the event of such appeal, the period of such suspension or revocation shall not be stayed except upon a vote of two thirds of the members of the town council.

(Section amended 1989)

CHAPTER FOUR

LICENSES AND BUSINESS TAXES

ARTICLE ONE

GENERAL BUSINESS LICENSE

4-101. Definitions. For the purposes of this chapter, the term "person" shall include any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, copartnership, joint adventure, association, trust, firm or corporation, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

4-102. General business tax levied. No person shall, without a general business license certificate, engage in or prosecute, within the Town of Sutton, any business, profession, calling, vocation, activity, or trade without first obtaining a business license from the Town of Sutton. The general business license tax levied shall be established based upon the standards and guidelines established by the West Virginia State Tax Commissioner for each location a person holds himself out to engage in or transact business therefrom.

(Section Amended 1989)

4-103. Conditions precedent to doing business. Each of the following conditions shall be fulfilled precedent to the transaction of any business activity for which a town business license is required:

(a) Payment in full of the proper tax or fee as required by the town;

(b) Display or evidence of possession of a business franchise certificate or other form of license from the State of West Virginia authorizing said person to do business within the state;

(c) Display or evidence of possession of a business franchise certificate or other form of license from Braxton County, if such be required by the Braxton County Commission, authorizing said person to do business within the county;

(d) Issuance of a town license certificate;

(e) Fulfillment of all terms and conditions of such grant of license.

4-104. Application for and issuance of license; payment of tax and fees; Recorder to maintain records. (a) Each applicant for a town license shall make application to the Town Recorder on a form to be provided by the town, and display of state and county certificates shall be made at the time of application.

(b) Upon the payment of the license tax or fee as required in this article, the Town Recorder shall issue the license applied for; provided, that the application is in proper form and that all requirements of state law, this code, and other ordinances and all conditions precedent to the issuance of such license appear to the Town Recorder to have been complied with.

(c) The Town Recorder shall maintain on file all applications for town licenses and a record of each license issued, which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, and such additional information as may be pertinent to establish that all requirements of law and ordinances have been complied with.

4-105. False statements prohibited. It shall be unlawful for any person to knowingly make any false statement in any application for a city license, or in any tax return, report or other statement relating to any activity licensed by the town and which is required to be made to any city officer or agency.

4-106. Separate license required for each fixed place of business and each class of business. Except as may be provided otherwise in this code or other ordinance, any person who, at more than one fixed place of business within the town, engages in or prosecutes any business activity for which a town license is required shall obtain a separate license and pay the prescribed tax or fee therefore for each such fixed place of business and for each such business activity.

4-107. License year; expiration date; annual renewal; minimum tax; proration of tax upon beginning business. (a) A license year shall begin on the first day of July of each calendar year and shall expire with the expiration of the next ensuing thirtieth day of June, and licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such as may be provided otherwise by this code or other ordinance.

(b) The license tax or fee for an initial license upon the commencement of business shall be in proportion to the annual tax or fee as the duration of the license is to the license year; provided, that no license for any length of time shall be issued for less than two dollars.

4-108. Display of license. Each person to whom a city license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.

4-109. License does not legalize unlawful acts -- generally. Nothing in this article, and no payment for or issuance of any town license under the provision hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.

4-110. Prosecution for violations; recourse of town to seek injunctions. If any person engages in or prosecutes any business, profession, calling, or vocation contrary to any of the provisions of this code, whether without first obtaining a town license therefor or by continuing the same after the termination of the effective period of such license, he shall be subject to immediate prosecution in the municipal court and, in addition, any elected official of the town may, in the name of the town, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.
(Section Amended 1989)

4-111. Penalties; collection by proceedings in court. Except as may be expressly provided otherwise by this code or by the code of the State of West Virginia, any person violating any provisions under this article shall, upon conviction thereof, be liable for a fine of not less than twenty nor more than one hundred dollars in addition to the prescribed license tax or fee.

The Town Recorder may collect any license tax, fee, or penalty unpaid under the provisions of this article by appropriate proceedings in any court of competent jurisdiction.
(See West Virginia Code §8-13-15.)

4-112. Suspension and revocation of licenses, and public hearings upon appeal from revocation. The Town Recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him pursuant to the provisions of this code for any reason which would have been grounds for denial of such license when first issued; for violation of any term or condition of such license; for violation of any pertinent provision of state law, this code, or other ordinance; or for the perpetration or attempted perpetration of fraud, malpractice, or malfeasance by the licensee; without prejudice to prosecution of such licensee by the town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the Town Recorder to further investigate the grounds for revocation and to reconsider his action, and if the Town Recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the Town Recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the Common Council, appear in person or by council, and may have the attendance of witnesses, books and papers in his behalf, and may testify in person. The decision of the Common Council following such hearing shall be final, subject only to such judicial review as may be provided by law.

ARTICLE TWO

BUSINESS AND OCCUPATION TAXES

4-201. Authority to levy business and occupation or privilege tax. Whenever any business or occupation, upon which the State of West Virginia imposes an annual business and occupation or privilege tax under the provisions of the state code, is engaged in or carried on within the corporate limits of the town, the council shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation or privilege tax thereon for the use of the town: provided, that in no case shall the rate of such town business and occupation or privilege tax on a particular activity exceed the rate imposed by the state, exclusive of surtaxes, and the ordinance imposing such tax shall conform with the provisions of said state code as to the waiver of penalties.

Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year and each year thereafter.
(See West Virginia Code §8-13-5)

4-202. Confidential nature of returns; limitation on divulging information. All returns and tax statements made by taxpayers to town officers shall be regarded as confidential and, except in compliance with judicial order or as may be required by the proper administration hereof, the Town Recorder, his agents and employees, and former Town Recorders, agents and employees, shall not divulge facts or information obtained in the administration of this code.

4-203. Tax imposed on public service or utility business. Upon, any person engaging or continuing within the town in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship, and motor vehicle carriers, there is hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows:

(1) water companies, four per cent, except as to income from municipally owned water plants;

(2) electric light and power companies, four per cent on sales and demand charges for domestic purposes and commercial lighting, and three per cent on sales and demand charges for all other purposes, except as to income from municipally owned

plants producing or purchasing electricity and distributing the same;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE THREE

MISCELLANEOUS BUSINESSES AND ACTIVITIES

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

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

(See West Virginia Code §8-13-6)

CHAPTER FOUR-ARTICLE THREE

CHAPTER FOUR, ARTICLE THREE ENACTED UPON PASSAGED:

CHAPTER IV ARTICLE III: HOTEL/MOTEL OCCUPANCY TAX

Passed on the First Reading this the 11th day of June 1992:
Passed on the Second Reading this the 18th day of June 1992:
Passed on the Third Reading this the 25th day of June 1992:

Common Council OF THE Town of Sutton

County of Braxton State of West Virginia

ORDAINED AND ENACTED INTO AN ORDINANCE THIS THE 25TH
DAY OF JUNE 1992:

MAYOR

RECORDER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

(Missing article 4-302-1, through -7 under review for inclusion)
Continued 4-302-7.

of this state's park and recreation system established or to be established.

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

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

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

4-302-11. Payment of this tax shall be due and payable in monthly installments on or before the Fifteenth day of the calendar month next succeeding the month in which the tax occurred; Provided, that credit sales in which the tax authorized by this article is not collected by the hotel operator at the time such sales, such tax shall not be regarded as having occurred until the date on which it is either received by the hotel operator or upon expiration of the Thirty day payment period, whichever shall occur first. The hotel operator shall, on or before the Fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority.

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

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

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

Notwithstanding any omissions, it is the intent of this

ARTICLE FOUR

PUBLIC UTILITIES EXCISE TAX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER FIVE

BUILDING AND BUILDING PERMITS; CLAIMS AND OFFENSES

ARTICLE ONE

IN GENERAL

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

(See West Virginia Code §8-12-5(1))

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

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

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

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

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

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

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

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

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

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

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

CHAPTER SIX

PUBLIC STREETS, THOROUGHFARES, AND SEWERS

ARTICLE ONE

IN GENERAL

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

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

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

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

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

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

(See West Virginia Code §20-7-26, Section Amended 1989)

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

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

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

ARTICLE TWO

ROADS, STREETS, AND ALLEYS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE THREE

SIDEWALKS, WALKWAYS, AND GUTTERS; VIOLATIONS AND PENALTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE FOUR

SEWERS

6-401. When sanitary sewage disposal facilities are required. Any building or structure wherein people live, are employed, or congregate must be equipped with such sanitary facilities for sewage disposal as are prescribed by this article.

(See West Virginia Code §8-12-5(6), (7), (8), (23), (32), (33))

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

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

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

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

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

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

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

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

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

CHAPTER SEVEN

FIRE PROTECTION AND EMERGENCY VEHICLES

ARTICLE ONE

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER EIGHT

HEALTH, SANITATION AND SAFETY

ARTICLE ONE

REFUSE

8-101. Refuse defined. Refuse shall mean and include garbage, rubbish, trash, and refuse as those terms are generally defined except that dead animals and fowls, body wastes, hot ashes, rocks, concrete, bricks, and similar materials are expressly excluded therefrom and shall not be stored therewith.

8-102. Premises to be kept clean. All persons within corporate limits of the town are hereby required to keep their premises in a clean and sanitary condition, free from accumulations of refuse except when stored as provided in this article.

8-103. Storage. Each owner, occupant, or other responsible person using or occupying any building or other premises within the corporate limits of the town where refuse accumulates or is likely to accumulate, shall provide and keep covered an adequate number of suitable refuse containers. The refuse containers shall be strong, durable, and rodent and insect proof. They shall each have a capacity of not less than twenty nor more than thirty-two gallons, except that this maximum capacity shall not apply to larger containers which the town handles mechanically. Furthermore, with the exception of containers which the town handles mechanically, the combined weight of any refuse container and its contents shall not exceed seventy-five pounds. No refuse shall be placed in a refuse container until such refuse has been drained of all free liquids. No refuse shall be permitted to accumulate on said premises for any period of time longer than the interval between the regularly scheduled collections.

8-104. Location of containers. Where alleys are used by the town refuse collectors, containers shall be placed on or within six feet of the alley line in such a position as not to intrude on the traveled portion of the alley. Where streets are used by the town refuse collectors, containers shall be placed adjacent to and back of the curb, or adjacent to and back of the ditch or street line if there be no curb, at such times as shall be scheduled by the town for the collection of refuse therefrom. As soon as practicable after such containers have been emptied

they shall be removed by the owner within, or to the rear of, his premises and away from the street line until the next scheduled time for collection.

8-105. Disturbing containers. No person other than the authorized collector shall collect, uncover, ruffle, rifle, pilfer, dig into, turn over, or interfere with any garbage after it shall have been put into a garbage receptacle and deposited in the proper place for the collector, or in any other manner disturb or use any refuse container belonging to another; nor shall any unauthorized person molest, hinder, delay or in any manner interfere with an authorized garbage collector in the discharge of his duties. This section shall not be construed to prohibit the use of public refuse containers for their intended purpose.

8-106. Collection. All refuse accumulated within the corporate limits shall be collected, conveyed, and disposed of under the supervision of such officer as the council shall designate. Collections shall be made regularly in accordance with an announced schedule as fixed or determined by council from time to time.

8-107. Collection vehicles. The collection of refuse shall be by means of vehicles with beds constructed of impervious materials which are easily cleanable and so constructed that there will no leakage of liquids draining from the refuse onto the streets and alleys. Furthermore, all refuse collection vehicles shall utilize closed beds or such coverings as will effectively prevent the scattering of refuse over the streets or alleys. Any person, other than an authorized agent or employee of the town, who places any garbage, refuse, trash or other debris into any collection vehicle or other vehicle owned by or in the possession of the town without previously receiving authorization from the mayor, chief of police, or street commissioner shall be guilty of a misdemeanor.
(Section amended 1989.)

8-108. Disposal. It shall be the duty of the council to provide for an adequate and sufficient refuse disposal within the town and to fix a reasonable fee to be paid by each person employing such service, and having ascertained such fee, which may be changed from time to time by the council, the same shall be so declared and published by council as to give all subscribers to such service adequate and timely notice thereof. The disposal of refuse in any quantity by any person in any place, public or private, other than at the site or sites, or in

the manner, designated for refuse disposal by the council is expressly prohibited.

8-109. Violations, penalties. Any person violating the provisions of any section of this article shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than fifty dollars for each offense.

8-130. Fees for collection within the town. For continuing once weekly pick-up of residential solid waste within the corporate limits of the town and for taxpayers of the town who have service to a location outside of the corporate limits of the town there shall be monthly fees due as follows:

For up to five bags per week	\$14.50
For six to ten bags per week	\$20.50
2 cubic yards of dumpster	\$41.00
4 cubic yard dumpster	\$51.00

Such fee shall be due for each residential unit and separate business location unless a dumpster is used for the premises. Businesses may elect to have collections more than once per week. The above fees shall apply for each collection per week. The Mayor or his designee shall establish fees for service which does not fall within the above classifications which cover the cost of collecting, transporting, and disposing of such residential solid waste. Taxpayers shall also include those persons and firms who have executed an irrevocable petition to have their property annexed into the town.

(adopted May 24, 2007)

8-131. Obligations of property owners to secure service and pay fees. Every owner of any occupied premises within the Town shall have the responsibility of obtaining minimum regular service for the collection, storage and disposal of solid waste. The rates and changes specified by section 8-130 hereof shall be the obligation of the owner of the premises, provided that upon application by the owner of any rental property, such bills may be rendered to the occupant. However, the rendering of a bill to an occupant who is not the owner of the premises shall not affect or impair the right of the Town to collect such charges from the owner in the event any such bill becomes delinquent.

(adopted May 24, 2007)

8-132. Fees for collection outside the town. The Council finds as a matter of fact that the cost of providing collection service outside the town is higher than the cost of providing collection service inside the town for the reason that the garbage truck driver is required to work more than forty hours

per week to provide such service and is entitled to and paid time and one half for time worked in excess of forty hours per week and that providing such service causes additional use of the truck and lifting equipment resulting in faster depreciation. For this reason it is justifiable to charge more for collection service outside the corporate limits of the town. For standard once weekly pick-up outside the corporate limits of the town there shall be monthly fees due as follows:

For up to five bags per week	\$16.00
For six to ten bags per week	\$23.00
2 cubic yards of dumpster	\$51.00
4 cubic yard dumpster	\$61.00

Businesses may elect to have collections more than once per week. The above fees shall apply for each collection per week. The Mayor or his designee shall establish fees for service which does not fall within the above classifications which cover the cost of collecting, transporting, and disposing of such residential solid waste.

(adopted May 24, 2007)

8-133. Fees for drop off service. The town may provide a drop off service for customers who are not eligible for or do not wish to have collection service. The fees shall be the same as for collection within the town. For customers who do not wish to enroll for continuing service the fee shall be \$1.50 per bag. (adopted May 24, 2007)

8-134. Fees for bulk goods. The Mayor or his designee shall establish fees for the collection and disposal of bulky goods which cover the cost of collecting, transporting, and disposing of such bulky goods. (adopted May 24, 2007)

8-135. Fees for yard waste. There shall be no additional fees for the collection and disposal of yard waste for the customers who subscribe to and pay for continuing collection of residential solid waste. By the garbage department. The Mayor or his designee shall establish fees for the collection and disposal of yard waste from other premises which cover the cost of collecting, transporting, and disposing of such yard waste. (adopted May 24, 2007)

8-136. Payment of fees. The fees herein provided shall be due and payable in advance at the office of the Municipal Clerk. Fees for continuing service are due and payable on the first day of the first month of the quarter in which service is to be provided. Customers shall be provided with a quarterly

statement on or before the first day of the quarter after they enroll for service. Customers who have not paid by the 20th day of the month shall be sent a reminder bill. There shall be a late fee of two dollars added for each such reminder bill which is issued.

(adopted May 24, 2007)

8-137. Failure to pay fees. If any person or firm is still delinquent in the payment of the fees due hereunder for a period of more than thirty days after notice of such delinquency has been mailed to them in accordance with the requirements of Section 8-136 it shall be the duty of the Municipal Clerk to cause the subscriber, and the property owner if the subscriber is a tenant of rental property within the Town, to be summoned before the Municipal Court. A fee of five dollars shall be charged to the account for each summons issued. If the court finds such fees remain delinquent, judgment shall be entered against such subscriber and property owner in the amount of the fees due plus court costs of twenty dollars and the fees for filing a judgment lien with the office of the Clerk of the County Commission of Braxton County. It shall be the duty of the Municipal Clerk to cause an abstract of any such judgment to be filed with the office of the Clerk of the County Commission of Braxton County as a lien against both the subscriber and the property owner.

(adopted May 24, 2007)

8-138. Surcharges. Because of volatility in the price of fuel, the Town of Sutton shall from time to time, implement temporary emergency fuel surcharges contemporaneously with and in the same fashion as such surcharges are authorized by the Public Service Commission of West Virginia for common carriers regulated by the Public Service Commission.

(adopted May 24, 2007)

ARTICLE TWO

MISCELLANEOUS

8-201. Health Officer. The "health officer" shall be such municipal, county, or state officer as the council shall appoint or designate to administer and enforce health and sanitation regulations within the town.

8-202. Adulterated food, drugs, and cosmetics; penalties. It shall be unlawful for any person, by himself or his agents, to knowingly adulterate, or cause to be adulterated, any article of food, drug, drink, or cosmetic, or to knowingly manufacture for sale, offer for sale, or sell, with the town, any such article of food, drug, drink, or cosmetic which is adulterated, without making the same known to the buyer. Any person who violates the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than five hundred dollars, or confined in jail not more than one year, or both such fine and imprisonment, in the discretion of the court.

8-203. Sale of preserved food as fresh, penalties.
(Section deleted 1989)

8-204. Determination of adulterated item. In determining whether any of such articles of food, drug, or drink is adulterated as provided in Section 8-202, the standard or test to be applied shall be the same as provided in the applicable section of the Code of the State of West Virginia.

8-205. Communicable disease. When there exists or is suspected to exist in any household a communicable disease, it shall be the duty of any attending physician and the head or other responsible person or persons in such household possessing knowledge of the facts to immediately notify the health officer. The health officer shall thereupon make such investigation and issue such quarantine orders as may reasonably be necessary to protect the public health. It shall be unlawful for any person to violate any such orders of the health officer.

8-206. Keeping of slaughterhouse prohibited. It shall be unlawful for any person to keep any slaughterhouse or kill or slaughter for sale any animal within the town, and every day such slaughterhouse shall be so kept shall constitute a distinct and separate offense; provided, however, that nothing herein shall prevent any person from slaughtering any of the animals

specified in Chapter 9, Section 101 of this code which have been and are being lawfully kept in the town for domestic purposes, provided the same are slaughtered in such a manner and at such a place within the town as not to be offensive to any person therein.

8-207. Disposal or water, slop, etc. on public grounds prohibited. It shall be unlawful for any person to throw the water, slop, offal, or any other such offensive material or substance from his or her house or kitchen into or upon any street, alley, road or public ground, or upon the lot of another, or permit or suffer the same to be done by any person in his or her employment or belonging to his or her family.

8-208. Dead animals, penalties. It shall be unlawful for the owner of any dead animal to suffer it to remain longer than five hours within the town after having been notified by the Mayor or any police officer to remove the same; upon conviction such person shall be fined not less than five nor more than fifty dollars, and for each and every twenty-four hours thereafter he shall suffer the same to remain, a further fine of not more than fifty dollars may be imposed. In all cases of neglect or refusal of the party so convicted to comply with the order of the Mayor to remove such nuisance or dead animal, the removal may be done by the direction of the Mayor and the costs of such removal shall be added to the fine imposed.

8-209. Smoke, soot, fumes, etc. It shall be unlawful for any person to permit or cause the escape of such quantities of dense smoke, soot, cinders, noxious acids, fumes or gases as to be detrimental to or to endanger the health, comfort, or safety of the public or so as to cause or have a tendency to cause injury or damage to property or business.

8-210. Stagnant water. It shall be unlawful for any person to knowingly allow any pool of stagnant water to accumulate and stand on his property.

8-211. Weeds. Every owner or tenant of property shall periodically cut the grass and other vegetation commonly recognized as weeds on his property, and it shall be unlawful for any such person to fail to comply with an order by the Mayor or Chief of Police to cut such vegetation when it has reached a height of over one foot.

8-212. Health hazard due to broken sewer, penalties. The owner and/or occupant of any private property, for the use and benefit

of which drains, sewers or ditches have been made or may be made within said town, shall be held liable for keeping the same in constant good repair and free from all manner of annoyance to the public or to the owners or occupants of property adjacent thereto.

In the event such drains, sewers or ditches become dangerous or offensive to the public health and safety by reason of their becoming stopped up, broken, or out of repair, or from any other cause, and owner, agent, or occupant of said property fails or refuses to repair the same within a reasonable length of time, after having been notified by the Mayor, it shall be the duty of the Mayor to direct the street Commissioner to repair, or cause to be repaired, such sewer, drain, or ditch, and report his proceedings, with the cost incurred in making such repairs, to the council, and the owner and occupant of such property, jointly and severally, shall be liable for said costs. The owner and occupant of such property, if both shall be so notified and both shall fail to make such repairs, or, if either one and not the other be so notified and shall so fail, then the party or parties notified and so failing, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five nor more than one hundred dollars.

8-213. Fireworks, penalties. Except as hereinafter provided, it shall be unlawful for any person, firm, co-partnership, or corporation to offer for sale, expose for sale, sell at retail, possess, use, or explode any fireworks (as defined by the applicable section or sections of the code of the State of West Virginia); provided, that there may be public displays of fireworks by the town, fair associations, amusement parks, or other organizations or groups of individuals, when such display shall be conducted in accordance with the rules and regulations prescribed by the state fire marshal, and who shall have first obtained a permit so to do from said marshal, and from the council. Every such display shall be handled by a competent operator to be approved by the Chief of Police and by the chief of the fire department, and shall be of such character and so located, displayed, or fired as, in the opinion of the police and fire chiefs, after proper inspection, shall not be hazardous to property in the town or endanger any person or persons. Application to the council for such permit shall be made in writing at least fifteen days prior to the date of the display.

After such privilege shall have been granted, sales, possession, use and distribution of such fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable. If the person holding

the permit shall in any manner violate the terms and conditions thereof, or shall in any manner injure any property of person while conducting such display, the Mayor, and his absence the Chief of Police, shall have authority to immediately revoke such permit and to stop any further display of such fireworks. In addition thereto, the person to whom the permit was granted shall be liable for any damage done to any property or person.

Any person, firm, co-partnership, or corporation violating any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed ninety days, or both such fine and imprisonment, in the discretion of the court.

8-213-A Explosive Devices. No explosive devise may be detonated within the city limits of the Town of Sutton without a Permit approved by the Common Council. The Mayor or in his absence the Chief of Police may grant temporary approval to proceed, if all other conditions are met, until the next regular meeting of the Council or call a special meeting for the purpose of consideration if necessary. This ordinance includes, but is not limited to, explosive devices used in construction, demolition, or site preparation.

A permit will not be granted to any individual or firm that does not meet all West Virginia State and Federal requirements including appropriate licenses. Such proof must accompany the application for permission to discharge explosives with in the said Town and will be the responsibility of the applicant to provide.

Either the Mayor or the Chief of Police will review the proposed work as described in the "Application For Permit To Detonate Explosives'" and may require additional action on the part of the applicant to insure as safe an environment as possible for the Town of Sutton. The Mayor or the Chief of Police may deny the application if they do not feel that adequate safe guards are in place to protect the Town, it's citizens and visitors.

Under no circumstances will any permit be granted without a 24 hour notice of application. Each explosion will constitute a separate incident and require a separate permit unless otherwise directed by the council. A fee of \$25 will be required to accompany the application.

No portion of this ordinance should be interpreted to relieve the individual or firm detonating such explosives from all liability incurred directly or indirectly from their actions. The person or persons to whom the permit is granted shall be liable for any and all damages done to any property or persons. By granting the permit the city of Sutton and it's officials take no responsibility, what so ever, for any damages that may result.

Any individual or firm violating this ordinance by detonating an explosive device within the corporate limits of the Town of Sutton shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one thousand dollars, or imprisoned in the county jail not to exceed ninety days or both such fine and imprisonment, in the discretion of the court. In addition to the penalties set forth by this ordinance the provisions here of, may be further enforced by injunction issued from the Circuit Court of Braxton County.

This ordinance will become effective immediately upon approval of the third reading of the Common Council of the Town of Sutton and apply to all occurrences from that date forth.
(Section added 1991)

8-214. Spitting on public property, penalty. It shall be unlawful for any person to spit upon the floors, walls, steps, or any other part of any hall or public building within the town. Any person offending against this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one nor more than ten dollars for each offense.

8-215. Public nuisances by reason of fire and safety hazard. No person, firm, corporation, or association owning real estate within the corporate limits of the Town of Sutton, nor any lessee or sublessee thereof, shall suffer or permit such real estate or any dwelling house thereon or any other building of any kind or character to fall into such state of neglect or disrepair as to become unsightly or to create a hazardous condition by reason of fire, wind, or other natural causes so as to endanger the health and safety of the residents of the Town of Sutton, nor shall any such owner or lessee allow the accumulation of paper, cardboard, boxes, and other rubbish causing or tending to cause a fire hazard. If in the opinion of the council such condition exists or arises, council shall take prompt and appropriate legal action to cause such condition to

be corrected or abated as a public nuisance, as provided in this article.

8-216. Public nuisances by reason of health and sanitation hazard. It shall be unlawful for any person to permit any premises owned, occupied, or controlled by him to become or remain in a filthy condition, or permit the use or occupation of the same in such a manner as to create noxious or offensive smells and odors in connection therewith, or to allow the accumulation or creation of unwholesome and offensive matter or the breeding of flies, rodents, or other vermin on the premises to the menace of the public health or the annoyance of people residing within the vicinity. If in the opinion of the council such condition exists or arises, council shall take prompt and appropriate legal action to cause such condition to be corrected or abated as a public nuisance, as provided in this article.

8-217. Abandoned refrigerators and other airtight appliances. No person shall abandon, discard, or knowingly permit to remain on premises under his control, in a place accessible to children, any refrigerator or other airtight or semi-airtight container which has a capacity of one and one-half cubic feet or more and an opening of fifty square inches or more and which has a door or lid equipped with a hinge, latch, or other fastening device capable of securing such door, lid, without rendering such equipment harmless to human life by removing such hinges, latches, or other hardware which may cause a person to be confined therein. This section shall not apply to an ice-box, refrigerator, or other airtight or semi-airtight container located in that part of a building occupied by a dealer, warehouseman, or repairman; provided, however, that this exception shall not relieve said dealer, warehouseman, or repairman from using the highest degree of care under the circumstances to protect and save harmless against injury or death the life or person of any individual.

8-218. Violations action by council. In the event of violation of any of the foregoing sections of this article for which a penalty is not therein prescribed, council shall take prompt and appropriate legal action to cause said violation to be corrected or abated as a public nuisance. Provided, that no such legal action shall be taken until such person, firm, corporation, or association or such occupant, lessee, or sublessee shall have first been given proper legal notice setting forth such facts as shall be necessary to sufficiently apprise such person of said violation and time and opportunity, all facts and circumstances considered, to correct such situation or abate the same; and, if

such person desires to be heard before council, an opportunity shall be afforded to him for a hearing as to the existence of such violation, provided a request for such hearing is timely made by said person.

8-219. Penalties. In addition to all civil remedies available to council to correct or abate any or all conditions referred to in this article, any person failing or refusing to correct or abate such condition within the time provided shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars; and, after the time allowed in the aforesaid notice has elapsed without the correction or abatement made as specified, each twenty-four hour period thereafter during which such condition remains uncorrected or unabated shall be and constitute a separate offense.

CHAPTER EIGHT-ARTICLE TWO-A

CHAPTER EIGHT, ARTICLE TWO-A ENACTED UPON PASSAGED:

CHAPTER VIII, ARTICLE II-A: Explosive Devices:

Passed on First Reading this the 12th day of September 1991:

Passed on Second Reading this the 26th day of September 1991:

Passed on Third Reading this the 10th day of October 1991:

Common Council of the Town of Sutton

County of Braxton State of West Virginia

ORDAINED AND ENACTED INTO AN ORDINANCE THIS •THE 10TH
DAY OF OCTOBER 1991:

MAYOR

RECORDER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

COUNCILMEMBER

CHAPTER NINE

ANIMALS AND FOWL

ARTICLE ONE

IN GENERAL

9-101. Running at large prohibited. It shall be unlawful for any person owning or being in charge of cows, swine, sheep, horses, mules, or goats, or any chickens, ducks, geese, turkeys, or other domestic fowl, cattle, or livestock, to knowingly or negligently permit any of them to run at large inside the corporate limits of the town.
(Section amended 1989)

9-102. Keeping near a residence or business restricted. No person shall keep, stable, or house any animal or fowl enumerated in the preceding section within the corporate limits of the town.
(Section amended 1989)

9-103. Pen or enclosure to be kept clean. When animals or fowl are kept within the corporate limits, the building, structure, corral, pen, or enclosure in which they are kept shall at all times be maintained in a clean and sanitary condition.

9-104. Adequate food, water, and shelter, etc., to be provided. No animal or fowl of any kind shall be kept or confined in any place where the food, water, shelter and ventilation are not adequate and sufficient for the preservation of its health, safe condition, and wholesomeness for food if so intended.

9-105. Keeping in such manner as to become a nuisance prohibited. No animal or fowl shall be kept in such place or condition as to become a nuisance either because of noise, odor, contagious disease, or other reasons.

9-106. Cruel treatment prohibited. If any person shall cruelly, unnecessarily, or needlessly beat, torture, torment, mutilate, kill, or overload, overdrive, or willfully deprive of necessary sustenance, any horse or other domestic animal, whether such horse or other animal be his own or that of another person, or shall impound or confine any such animal in any place and fail to supply the animal with a sufficient quantity of good, wholesome food and water, or shall carry in or upon any

vehicle, or otherwise, any such animal in a cruel or inhumane manner, or knowingly feed a cow on food that produces impure or unwholesome milk, or shall abandon to die any maimed, sick, infirm, or diseased animal, or shall be engaged in or employed at cock fighting, dog fighting, bear battling, pitting one animal to fight against another of the same or different kind, or any similar cruelty to animals, or shall receive money for the admission of any person or shall knowingly purchase a dog or other animal for the purpose of seizing, detaining, or mistreating any other domestic animal, he shall be fined not less than five nor more than one hundred dollars and, in the discretion of the court, he may be imprisoned not exceeding six months.

9-107. Seizure and disposition of animals. Any animal or fowl found running at large or otherwise being kept in violation of this article may be seized by the health officer or by any police officer or other officer so designated by council, and confined in a pound provided or designated by the council. If the owner is known he shall be given notice in person, by telephone, or by a post card addressed to his last-known mailing address, and the animal or fowl will be humanely destroyed or sold if not claimed within five days. If the owner is not known, a note describing the impounded animal or fowl will be publicly broadcast or posted in at least three public places within the corporate limits of the town. The notice shall state that the impounded animal or fowl must be claimed within five days by paying the pound costs or the same will be humanely destroyed or sold. If not claimed by the owner within the specified period, the animal or fowl will be sold, humanely destroyed, or otherwise disposed of as authorized by council and the council, town, and any such purchaser shall in no way be liable to the former owner therefore.

9-108. Seizure of rabid animals. Any rabid animal, or animal from good cause supposed to be rabid, found running at large upon any of the streets, alleys, or premises other than that of the owner of such animal, within said town, shall be seized forthwith by the health officer or any police officer and confined in a suitable place until such time as may be required to determine if said animal be infected or not. Any reasonable expense attending such confinement and, of necessary, the humane disposal of such animal, may be allowed by the council.

9-109. Confinement of diseased animals. The owner of any animal suffering with any contagious or infectious disease shall remove or confine the same to some place where danger of its

spread of infection cannot be reasonably apprehended; or, if the animal be killed or die, the body shall be buried or destroyed by the owner.

9-110. Dangerous or vicious animals prohibited. No person shall keep any animal which is known to be dangerous or vicious within the limits of the town unless said animal be kept securely confined. Any person offending against the provisions of this section shall be fined as provided in Section 9-115 following, and after the assessment of the first fine a like fine shall be imposed for every twenty-four hours such animal is suffered by such person to remain unconfined.

9-111. Turning animals loose within the town prohibited. No person shall willfully let out, or cause to be let out, of any enclosure within the town, or drive or lure, or cause to be driven or lured, into said town any of the animals mentioned in Section 9-101 of this article.

9-112. Unauthorized removal of animals from pound. No person shall let out, drive, or turn out of any pound or enclosure any animal that may have been placed therein by any police officer or authorized employee of the town.

9-113. Running, standing, or hitching of animals. It shall be unlawful for any person to run or race any horse or other brute, or start the same for the purpose of racing, within the town on any road, street, or alley thereof; or to suffer such horse or brute to stand on any road, street, or alley, or public grounds in the town without being properly fastened or being watched by some person competent to prevent the same from starting; or to hitch any such animal near enough to any sidewalk or board walk to permit said animal to get thereon with its feet.

9-113. Passing of Ordinance Animals and Fowl. No person, living within the town boundaries, shall keep fowl of any type without first, applying for a permit from the Town of Sutton. No roosters will be allowed. Birds are limited to a total of 15. All birds must be kept in a humane way and penned at all times. Pens must be kept clean: Permits are granted at the discretion of council according to location, and any other factors which concern the health, safety, and well-being of the residents.

If applicant is not the property owner, a letter from the landowner must accompany the application. The letter must

state the owner's permission to allow birds, specifically. Permit application will be made at the Mayor's Office during normal business hours.

Cost of permit is \$5.00 five dollars. The permit will consist of name, address, total number of birds. A map will accompany the permit showing the exact location of the pen on the owner's lot. Any violation of this ordinance may result in citation and fine of not less than \$25.00 and not more than \$200.00. This ordinance, adopted this July 16, 2010, will supersede any previous ordinance regarding fowl.
(Section added 2010)

9-114. Excess speed of animals prohibited. It shall be unlawful for any person to gallop any horse, mare, gelding, mule, or ass, or ride or drive any such animal or other brute, over any road, street, or alley of the town at a greater rate of speed than eight miles per hour, or to ride or drive any horse or other brute across any bridge within said town at a gait faster than a walk.

9-115. Violations and penalties. Any violation of any section of this article wherein a penalty is not prescribed shall be punishable by a fine of not more than one hundred dollars for each separate offense.

9-116. Pet waste and penalties. I) Purpose: An ordinance to establish requirements for the proper disposal of pet solid waste in Town of Sutton, so as to protect public health, safety and welfare, and to prescribe penalties for failure to comply.

II) Definitions: For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

a. Immediate - shall mean that the pet solid waste is removed at once, without delay.

b. Owner/Keeper - any person who shall possess, maintain, house or harbor any pet or otherwise have custody of any pet, whether or not the owner of such pet.

c. Person - any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

d. Pet - a domesticated animal (other than a disability assistance animal) kept for amusement or companionship.

e. Pet solid waste - waste matter expelled from the bowels of the pet; excrement

f. Proper disposal- placement in a designated waste receptacle, or other suitable container, and discarded in a refuse container which is regularly emptied by the municipality or some other refuse collector; or disposal into a system designed to convey domestic sewage for proper treatment and disposal.

III) Requirement for Disposal: All pet owners and keepers are required to immediately and properly dispose of their pet's solid waste deposited on any property, public or private, not owned or possessed by that person.

IV) Exemptions: Any owner or keeper who requires the use of a disability assistance animal shall be exempt from the provisions of this section while such animal is being used for that purpose.

V) Enforcement: The provisions of this Article shall be enforced by the [Police Department and the Local Board of Health] of Town of Sutton. Any person(s) who is found to be in violation of the provisions of this ordinance shall be subject to a fine not to exceed \$100.00.

VII) Severability: Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.
(Adopted August 27, 2020)

ARTICLE TWO

DOGS

9-201. Annual head tax imposed; duty of keepers of dogs to report to county assessor and pay head tax; dog tags to be affixed to collars of dogs.

(a) There is hereby imposed upon each person keeping within the town a dog above the age of six months an annual head tax on each dog so kept by him in the amount of one dollar for each male or spayed female dog and two dollars for each unspayed female dog.

(b) It shall be the duty of each person who keeps within the town a dog above the age of six months to report such dog to the Assessor of Braxton County at the time when the annual assessment of personal property is made; provided, that when any person within the town acquires a dog above the age of six months, or when a dog kept by him within the town attains the age of six months, such person shall then report such dog to the Assessor of Braxton County.

(c) Each person reporting a dog to the county assessor pursuant to subsection (b) of this section shall pay to the assessor the amount of the head tax prescribed in subsection (a) of this section for each dog he is required to report, and he shall then attach to the collar of each such dog the proper registration tag furnished to him by the assessor, and retain within his possession the certificate of registration furnished to him by the assessor for each such dog.

(d) The annual head tax on dogs imposed by subsection (a) of this section is for a fiscal year rather than a calendar year.

9-202. Certain dogs exempt from tax imposed by Section 9-201. The head tax imposed by subsection (a) of Section 9-201 shall not apply to dogs in a licensed kennel or veterinary hospital. All seeing-eye dogs are exempted from the head tax imposed by subsection (a) of Section 9-201, but their owners or custodians shall annually apply for and be issued dog license tags upon display of proper rabies vaccination or inoculation or vaccination certificate.

9-203. Offenses concerning license tags. No person shall attach a license tag to any dog to which it was not issued or

remove a license tag from the collar of any dog without the consent of the owner.

9-204. Dogs are not permitted to run at large. No dog, whether wearing a license tag or not, shall be permitted, and it shall be unlawful for any dog, to run at large within the corporate limits of the town at any time. Any dog found running at large in violation of this section shall be subject to impoundment as provided in Section 9-107 of this chapter.

9-205. Keeping vicious dog prohibited. 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 animal warden or any police officer or other person may cause such to be impounded, upon a warrant being issued therefore and served upon the owner thereof and a hearing being had thereon, disposed of in a humane manner. (Section amended 1989)

9-206. Duty of owner or custodian of dog upon biting any person. Any dog, whether licensed or not, who bites any person shall be taken by its owner or custodian forthwith to a veterinarian for confinement and observation, or shall be securely confined on the premises of its owner or custodian, and in either case the owner or custodian shall forthwith notify the health officer of Braxton County.

9-207. Muzzling dogs under proclamation of Mayor. Whenever it shall be made to appear to the Mayor and/or council that there are good reasons for believing that any dog within the town is mad, he may issue a proclamation requiring that all dogs shall, for a period to be defined in the proclamation, wear good, substantial muzzles, securely put on, so as to prevent them from biting or snapping, and any dog at large, during the period defined by the Mayor, without such muzzle, shall be taken by the animal warden or any police officer and impounded as provided in this chapter.

9-208. Inducing dogs to fight, annoy persons or animals. No person shall entice, induce, urge or cause any dog to engage in or prolong a fight in the town, and no person shall induce or cause any dog to run after, bark at, frighten, or bite any person or animal lawfully passing along or standing in or on any street or highway within the town.

9-209. Seizure or enticing dog; bringing dog into city for impounding or killing. Except for persons duly authorized by this article, no person shall entice any properly licensed dog into any enclosure for the purpose of taking off its collar, harness, or tag, or, for such purpose, decoy or entice any dog out of the enclosure or house of its owner or possessor, or seize or molest any dog which is held or led by any person, or bring any dog into the town for the purpose of impounding or killing.

9-210. Violations and penalties. A violation of any section of this article shall be punishable by a fine of not more than fifty dollars for each separate violation.

CHAPTER TEN

MOTOR VEHICLES AND TRAFFIC

ARTICLE ONE

IN GENERAL

10-101. Definitions. The following words and phrases when used in this code shall, for the purpose of this code, have the meanings respectively ascribed to them in this article.

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

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

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

(4) "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed five horsepower, and every bicycle with motor attached.

(5) "Authorized emergency vehicle" means vehicles of the fire department, duly chartered rescue squad, police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the Commissioner or the Chief of Police of an incorporated city, and such privately owned ambulances and emergency vehicles as are designated by the Commissioner.

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

(7) "Bicycle" means every device propelled by human power upon which any person or persons may ride, having two wheels.

(8) "Truck Tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(9) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(10) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(11) "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

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

(13) "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley

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

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

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

(17) "Pneumatic tire" means every tire in which compressed air is designed to support the load.

(18) "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(19) "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

(20) "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

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

(22) "Streetcar" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

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

(24) "Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

(25) "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

(26) "Commissioner" means the Commissioner of the Department of Motor Vehicles of the State of West Virginia.

(27) "Department" means the Department of Motor Vehicles of the State of West Virginia acting directly or through its duly authorized officers and agents.

(28) "Person" means every natural person, firm, co-partnership, association, or corporation.

(29) "Pedestrian" means any person afoot.

(30) "Driver" means every person who drives or is in actual physical control of a vehicle.

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

(32) "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

(33) "Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public purposes of vehicular travel.

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

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

(36) "Sidewalk" means that portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

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

(38) "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

(39) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

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

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

(42) "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three

hundred feet or more is in the main improved with residences or residences and buildings in use for business.

(43) "Traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

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

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

(46) "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

(47) "Right-of-way" means the privilege of the immediate use of the highway.

(48) "Stop" when required, means complete cessation from movement.

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

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

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

(52) "Axle group" means an assemblage of two or more consecutive axles considered together in determining their combined load effect on a bridge or pavement structure. The determination of what constitutes an axle group may include any or all the axles on the vehicle or combination of vehicles.

(53) "Tandem axle" means any two or more consecutive axles whose centers are not more than ninety-six inches apart, and are individually attached to and/or articulated from a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(54) "Tandem axle weight" means the total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse planes

spaced not more than ninety-six inches apart, extending the full width of the vehicle.

(55) "Connecting mechanism" means an arrangement of parts interconnecting two or more consecutive axles to the frame of a vehicle in such a manner as to equalize the load between axles.

(56) "Parking space" means an area at the side of a street or roadway which is intended for the standing, stopping of a vehicle.

(57) "Loading zone" means that parking space or spaces which are designated for the temporary standing, stopping of a vehicle while actually engaged in loading or unloading.

(58) "Reserved Parking zone" means that parking space or spaces specifically designated for the use of certain authorized persons but not for the general public.

(59) "No-Parking zone" means that area in which no standing, stopping, or parking of any vehicle is permitted at any time unless under emergency conditions or under the direction of a police officer.

(60) "Parking meter" means a mechanical traffic control device for the purpose of regulating parking, by which a person or persons may insert a designated coin or coins to operate a mechanism which indicates the time period that a vehicle may be legally parked within the designated parking space.

(See West Virginia Code 17A-1-1.)

10-102. Obedience to chapter required; exceptions. (a) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, the State of West Virginia, or any county, city, town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this code with reference to authorized emergency vehicles.

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

10-103. Required obedience to police officers. It shall be the duty of the Sutton Police Department and its officers to enforce the provisions of this chapter and other laws of the Town of Sutton; and no person shall willfully fail to refuse to comply with any lawful order or direction of any police officer or any officer invested by law with authority to direct, control, or regulate traffic.

10-104. Applicability of chapter to animals. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

10-105. Railroad trains restricted as to blocking streets. It shall be unlawful for any railroad company, except in an emergency, to order, allow, or permit the operation of or to operate or to so operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road, or highway of the town for a period longer than ten minutes. This section does not apply to an obstruction of any such street, road, or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading, or unloading operations.

10-106. Putting glass, etc. upon highway; required removal thereof. (a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

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

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

10-107. Duty of driver whose vehicle collides with unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in or on the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

(See West Virginia Code 17C-4-3)

10-108. Unlawful taking of vehicle. Any person who drives a vehicle, not his own, without consent of the owner thereof, and with intent temporarily to deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in, any such unauthorized taking or driving is guilty of a misdemeanor.

(See West Virginia Code 17A-8-4)

10-109. Offenses by persons owning or controlling vehicles. It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

(See West Virginia Code 17C-5-2)

10-110. Parties to an offense. Every person who commits, attempts to commit, conspires to commit, or knowingly aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, required, permits, or directs another to violate any provision of this chapter is likewise guilty of such offense.

10-111. Penalties. (a) It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other section of this code declared to be a felony.

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

hundred dollars or by imprisonment for not more than six months
or both such fine and imprisonment.

ARTICLE TWO

TRAFFIC-CONTROL DEVICES

10-201. Obedience to traffic-control devices. (a) The driver of any vehicle and the motorman of any streetcar shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in Chapter 7 of this code.

(b) No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place. (See West Virginia Code 17C-3-2(b), 17C-3-4)

10-202. Authority of council to erect or install traffic-control devices. The Common Council of the Town of Sutton shall place and maintain such traffic-control devices upon highways within the corporate limits of the town as they may deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the West Virginia State manual and specifications. (See West Virginia Code 17C-10-1)

10-203. Traffic-control legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop", or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green alone or "Go": (1) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited. (2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow alone or "Caution" when showing following the green or "Go" signal: (1) Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited. (2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(c) Red alone or "Stop": (1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone except as provided in paragraphs (2) and (3) of this subsection (c). (2) A vehicle which is stopped in obedience to a red or "Stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection, may cautiously make a right turn but such vehicle shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at said intersection, except that council may by ordinance prohibit any such right turn against a red or "Stop" signal at any intersection within the corporation, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof. (3) A vehicle which is stopped in obedience to a red or "Stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection on a one-way street which intersects another one-way street on which traffic moves to the left, may cautiously make a left turn into said one-way street but such vehicle shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at said intersection, except that council may by ordinance prohibit any such left turn against a red or "Stop" signal at any intersection within the corporation, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof. (4) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with green arrow: (1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawful within a crosswalk and to other traffic lawfully using the intersection. (2) No pedestrian

facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(f) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

10-204. Pedestrian walk wait signals. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait" or words to such effect are in place such signals shall indicate as follows:

(a) "Walk" - Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(b) "Wait" - No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

10-205. Flashing signals. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1) Flashing red (stop signal) - When a red lens is illuminated with intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) Flashing yellow (caution signal) - When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

10-206. Display of unauthorized devices, signs, etc.; such devices etc., declared nuisance and subject to removal. (a) No person shall place, maintain, or display upon or in view of any highway, road, or street within the corporation any unauthorized traffic-control device or traffic-control signal, or any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-

control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain upon any highway, road, or street within the corporation any traffic-control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to the highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited device, signal, sign, or marking is hereby declared to be a public nuisance and the Common Council is hereby empowered to remove the same or cause it to be removed without notice.

10-207. Interference with official traffic-control devices or railroad signs or signals prohibited. 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.

ARTICLE THREE

OPERATION OF VEHICLES

10-301. Motor vehicle drivers must be licensed by state, with few exceptions. No person shall drive or operate a motor vehicle, as defined in this code, upon any street, alley, or highway of the Town of Sutton unless he has first been duly licensed as required by the laws of the State of West Virginia, which operator's license has not been suspended or revoked by the State of West Virginia, or unless he falls within one of the exceptions provided by said laws of said state.

(See West Virginia Code 17B-2-1)

10-302. Vehicle registration plate and registration required. It is a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any road, street, alley, or highway of the Town of Sutton any vehicle of a type required to be registered under the laws of the state of West Virginia which is not a registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required by said laws, except as otherwise permitted by the provisions of said laws.

(See West Virginia Code 17A-3-2)

10-303. Display of registration plates. Registration plates issued for vehicles required to be registered hereunder shall be attached to the rear thereof. Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measured from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(See West Virginia Code 17A-3-15)

10-304. Requirements for safety inspection of vehicles and display of inspection certificates. It is a misdemeanor for any owner or operator, or both owner and operator, of any vehicle required to be inspected under the motor vehicle laws of the State of West Virginia to operate or permit to be operated such vehicle in the Town of Sutton without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as designated under said laws. Unless another penalty is by this

code provided, every person convicted of a misdemeanor for operating a vehicle without having displayed thereon a current and valid certificate of inspection and approval or for failure to produce such certificate upon demand of an authorized person shall be punished by a fine of not more than one hundred dollars.

(See West Virginia Code 17C-16-4)

10-305. Requirement for display of motor carrier fuel tax identification marker. No person shall operate or cause to be operated within the town any motor carrier subject to the road fuel tax provisions of the West Virginia State Code without first securing from the State Motor Vehicle Commissioner a registration card and an identification marker for each such motor carrier. The registration card shall be carried in the motor carrier for which it was issued at all times when the motor carrier is within the town. Each identification marker for a particular motor carrier shall bear a number, which number shall be the same as that appearing on the registration card for that particular motor carrier. The identification marker shall be displayed on the motor carrier as required by the commissioner.

Upon conviction for failure to obtain, carry and display the registration card and identification marker in or on each motor carrier, the person who operates or causes to be operated said motor carrier shall be fined not less than twenty nor more than one hundred dollars for each offense, and each day of such failure shall constitute a separate offense.

10-306. Vehicles not to be driven without equipment required by state or in unsafe condition. No person shall drive or move on any road, street, or alley of the town any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required by this code and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any highway.

(See West Virginia Code 17C-16-1)

10-307. Obstruction of driver's view or driving mechanism. (a) No person shall drive a vehicle in the Town of Sutton when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or street car shall ride in such position as to interfere with the driver's or motorman's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle or streetcar.

(See West Virginia Code 17C-14-4)

10-308. Number of passengers in vehicle limited. No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated on the roads, streets, or alleys of this town; provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Department of Motor Vehicles.

(See West Virginia Code 17C-14-5)

10-309. Operation of vehicles on approach of authorized emergency vehicles. (a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by this code which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell: (1) 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 and clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

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

(See West Virginia Code 17C-9-5)

10-310. Signals to indicate intent to turn, slow down, or stop.

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

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

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

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

(e) All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows: (1) Left turn - Hand and arm extended horizontally; (2) Right turn - Hand and arm extended upward; (3) Stop or decrease speed - Hand and arm extended downward.

(See West Virginia Code 17C-8-9 and 17C-8-10)

10-311. Speed limitations generally; charging violations. (a) No person shall drive a vehicle on a road, street, or alley within the town at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. 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 alleys in compliance with legal requirements and the duty of all persons to use due care.

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

(c) In every charge of violation of any speed regulations in this article the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, with the exception of an offense charged

under paragraph (a) of this section, also the speed applicable within the district or at the location, and in the event charge shall also be made of violation of any other provision of this chapter, the complaint and the summons or notice to appear shall also specify such other offense alleged to have been committed.

(d) The provision of this section declaring speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident. (See West Virginia Code 17C-6-1)

10-312. Speed limitations in specific locations. Where no special hazard exists that requires lower speed for compliance with Section 10-311 of this article, the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

(1) Fifteen miles per hour when passing a school building or school grounds abutting on a road, street, highway during school recess or while children are going to or leaving school during opening or closing hours. Such speed restriction shall not apply to vehicles travelling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the state road commissioner.

(2) Twenty-five miles per hour in any business or residence district within the corporate limits of the Town of Sutton with the exception of the following:

(a) Forty miles per hour along S. Stonewall St. (Rte. 19/40) from the south corporate limit of the town to the intersection of S. Byrne St.

(b) Thirty-five miles per hour along Main St. (Rte. 19/40) from milepost 11.41 (approximately the present location of Evans' Gulf Station) to the intersection of Rte 4. along Rte. 4 North to the north corporate limit of the town, and along Rte. 4 South to the west corporate limit of the town.

(Authorized pursuant to West Virginia Code 17C-6-3)

10-313. Authority of police to determine speed by means of radar. The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves, or any device commonly referred to as "radar", when such evidence is obtained by members of the Sutton Police Department. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

(See West Virginia Code 17C-6-7)

10-314. Driving on right side of roadway; exceptions. (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows: (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement; (2) When the right half of the roadway is closed to traffic while under construction or repair; (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or (4) Upon a roadway designated and signposted for one-way traffic.

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

(c) The provisions of this section shall not be construed to require the operator of a motor vehicle to drive continually in the right-hand lane when there is no traffic to be affected by his movement, except as provided in sub-section 10-318(b) of this article.

(See West Virginia Code 17C-7-1)

10-315. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

(See West Virginia Code 17C-7-2)

10-316. Overtaking and passing vehicle proceeding in same direction; passing on the left generally. The following rules shall govern the overtaking and passing of vehicle proceeding in the same direction, subject to the limitations, exceptions, and special rules hereinafter stated.

(a) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.
(See West Virginia Code 17C-7-3)

10-317. Same - When overtaking on the right is permitted. (a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions: (1) When the vehicle overtaken is making or about to make a left turn; (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving traffic in each direction; (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.
(See West Virginia Code 17C-7-4)

10-318. Same - Limitations on overtaking or driving to the left of center of roadway. a) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

(b) No vehicle shall at any time be driven to the left side of the roadway under the following conditions: (1) When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction; (2) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing; (3) When the view is obstructed upon approaching

within one hundred feet of any bridge, viaduct, or tunnel; (4) When traveling upon any portion of the road or highway where the signs or appropriate markings on the pavement indicate that overtaking and passing or driving to the left of the roadway would be especially hazardous and such portion of the road or highway has been declared a No-Passing Zone.

(See West Virginia Code 17C-7-5 ,17C-7-6, and 17C-7-7)

10-319. Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven and nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

(See West Virginia Code 17C-7-9)

10-320. Right-of-way - vehicles approaching or entering intersections generally. (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway or street.

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

(c) The right-of-way rules declared in subsections (a) and (b) of this section are modified at through highways and otherwise as hereinafter stated in this article.

(See West Virginia Code 17C-9-1)

10-321. Same - vehicle turning left at intersection. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this article, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

(See West Virginia Code 17C-9-2)

10-322. Same - vehicle entering through highway or stop or yield intersections. (a) The driver of a vehicle shall stop at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed.

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

(c) The driver of a vehicle approaching an intersection where a yield sign is plainly and conspicuously posted shall when necessary yield the right-of-way to other vehicles which have entered the intersection or which are approaching on the intersection highway so closely as to constitute an immediate hazard.

(See West Virginia Code 17C-9-3)

10-323. Stopping before entering street or road from alley or private drive. The driver of a vehicle within a business or residence district emerging from any alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(See West Virginia Code 17C-12-6)

10-324. Overtaking and passing school bus. The driver of a vehicle on any road or street of the town upon meeting or overtaking from either direction any school bus which has stopped on the street for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus flashing warning signal lights, and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.

(See West Virginia Code 17C-12-7)

10-325. Turning at intersections generally. (a) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

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

(c) If the over-all length of the turning vehicle, including any trailer or load pulled thereby, be such that any turn cannot be made completely within the proper lane, the driver of the turning vehicle may use that portion of the roadway which will permit the vehicle and load to complete said turn, providing that said driver exercise at all times sufficient care and caution to ensure that the turn is made with safety to other vehicles, persons and property.

10-326. Certain turns prohibited. (a) The following turns are prohibited as requested by the W.Va. Dept. of Highways, Feb. 23, 1978:

(1) Right turns out of Twistville Road onto Braxton County Rte. 19/40;

(2) Left turns from Braxton County Rte. 19/40 onto Twistville Road.

(b) It shall be unlawful for the operator of a motor vehicle to make a "U" turn with the vehicle operated by him at any of the intersections of the streets or alleys within said

town where the same is so designated by signs posted to the effect that "U" turns are prohibited, or words of like import.

10-327. One-way roadways. The Common Council of the Town of Sutton may designate any road, street, or alley under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof. Upon such road, street, or alley designated and signposted for one-way traffic, a vehicle shall be driven only in the direction designated.

ARTICLE FOUR

EQUIPMENT

10-401. Unsafe and improperly equipped vehicles; additional parts and accessories; applicability of article to farm and road equipment. (a) 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 street, road, or alley of the town any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.

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

(c) The provisions of this article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable. Every farm tractor equipped with an electric lighting system shall at all times mentioned in section 10-402 of this article display two red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of Section 10-405, 10-420, and 10-422 of this article, respectively.

(See West Virginia Code 17C-15-1; Section amended 1989)

10-402. When lighted lamps are required. (a) Every vehicle upon a road, street, or alley of the town at any time from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the road at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicle, subject to exceptions with respect to parked vehicles as hereinafter stated.

(b) For the purposes of this chapter, the terms "lamp", "lamps", "light", and "lights" shall be considered interchangeable and each shall have a common definition with the other.

(Section amended 1989)

10-403. Visibility distance and mounted height of lamps. (a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in section 10-402 of this article in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

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

(See West Virginia Code 17C-15-3)

10-404. Head lamps on motor vehicles. (a) Every motor vehicle other than a motorcycle or motor driven cycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article.

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

(c) Every head lamp upon every motor vehicle, including every motor-cycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-two inches to be measured as set forth in Section 10-403 of this article.

(See West Virginia Code 17C-15-4)

10-405. Tail lamps. (a) Every motor vehicle, trailer or semitrailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least two tail lamps mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than sixty inches nor less than twenty inches to be measured as set forth in Section 1-403 of this article.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.
(See West Virginia Code 17C-15-5; Section amended 1989)

10-406. New motor vehicles to be equipped with reflectors. (a) Every new motor vehicle hereafter sold and operated upon a road, street, or alley, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately, two red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one reflector, meeting the requirements of this section, and except that vehicles of the type mentioned in Section 10-409 of this article shall be equipped with reflectors as required in those sections applicable thereto.

(b) Every such reflector shall be mounted on the vehicle at a height not less than twenty inches nor more than sixty inches measured as set forth in Section 10-403(b) of this article, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within three hundred feet to fifty feet from such vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.
(See West Virginia Code 17C-15-6)

10-407. Stop lamps required on new motor vehicles. From and after the date of adoption of this code, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle or motor-driven cycle, in the corporate limits of the town or for any person to drive such vehicle on any road, street, or alley of the town unless it is equipped with stop lamps meeting the requirements of Section 10-418 of this article.
(See west Virginia Code 17C-15-7; Section amended 1989)

10-408. Application of 10-409 through 10-413. Those sections of this article which follow immediately, including Sections 10-409, 410, 411, 412, and 413 of this articles, and relating to clearance and marker lamps, reflectors, and stop lights shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any road, street, or alley of the town, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in Section 10-402 of this article.

(Section amended 1989)

10-409. Additional lighting and reflector equipment required on certain vehicles. In addition to other equipment required in this article the following vehicles shall be equipped as herein stated under the conditions stated in Section 10-408 of this article:

(a) On every bus or truck, whatever its size, there shall be the following: on the rear, two reflectors, one at each side, and two stop lights, one at each side.

(b) On every bus or truck eighty inches or more in overall width, in addition to the requirements in subsection (a): on the front, two clearance lamps, one at each side; on the rear, two clearance lamps, one at each side; on each side, two reflectors, one at or near the front and one at or near the rear.

(c) On every truck tractor: on the front, two clearance lamps, one at each side; on the rear, two stop lights, one at each side.

(d) On every trailer or semitrailer having a gross weight in excess of three thousand pounds: on the front, two clearance lamps, one at each side; on each side, two side marker lamps, one at or near the front and one at or near the rear; one each side, two reflectors, one at or near the front and one at or near the rear; on the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and two stop lights, one at each side.

(e) On every pole trailer in excess of three thousand pounds gross weight: on each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side, and rear; on the rear of the pole trailer or load, two reflectors, one at each side.

(f) On every trailer, semitrailer, or pole trailer weighing three thousand pounds gross or less: on the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop lights on the towing vehicle, then such vehicle shall also be equipped with two stop lights, one at or near each side.

(See West Virginia Code 17C-15-9; Section amended 1989)

10-410. Color of clearance lamps, side marker lamps and reflectors. (a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which shall be red, and except that the light illuminating the license plate, or the light emitted by a back-up light shall be white.

(See West Virginia Code 17C-15-10)

10-411. Mounting of reflectors, clearance lamps and side marker lamps. (a) Reflectors when required by Section 10-409 of this article shall be mounted at a height not less than twenty-four inches and not higher than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of this vehicle is less than twenty-four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit. The rear reflectors on a pole trailer may be mounted on each side of the bolster or load. Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this article.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

(See west Virginla Code 17C-15-11)

10-412. Visibility of reflectors, clearance lamps and marker lamps. (a) Every reflector upon any vehicle referred to in Section 10-409 of this article shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within five hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of head lights. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the side of the vehicle on which mounted.
(See West Virginia Code 17C-15-12.)

10-413. Obstructed lights not required to be lighted. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

(See West Virginia Code 17C-15-13)

10-414. Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 10-402 of this article, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(See West Virginia Code 17C-15-14)

10-415. Lamps on parked vehicles. (a) Whenever a vehicle is lawfully parked upon a street within the limits of the town during the hours between a half hour after sunset and a half hour before sunrise and in the event, there is sufficient light

to reveal any person or object within a distance of five hundred feet upon such street no lights need be displayed upon such parked vehicle.

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

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

(See West Virginia Code 17C-15-15)

10-416. Lamps on animal-drawn and other vehicles and equipment. All vehicles including animal-drawn vehicles and including those referred to in Section 10-401(c) of this article not hereinbefore specifically required to be equipped with lamps, shall at the times specified in Section 10-402 of this article be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

(See West Virginia Code 17C-15-16)

10-417. Spot lamps and other auxiliary lamps. (a) Spot lamps: Any motor vehicle except a public utility company maintenance vehicle may be equipped with not to exceed one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one

spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this section.

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

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

(d) Auxiliary driving lamp: Any motor vehicle may be equipped with not to exceed one auxiliary driving lamp mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.
(See West Virginia Code 17C-15-17)

10-418. Signal lamps and signal devices. (a) Any motor vehicle may be equipped and when required under this article shall be equipped with the following signal lamps or devices: (1) Two lamps on the rear which shall emit a red and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp; (2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

(b) A stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working

condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Section 10-402 of this article.

(See west Virginia Code 17C-15-18)

10-419. Additional lighting equipment. (a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

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

(c) Any motor vehicle may be equipped with not more than two backup lamps either separately or in combination with other lamps, but any such backup lamp shall not be lighted when the motor vehicle is in forward motion.

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

(See West Virginia Code 17C-15-19)

10-420. Multiple-beam road-lighting equipment - requirements generally. Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle or motor-driven cycle shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal

persons and vehicles at a distance of at least three hundred and fifty feet ahead for all conditions of loading.

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

(c) Every new motor vehicle, other than a motorcycle or motor-driven cycle, operated within the limits of the town of Sutton after the date of adoption of this code, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

(See West Virginia Code 17C-15-20)

10-421. Same - Use of; dimming lights upon approaching or overtaking. (a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 10-402 of this article, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in Section 10-420(b) of this article shall be aimed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this article other than the uppermost distribution of light specified in Section 10-420(a) of this article.

(See West Virginia Code 17C-15-21)

10-422. Single-beam road-lighting equipment. Head lamps arranged to provide a single distribution of light shall be

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

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

(b) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

(See West Virginia Code 17C-15-22)

10-423. Lighting equipment on motor-driven cycles. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(a) Every said head lamp or head lamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour.

(b) In the event the motor-driven cycle is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in Section 10-420(a) of this article and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in Section 10-420(b) of this article.

(c) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(See West Virginia Code 17C-15-23)

10-424. Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in Section 10-402 of this article when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in Section 10-420 or Section 10-422 of this article; provided, however, that at no

time shall it be operated at a speed in excess of twenty miles per hour.

(See West Virginia Code 17C-15-24)

10-425. Number of driving lamps required or permitted. (a) At all times specified in Section 10-402 of this article at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with an auxiliary lamp or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway. (See West Virginia Code 17C-15-25)

10-426. Special restrictions on lamps. (a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any road or street of the town with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in Section 10-419 of this article, flashing lights are prohibited on motor vehicles, except on an authorized emergency vehicle, school bus, snow removal equipment, or on any vehicle as a means for indicating right or left turn, or on any vehicle as a means of indicating the same is disabled or otherwise stopped for any emergency.

(d) Notwithstanding any other provisions of this article, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles, except as authorized by Section 10-427 of this article.

(2) Except as authorized by Sections 10-419 and 10-427 of this article, red flashing warning lights are restricted to ambulances, fire-fighting vehicles, school buses, wreckers, and personal car or truck of those volunteer firemen who are authorized by their fire chief to have such lights.

(3) All other emergency vehicles authorized by this chapter and by Section 10-427 of this article shall be restricted to amber or yellow flashing warning lights. It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights. (See West Virginia Code 17C-15-26)

10-427. Lights on snow removal equipment must conform to state code. It shall be unlawful to operate any snow removal equipment on any road, street, or alley of the town unless the lamps thereon comply with the standards and specifications adopted by the West Virginia Department of Highways as authorized in the West Virginia Motor Vehicle Laws. (See West Virginia Code 17C-15-28)

10-428. Selling and using unapproved lamps or equipment; legibility of name, etc., of approved equipment; use of improperly mounted, etc., equipment. (a) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any head lamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the Commissioner of the West Virginia Department of Highways and approved by him. The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor, provided that such equipment complies with the laws relating thereto prior to the enactment hereof.

(b) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section which has been approved by the Commissioner of the West Virginia Department of Highways unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(c) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the Commissioner of the West Virginia Department of Highways.

(See West Virginia Code 17C-15-28)

10-429. Brakes - generally. (a) Brake equipment required:

(1) Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a road, street, or alley of the town shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle and every motor-driven cycle, when operated upon a road, street, or alley of the town, shall be equipped with at least one brake which may be operated by hand or foot.

(3) Every trailer or semitrailer of a gross weight of three thousand pounds or more when operated upon a road, street, or alley of the town shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

(4) Every motor vehicle, trailer, or semitrailer hereinafter sold in this town or operated upon the streets shall be equipped with service brakes upon all wheels, with the following exceptions: (1) that trucks and truck tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, and (2) any motorcycle or motor-driven cycle, and except that any semitrailer of less than one thousand five hundred pounds gross weight need not be equipped with brakes.

(5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking

effort first on the rear-most trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.

(6) Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.

(7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance ability of brakes: Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, if being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

(c) Maintenance of brakes: All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

(See West Virginia Code 17C-15-31)

10-430. Same - Brakes on motor-driven cycles. No person shall operate on any road, street, or alley of the town and motor-driven cycle in the event the Commissioner of the West Virginia Department of Highways has disapproved the brake equipment upon such vehicle or type of vehicle.

(See West Virginia Code 17C-15-32; Section amended 1989)

10-431. Horns and warning devices. (a) Every motor vehicle when operated upon a road, street, or alley of the town shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a roadway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the W.Va. Dept. of Motor Vehicles, but such siren shall not be used except when such vehicle is operated in response to an emergency or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

(See West Virginia Code 17C-15-33)

10-432. Mufflers; prevention of noise, fumes and smoke. (a) Every motor vehicle operated within the corporate limits of the town shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. Such muffler shall be the muffler originally

installed by the manufacturer of the vehicle or, if a replacement, the equivalent thereof. No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on any road, street or alley of the town.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(See West Virginia Code 17C-15-34; Section amended 1989)

10-433. Mirrors. Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(See West Virginia Code 17C-15-35)

10-434. Windshields must be unobstructed and equipped with wipers. (a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(See West Virginia Code 17C-15-36)

10-435. Tire equipment restrictions; rules and regulations as to certain tires. (a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any road, street, or alley of the town any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a road or street shall have on it periphery any block, stud, flange, cleat, or spike, or any other protuberance of any material other than rubber

which projects beyond the tread of the traction surface of the tire, except that (1) it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; (2) it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid, and (3) it shall be permissible to use studded tires during the period from the first day of November each year until the fifteenth day of April of the following year; provided, that in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

(d) No studded tires or chains shall be sold or used within the Town of Sutton which do not meet the specifications established by the rules and regulations which the commissioner of the West Virginia Department of Highways shall promulgate.

(e) The Common council may in its discretion issue special permits authorizing the operation upon the roads of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such moveable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this article.

(See West Virginia Code 17C-15-37; Section amended 1989)

10-436. Safety glass in motor vehicles. (a) No person shall operate any motor vehicle as specified herein, nor shall any motor vehicle as specified herein be registered unless such vehicle is equipped with safety glass of a type approved by the Commissioner of the West Virginia Department of Highways whenever glass is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glass shall apply to all glass used in doors, windows, and windshields in the drivers' compartments of such vehicles.

(b) The term "safety glass" shall mean any product composed of glass, so manufactured, fabricated, or treated as substantially to prevent shattering and flying of the glass when struck or broken, or such other similar product as may be approved by the commissioner.

(See West Virginia Code 17C-15-38)

10-437. Vehicles transporting explosives. Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon any road, street, or alley of the town shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placard on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

(b) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(See West Virginia Code 17C-15-41)

10-438. Television receivers in view of driver prohibited. No motor vehicle shall be operated on any road, street, or alley within the corporate limits of the town when equipped with a television receiver unless such receiver is so placed that the screen or picture tube of such receiver is visible only in the rear seat of such motor vehicle and not in view of the operator of such motor vehicle.

(See West Virginia Code 17C-15-42)

10-439. Vehicles to be equipped with safety belts. No dealer in new or used automobiles shall sell, lease, transfer or trade, at retail, any passenger automobile which is manufactured after January 1, 1965, unless such vehicle is equipped with safety seat belts for the front seat, which seat belts shall meet the standards set and approved by the Society of Automotive Engineers.

(See West Virginia Code 17C-15-43)

10-440. Safety equipment and requirements for motorcyclists and motorcycles. (a) No person shall operate or be a passenger on any motorcycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by a motorcycle operator or motorcycle passenger shall meet the performance specifications established by the United States of America Standards Institute, Specifications for Protective Headgear for Vehicle Users, Standard Z 90.1 - 1966. Helmets worn by motorcycle operators and motorcycle passengers shall be coated with a reflectorized substance, or have attached thereto a reflectorized material, on both sides and the back thereof, with a minimum of ten square inches of coated substance or attached material in each of the three locations.

(b) No person shall operate or be a passenger on any motorcycle unless he is wearing safety, shatter resistant eyeglasses (excluding contact lenses), or eye goggles or face shield that complies with the performance specifications established by the United States of America Standards Institute, Specification for Head, Eye and Respiratory Protection Z 2.1 - 1959. In addition, if any motorcycle be equipped with a windshield or wind screen, the windshield or wind screen shall be constructed of safety, shatter resistant material that complies with the performance specifications established by the United States of America Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard z 26.1 - 1966.

(c) No person shall operate a motorcycle on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the motorcycle. No operator shall carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the motorcycle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the motorcycle. No more than two persons, the motorcycle operator and one passenger, shall ride the same motorcycle at the same time. No person shall ride sidesaddle on a motorcycle seat.

(e) Every motorcycle shall be equipped with a rear view mirror affixed to the motorcycle handlebars and adjusted so that the motorcycle operator shall have a clear view of the road and condition of traffic behind him for a distance of at least two hundred feet.

(See West Virginia Code 17C-15-44)

10-441. Lamps and other equipment on bicycles. (a) Every bicycle when in use at nighttime me shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the W.Va. Dept.

of Motor Vehicles which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(See West Virginia Code 17C-11-7)

10-442. 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, highway, or alley within the corporate limits of the town, 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. Provided further, that if all seat belts required to have been installed in the vehicle at the time of its manufacture are being used by passengers at the time of examination by a law officer, the driver shall not be considered to be in violation of this section.

(See West Virginia Code 17C-15-46; Section added 1989)

ARTICLE FIVE

DRIVING UNDER THE INFLUENCE, RECKLESS DRIVING

10-501. Driving under the influence.

I. (a) Any person who:

(1) Drives a vehicle within the corporate limits of the Town of Sutton while:

(A) He is under the influence of alcohol, or

(B) He is under the influence of any controlled substance, or

(C) He is under the influence of any other drug, or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or

(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more by weight; and

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle within the corporate limits of the Town of Sutton, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(c) Any person who:

(1) Knowingly permits his vehicle to be driven within the corporate limits of the Town of Sutton by any other person who is:

(A) Under the influence of alcohol, or

(B) Under the influence of any controlled substance, or

(C) Under the influence of any other drug, or

(D) Under the combined influence of alcohol and any controlled substance or any other drug, or

(E) Has an alcohol concentration in his blood of ten hundredths of one percent or more by weight; and

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(d) Any person who knowingly permits his vehicle to be driven within the corporate limits of the Town of Sutton by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) A person violating any provision of subsection (a), (b), (c) or (d) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(f) For purposes of subsection (e) of this section relating to second offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), or (d), of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section.

(g) It shall be no defense hereunder that the person charged could legally possess or consume the substance causing the driver's intoxication.

(h) The sentences provided herein upon conviction for a violation of this article are mandatory and shall not be subject to suspension or probation: Provided, that a person convicted and sentenced pursuant to this section may apply to the court for alternative sentencing pursuant to the provisions of West Virginia Code §62-11A-1 et seq.

(See West Virginia Code §17C-5-2; Section Amended 1989)

10-502. Reckless driving. Any person who drives any vehicle upon any street, road, or alley of the town in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so

as to endanger, or be likely to endanger, any person or property, is guilty of reckless driving.

Every person convicted of reckless driving may be punished upon a conviction by jail for a period of not less than five days nor more than thirty days, or by fine of not less than twenty-five dollars nor more than five hundred dollars, or by both such fine and imprisonment.

10-503. Chemical blood testing. (a) Any person who drives a motor vehicle within the corporate limits of the town of Sutton shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a secondary chemical test of either his blood, breath or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions §17C-5-5 of the West Virginia Code whenever a law enforcement officer has reasonable cause to believe a person to have committed an offense prohibited by this section.

(b) The Sutton Police Department hereby designates as its secondary chemical test the intoxilyzer or breathalyzer as may be maintained in the offices of the Braxton County Sheriff's Department at the time of the arrest. Refusal to submit to such test may, in the discretion of the court, be admissible as evidence against the accused.

(c) A person accused under this section may demand a blood or urine test to be performed at his own expense, the results of which shall be admissible evidence against him. (See West Virginia Code §17C-5-4; Section Amended 1989)

10-503-A. Evidence of blood testing results. Upon trial for any offense charged under section 10-501 of these ordinances, the results of a blood alcohol test may be admissible if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following inferences or have the following effect:

(a) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his blood, shall be prima facie evidence that the person was not under the influence of alcohol;

(b) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person's blood shall be relevant evidence, but it is not to be given prima facie effect

in indicating whether the person was under the influence of alcohol;

(c) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

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

(See West Virginia Code §17C-5-8; Section Amended 1989)

ARTICLE SIX

PEDESTRIANS

10-601. Pedestrians subject to traffic regulations.

Pedestrians shall be subject to traffic-control signals at intersections as provided in Section 10-203 of this code, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article. (See West Virginia Code 17C-10-1)

10-602. Pedestrians' right-of-way in crosswalks. (a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(See West Virginia Code 17C-10-2)

10-603. Crossing at other than crosswalks. Every pedestrian crossing a road at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway. (See West Virginia Code 17C-10-3.)

10-604. Drivers to exercise due care. Notwithstanding the foregoing provisions of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(See West Virginia Code 17C-10-4.)

10-605. Pedestrians to use right half of crosswalks.

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

(See West Virginia Code 17C-10-5)

10-606. Pedestrians on roadways; soliciting rides. (a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway, provided that said sidewalk is in adequate and safe condition.

(b) Where sidewalks are not provided any pedestrian walking along and upon the road or street shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in the roadway for the purpose of soliciting a ride from the driver of any vehicle.

(See West Virginia Code 17C-10-6)

10-607. Persons working on streets and highways. The driver of a vehicle shall yield the right of-way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic control device or flagman.

(See West Virginia Code 17C-10-8)

(e) Other public right-of-way means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this State or a local political subdivision thereof and is designed for use and used by vehicular or pedestrian traffic.

(f) Protective bicycle helmet means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell memorial foundations standards for protective headgear or American Society for Testing and Materials (ASTM) for use in bicycling.

(g) Passenger means any person who travels on a bicycle in any manner except as an operator.

(h) Operator means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

1st Read 9/9/10

2nd Read 9/23/10

History. 1996, c76

17C-11A-4 Requirements for helmet use.

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

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

History. 1996, c. 76.

17C-11A-5. Sale of bicycle helmets.

Any helmet sold or offered. for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (f), section three [17C-11A-3] of this article, which shall constitute the manufacturers certification that the helmet conforms to the applicable safety standards.

History. 1996, c. 76.

17C-11A-6. Civil actions.

A violation of section four [17C-11A-4] of this article 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.

History.1996, c. 76.

17C-11A-7. Penalties.

(a) Notwithstanding the provisions of section one [17C-18-1], article eighteen of this chapter, any parent or legal guardian violating any requirement set forth in section four [17C-11A-4] of this article shall be fined ten dollars or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of section one [8-11-1], article eleven. chapter eight of this code, no court costs may be assessed to any person violating the requirements of section four of this article.

(b) In the case of a first violation of section four of this article, the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.

(c) It is an absolute defense to a charge for a violation of this article that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of subsection (c), section one [59-2-1(c)], article two, chapter fifty-nine of this code. Any

person who demonstrates inability to pay shall be referred to the governor's highway safety program for assistance in obtaining the appropriate helmet or helmets.

History.1996, c. 76.

17C-11A-8.Ordinances.

Nothing in this article shall limit the right of any municipality to enact an ordinance on the use of bicycle helmets.

History.1996, c. 76.

17C-11A-9.Bicycle safety program.

(a) Commencing on the first day of July, one thousand nine hundred ninety-six, the Governor's Highway Safety Program shall initiate and conduct an educational and public awareness program designed to encourage people to comply with the requirements of this article.

(b) The Governor's Highway Safety Program shall make application for grants or any other funding to subsidize the costs of purchasing helmets for people who qualify under the provisions of subsection (c), section seven [17C-11A-7] of this article.

History. 1996, c. 76.

ARTICLE SEVEN

OPERATION OF BICYCLES AND PLAY VEHICLES

10-701. Obedience to article; duty of parents and guardians; applicability of article to bicycles. a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any road, street, or alley of the town or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.
(See West Virginia Code 17C-11-1)

10-702. Traffic laws apply to persons riding bicycles. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this article and except as to those revisions of this chapter which by their nature can have no application.
(See West Virginia Code 17C-11-2)

10-703. Riding on bicycle seats; carrying more than one person on bicycle. (a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
(See West Virginia Code 17C-11-3)

10-704. Clinging to vehicles. No person riding upon any bicycle, coaster, skateboard, roller skates, sled, or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.
(See West Virginia Code 17C-11-4)

10-705. Riding on roadways, sidewalks, and bicycle paths. (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising

due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(d) No person riding upon any bicycle, coaster, skate Board, roller skates, sled, or toy vehicle shall ride the same upon any sidewalk subject to maintenance by the town.

(1) In the event any official or officer authorized to enforce these ordinances observes a minor violating the provisions of this section, such officer is hereby authorized to seize and take possession of such bicycle, coaster, skate board, roller skates, sled, or toy vehicle until such time as the parent or guardian of the minor child from whom such item was seized has presented himself or herself to such officer and requests return of the item.

(2) Upon release of such seized item to the parent or guardian, any similar infraction of this article by the same child shall give rise to an evidentiary inference that such parent or guardian has authorized or knowingly permitted such violation by the child, and such shall be considered a violation of section 10-701 above and such parent or guardian shall be subject to prosecution for such violation as if he or she were an aider and abettor of such act.

(See West Virginia Code 17C-11-5; Section amended 1989)

10-706. Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebars.

(See West Virginia Code 17C-11-6)

ARTICLE EIGHT

PENALTIES

10-801. Violations of chapter; penalties for misdemeanor. (a)
It is a misdemeanor for any person to violate any of the provisions of this chapter.

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

ARTICLE NINE

STOPPING, STANDING, AND PARKING; PARKING METERS; PARKING ZONES;
PENALTIES

10-901. General parking regulations violations and penalties.

(a) Except as otherwise provided by council, all vehicles not in motion shall be stopped or parked so that the right-hand wheels of such vehicle shall be parallel to and within fifteen inches of the right-hand curb or roadside.

(b) In those parts of the corporate limits of the town where the boundaries of the parking spaces are designated, whether by lines painted on the street or roadside or by signs erected by the roadside or by meter posts erected by the roadside, the operator of any vehicle shall park said vehicle so that the same shall be entirely within such designated parking space. If any vehicle parked in a parking space is of such size that it cannot be entirely contained within a single parking space, said vehicle shall be parked so that the front end is as close as practicable to the front boundary of the occupied space or spaces, and so that the vehicle occupies the smallest number of parking spaces required by the size of the vehicle. In no case shall more than one vehicle be parked within a single parking space.

(c) Any vehicle parked so as not to be consistent with the provisions of this section shall be in violation of this section, and the operator of said vehicle shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one dollar nor more than fifty dollars.

10-902. Loading zones, violations and penalties. (a) The council has the authority to declare by proper order certain parking spaces as loading zones and to designate the same by means of signs erected by the roadside or markings on the street or curb or both.

(b) A vehicle may be left standing or parked in a loading zone only for such time as the operator of said vehicle is actively engaged in loading or unloading, up to a maximum time period of thirty minutes. Any such vehicle parked in a loading zone for more than thirty minutes without police permission or any vehicle parked in a loading zone while not engaged in loading or unloading shall be in violation of this section and the operator of said vehicle shall be guilty of a misdemeanor

and, upon conviction, shall be fined not less than five dollars nor more than fifty dollars.

10-903. Reserved parking; violations and penalties. (a) The council has the authority to declare by proper order certain parking spaces as reserved parking zones, specifically for the use of certain authorized persons, and to designate the same by means of signs erected by the roadside, or markings on the street or curb, or both.

(b) Any unauthorized vehicle parked in a reserved parking zone shall be in violation of this section, and the operator of said vehicle shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars nor more than fifty dollars.

(c) Any area under the control and jurisdiction of the Town of Sutton which is designated as a parking lot shall be considered a reserved parking zone. Any unauthorized vehicle parked in such a parking area shall be subject to any and all fines and penalties as those prescribed for the violation of this section. Where there are designated time limits for parking in such a parking area, any authorized vehicle which has remained parked in such area for longer than the designated time period shall be considered as parking over time, and shall be subject to the same fines and penalties for over-time parking as specified in Section 10-905(d) of this article. In any case, no vehicle shall be parked in any such area for more than twenty-four hours consecutively.

10-904. No-Parking zones; violations and penalties. (a) No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the follow places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty feet of a crosswalk at an intersection;
- (7) Within thirty feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;
- (8) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite

the ends of a safety zone, unless a different length is indicated by the signs or marking;

(9) Within fifty feet of the nearest rail of a railroad crossing;

(10) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance (when property signposted);

(11) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(12) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(13) Upon any bridge or other elevated structure, upon a highway or within a highway tunnel;

(14) At any place where official signs prohibit stopping;

(15) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if such parking interferes with or causes delay in the carrier's schedule.

(16) At any place on any highway where the safety and convenience of the traveling public is thereby endangered.

(b) The council has the authority to declare by proper order certain other areas as No-Parking zones and to designate the same by means of signs erected by the roadside, or markings on the street or curb by painting the said area or otherwise indicating that parking is not permitted in that area, or both, and no standing, stopping, or parking of a vehicle will be permitted in any area so designated.

(c) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

(d) The operator of any vehicle in violation of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five dollars nor more than fifty dollars.

(See West Virginia Code 17C-13-3)

10-905. Parking meter zones, violations and penalties. (a) The council has the authority to erect and maintain parking meters for the regulation of parking and traffic control in any area where such is not prohibited by the West Virginia Motor Vehicle

Laws, and to designate the parking spaces governed by said parking meters as parking meter zones.

(b) Upon parking in a parking meter zone, the operator of the parked vehicle shall deposit a coin or coins of the United States so as to operate the parking meter mechanism according to the instructions thereon. After the deposit of such coin placing the meter in operation, the parking space may be lawfully occupied by said vehicle during the period of time indicated on the meter for the particular amount deposited. If any vehicle parked in a parking meter zone is of such size that it cannot be entirely contained within a single parking space, the operator of said vehicle shall deposit a coin or coins so as to operate each and every parking meter governing each and every parking space occupied by said vehicle or any portion thereof.

(c) Between the hours of 9:00 a.m. and 6:00 p.m. Mondays through Fridays and between the hours of 9:00 a.m. and 9:00 p.m. on Saturdays, it shall be unlawful for the operator of any vehicle to park said vehicle in a parking meter zone without placing the meter or meters in operation as specified in this section; provided, however, free parking in parking meter zones shall be permitted on Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

(d) If any vehicle shall remain parked in a parking space or spaces for such length of time that the meter or meters shall indicate by a proper signal that the lawful parking period has expired, said vehicle shall be considered as parking over time, and the parking of a vehicle over time shall be a violation of this section. The operator of any vehicle parked in violation of this section shall be guilty of a misdemeanor and shall, upon conviction, be required to pay a fine of not less than fifty cents nor more than fifty dollars.

10-906. Parking tickets and fines. (a) The operator of any vehicle parked in violation of any previous section or sections of this article shall be guilty of a misdemeanor and shall be liable for the fines or penalties stated in the applicable section or sections or as indicated on the parking ticket issued by a duly authorized police officer of this town. Payment of the fine indicated on the parking ticket must be made within ten days of the date shown on the ticket and shall be accepted as an implied plea of "guilty", in which case no further action shall be taken on the part of the town, with the exception of the following: if the original fine stated on the ticket for over-

time parking is not paid within twenty-four hours of the time shown on the ticket, the amount of the fine shall be doubled for each ticket unpaid. There shall be a rebuttable presumption that the owner of any vehicle parked upon the alleys, roads, or streets of the town shall be in control thereof, and any such owner, if he be other than the operator thereof, shall subject to pay the same fine and penalties as is the operator thereof at the time such citation was issued, and such owner shall be held responsible to pay any tickets issued as a result of the operation of such vehicle.

(1) In the event the city attorney or another attorney acting on behalf of the city is called upon by the mayor or council to collect delinquent fines assessed pursuant to either paragraph (a) or (b) of this section, the registered owner of the vehicle ticketed shall hereby be deemed to have consented to a reasonable attorney fee being recovered from him as part of any civil action filed to recover such fines, provided that the delinquent owner has been first given ten days notice in writing prior to the filing of such civil action that an attorney fee will be sought to be recovered from him as a part of such action.

(b) A plea of "not guilty" of said parking violation and a request for a hearing must be entered within ten days of the date shown on the parking ticket in writing by filing a written notification thereof with the municipal judge or mayor at the office of either such official. If no response to the parking ticket, either by payment of fine or entry of a "not guilty" plea, is made within ten days of the date shown on the parking ticket, said operator and the owner of the vehicle, if he or she be other than the operator thereof shall be in violation of this section and shall be guilty of the misdemeanor of failure to acknowledge a parking ticket. Violation of this section may result in the initial fine or fines being increased at the rate of an additional one dollar for each day beyond the initial ten day period that the fine remains unpaid, not to exceed one hundred dollars for each parking ticket, in the discretion of the court.

(See West Virginia Code 17C-13-1)

10-907 Mechanical Seizure. (a) At such time as any motor vehicle has at least two unpaid parking citations issued pursuant to this article which remain unpaid and for which a trial has not been requested as is provided for in this article, the chief of police or any officer or city official observing any subsequent such violation is hereby authorized to

affix to such vehicle a mechanical device, commonly referred to as a "boot", designed to immobilize the vehicle, and such officer is hereby authorized to not remove the said mechanical device until such time as all delinquent and unpaid parking citations have been paid.

(b) Any person other than a law enforcement officer of the town who intentionally removes, steals, or damages an affixed mechanical device such as is described in paragraph (a) hereof shall be guilty of a misdemeanor and be subject to prosecution as is provided for elsewhere within these ordinances.

(c) Neither the town or any law enforcement officer affixing such mechanical device shall be liable for any damages or loss to any person or property resulting from any unauthorized person attempting to remove, steal, or damage any such mechanical device.

(See West Virginia Code 17C-13-1; Section enacted 1989)

CHAPTER ELEVEN

MISCELLANEOUS OFFENSES AND PENALTIES THEREFOR

ARTICLE ONE

OFFENSES AGAINST THE PEACE; PENALTIES

11-101. Assault and battery. No person shall within the corporate limits of the town unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury; or unlawfully and intentionally make physical contact of an insulting or revoking nature with the person of another, or unlawfully and intentionally cause physical harm to another person; or provoke another to commit any act prohibited by this section; or aid and abet or encourage anyone to commit any act prohibited by this section.

(See West Virginia Code 61-2-9(b,c); Section amended 1989)

11-102. Threats of violence or contention. No person within the town shall or threaten to beat, wound, or kill another, or commit violence against his person or property.
West Virginia Code

11-103. Disturbing the peace. No person shall commit or cause, or aid in the commission or causing of, any riot, disorder, tumult, offensive or obstreperous conduct, or any loud or boisterous noise to the disturbance or tending to the disturbance of the peace or just quiet of others, or shall by any means disturb the citizens of the town at any time; and no person shall knowingly permit such conduct, noise, or disturbance upon any premises owned or possessed by him or under his control.

11-104. Rude, indecent, or insulting behavior. No person shall conduct or behave himself in a rude, indecent, or disorderly manner; or abuse or insult any person by words or otherwise; or improperly follow, pursue, lay hands on, or otherwise insult any person; or attempt to do so; in any road, street, alley, or any public place within the town.

11-105. Penalties for Sections 11-101 through 11-104. Any person offending against any provision of the preceding sections of this article shall be guilty of a misdemeanor and, upon

conviction, shall be fined not less than five nor more than one hundred dollars, or may, at the discretion of the court, be imprisoned not to exceed thirty days, or both such fine and imprisonment.

(See West Virginia Code 61-6-13; Section amended 1989)

11-106. Disturbance of school, meeting, or festival; penalties.

It shall be unlawful for any person within the corporate limits of the town to willfully and unlawfully interrupt, molest, or disturb any free school, or other school; a school exhibition; or any literary society or any other society or meeting formed or convened for intellectual, social, or moral improvement or for improvement in music, either vocal or instrumental, or for any moral or social amusement; or any other social activity organized or carried on under or in pursuance of the laws of this state; or any Fourth of July celebration, or any festival; or any society lawfully carried on. Any person offending against any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than ten nor more than fifty dollars and may, at the discretion of the court, be confined in jail not more than thirty days in addition to such fine.

(See West Virginia Code 61-6-14; Section amended 1989)

11-107. Disturbance of religious meeting; penalties. If any person willfully and unlawfully interrupt, molest, or disturb any assembly of people lawfully met for the worship of God or convened for the purpose of any recognized religious function, within the corporate limits of the town, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail not more than thirty days and fined not less than twenty-five nor more than one hundred dollars.

(See West Virginia Code 6-6-13; Section amended 1989)

11-108. Carrying concealed weapons. (a) Definitions: The definitions of the terms "blackjack", "gravity knife", "knife", "switchblade knife", "nunchuka", "metallic" or false knuckles", "pistol", "revolver", ', 'deadly weapon', "concealed" and "firearm", as they are defined by West Virginia Code Chapter 61, Article 7, Section 2 are hereby adopted and incorporated into these Town Ordinances as if they were set out herein in their entirety and the said definitions shall apply wherever any such term is used within the said Town Ordinances unless otherwise provided for therein.

(b) It shall be unlawful for any person, within the corporate limits of the town, without a valid state license or

other lawful authorization established by the provisions of the West Virginia Code, as amended, or the provisions of the Constitution of the United States of America, or the provisions of the Constitution of the State of West Virginia, to carry concealed any firearm, revolver, pistol, gravity knife, knife, switchblade knife, nunchuka, metallic or false knuckles, or any other deadly weapon of like kind or character. Any person convicted of offending against the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed two hundred dollars and may be confined in jail for a period of not more than thirty days, or both so fined and jailed. None of the provisions of this section shall be so construed as to prevent any bonded officer charged with the execution of the laws of the state or of the ordinances of this town from carrying any of said weapons while in the performance of his duties as such officer.
(See West Virginia Code 61-7-3; Section amended 1989)

11-109. Brandishing deadly weapons, penalties. (a) It shall be unlawful for any person armed with a firearm, revolver, pistol, or other deadly weapon, whether licensed to carry the same or not, to carry, brandish, or use such weapon in a way or manner to cause, or threaten, a breach of the peace within the corporate limits of the town. Any person violating this section shall be fined not less than fifty nor more than three hundred dollars, or confined in jail for a period not to exceed thirty days, or both so fined and jailed, in the discretion of the court.

(b) It shall be unlawful for any person armed with a firearm, revolver, pistol, or other deadly weapon within the corporate limits of the town, except for law-enforcement officers in the lawful performance of their duty to brandish, unholster, or hold such deadly weapon in his or her hand in or upon the premises of any business within the town or in or upon the premises of any building within which any of the offices of the town government are maintained.
(See West Virginia Code 61-7-11; Section amended 1989)

11-110. Obstructing an officer, penalties. If any person within the corporate limits of the town by threat, menace, act or otherwise, forcibly or illegally attempt to hinder, resist, oppose, or obstruct any police officer of the town in the lawful execution of his duty or in the lawful execution of any power or authority required of or granted to such officer by law or by any ordinance of this town, or shall so resist the Mayor or the Recorder or any member of the council in exercising powers

conferred by Chapter Two of this code, or shall aid, abet, or assist any other person in so resisting or obstructing any such officer or officers, he shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than five nor more than one hundred dollars and costs of prosecution of every such offense, and may at the discretion of the court be confined in jail not to exceed thirty days in addition to such fine.
(See West Virginia Code 61-5-17; Section amended 1989)

11-111. Removing offender from custody, penalties. If any person shall rescue, or assist, or attempt to rescue, or take from the custody of the chief or any police officer of the town any person charged with or convicted of any offense against any ordinance of said town, or shall rescue or attempt to rescue or assist in the escape of such offender from any guard or person charged with his safe keeping, or aid and abet therein, he shall, upon conviction, be fined not less than five nor more than one hundred dollars and may in addition thereto be confined in jail not to exceed thirty days.

11-112. Interfering with arrest, refusing assistance; penalties. If any person on being requested, directed, or required by the Mayor or other person acting in his stead, or by the chief of police or any police officer, or by the Recorder or any member of the council of said town to arrest or assist in the arrest or conveyance to jail of any person charged with offending against the ordinances of said town or the laws of the State of West Virginia, shall neglect or refuse such assistance, or if any person shall crowd around such officer or policeman when directing or making an arrest or annoy him in such manner as to attract attention or disturb him in the discharge of his duties, such person so offending shall, upon conviction thereof, be fined not to exceed fifty dollars.
(See West Virginia Code 61-5-14; Section amended 1989)

11-113. Bribery for concealment of offense, penalties. If a person, knowing of the commission of an offense punishable under any of the provisions of the ordinances of this town, take any money or reward, or any engagement therefor, upon an agreement, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall be fined not exceeding one hundred fifty dollars, and may, in addition thereto, in the discretion of the court, be jailed for a period not exceeding twenty days, or both so fined and Jailed.

Any police officer of the town convicted under the provisions of this section shall be discharged from the police department.

11-114. Impersonating a government officer or employee, penalties. No person other than an official police officer of the Town of Sutton shall wear the uniform, apparel, or badge, or carry any identification card or other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the town. Furthermore, no person shall deceitfully impersonate or represent that he is any government officer or employee. Any person offending against the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars or confined in jail not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court.

ARTICLE TWO

OFFENSES AGAINST MORALITY AND DECENCY; PENALTIES

11-201. Profanity, penalties. No person shall use any profane, vulgar, or indecent language in or near any public street or other public place or in or around any place of business open to use of the public in general. Any person offending against the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five nor more than fifty dollars.

(See West Virginia Code 61-8-15; Section amended 1989)

11-202. Immoral conduct, penalties. No person shall commit, offer or agree to commit, nor shall any person secure or offer another for the purpose of committing, a lewd or adulterous act or act of prostitution or moral perversion; nor shall any person knowingly transport or direct or offer to transport or direct any person to any place or building for the purpose of committing any lewd act or act of prostitution or moral perversion; nor shall any person knowingly receive, or offer or agree to receive any person into any place or building for the purpose of performing a lewd act or an act of prostitution or moral perversion, or knowingly permit any person to remain in any place or building for any such purpose. Any person offending against the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars or confined in jail not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court.

(See West Virginia Code 61-8-5; Section amended 1989)

11-203. Indecent exposure penalties. It shall be unlawful for any person within the corporate limits of the town to intentionally expose his or her sex organs or anus, or the sex organs or anus of another person, or engage in any overt act of sexual gratification, under circumstances in which the person so acting knows that his or her conduct is likely to cause affront or alarm to another person. Any person offending against the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty-five nor more than one hundred dollars, and may, in the discretion of the court, in addition to such fine be confined in jail not to exceed thirty days.

For the purposes of this section, the term "sex organs"

shall be defined so as to include the male penis, the female vagina, the pubic hair of either sex, and the breasts of a female eleven years of age or older.

(See West Virginia Code 61-8B-10; Section amended 1989)

11-204. Obscene literature, etc.; penalties.

(Section deleted on constitutionality grounds 1989.)

11-205. Public assembly for indecency etc.; penalties.

(deleted on constitutionality grounds 1989.)

11-206. Disorderly house, penalties. It shall be unlawful for any person to keep a disorderly house or house of ill fame for the purpose of prostitution of lewdness or where drunkenness, quarrelling, fighting, or other breaches of the peace are carried on or permitted to the disturbance of others. Any person offending against the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty-five nor more than one hundred dollars and may also, in the discretion of the court, be confined in jail not to exceed thirty days.

11-207. Houses of ill fame and assignation penalties. (a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or renter to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or

transporting is prostitution, lewdness, or assignation, or who shall aid, abet, or participate in the doing of any acts here prohibited, shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than two hundred fifty dollars and may, in the discretion of the Court be imprisonment in jail for a period of up to thirty days.

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by a fine of not less than fifty dollars not more than two hundred fifty dollars, and may be jailed for a period of not less than thirty days, or both so fined and jailed.

(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution, lewdness, or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. The term "tourist camp" shall include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent the same, and of the defendant or defendants, shall be admissible in support of the charge. (See West Virginia Code 61-8-5; Section amended 1989)

11-208. Public fornication; penalties. If any person commit adultery or fornication in any public place he shall be guilty

of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five nor more than fifty dollars.
(See West Virginia Code 61-8-3; Section amended 1989)

ARTICLE THREE

OFFENSES AGAINST PROPERTY; PENALTIES

11-301. Damage to public trees prohibited. It shall be unlawful for any person to willfully cut, mark, injure, disfigure, or destroy any tree growing in the public grounds, streets, alleys or sidewalks of said town, unless so ordered or permission granted by the Mayor, Superintendent of Roads, Streets and Alleys, or the council.
(Section amended 1989)

11-302. Posting bills or damage to trees and utility poles prohibited. It shall be unlawful for any person to injure, deface, or destroy, or post or fasten any bill or advertisement to, any tree, or any post or pole erected for lighting purposes, or any telephone or telegraph pole in said town.

11-303. Damage to street lights prohibited. It shall be unlawful for any person to injure or destroy any gas pipe, gas jet or burner, mantle, globe, or any electric light, or other appliance used for street lighting within the town. It shall also be unlawful for anyone not authorized to do so, to put out any street light.

11-304. Intentional damage or destruction of public or private property prohibited. It shall be unlawful for any person within the corporate limits of the town to intentionally engrave, deface, mutilate, injure, or destroy any property of the town, or any house, fence, railing, or any goods or chattels, the property of any other person or persons.
(See West Virginia Code 61-3-30.)

11-305. Throwing missiles at property prohibited. It shall be unlawful for any person to willfully or maliciously throw stones, bricks, bats, clubs, or other missiles against any building, window, fence, sign transparency, or flag.

11-306. Removal of signs or other property, blocking traffic lanes prohibited. a) It shall be unlawful for any person within the corporate limits of the town to remove, take or carry away any personal property belonging to any other person without the owner's permission, or to remove, take or carry away any property of the town, without the consent of the owner thereof, from any location at which the said property has been lawfully

and intentionally placed, with the intent to interfere with the owner's use thereof.

(b) It shall be unlawful for any person to place any item of personal property onto any sidewalk, street, alley, or public place with the intention of blocking or impeding the use thereof, without the prior approval of the council, mayor, recorder, or chief of police.
(Section amended 1989)

11-307. Damage to Public toilets prohibited. It shall be unlawful for any person to injure, deface, or defile any toilet provided by the town or county or by any individual, firm, or corporation, for the use of the public, by cutting or scratching, or writing or printing on the walls thereof or fixtures therein, or by willfully daubing the same with excrement or filth of any kind, or wetting the same.
(See West Virginia Code 61-3-30)

11-308. Malicious mischief Prohibited. (a) It shall be unlawful and deemed to be malicious mischief for any person within the corporate limits of the town, to ring any door bell, or to rap upon any door or window, with intent to annoy or deceive the occupants of any such house or store.

(b) It shall be unlawful for any person to willfully or wantonly damage, deface, destroy, tamper with, remove, or withhold from its owner or lawful possessor any real or personal property which does not belong to the person so acting.
(Section amended 1989)

11-309. Penalties for Sections 11-301 through 11-308. Any person offending against any provision of the preceding sections of this article shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than ten nor more than one hundred dollars for each such offense.
(Section amended 1989)

11-310. Damaging grave markers or plants Penalties. If any person shall willfully maliciously destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, or other structure placed within any cemetery or graveyard within the town or any part of any fence or enclosure, or shall willfully or maliciously destroy, remove, cut, break, or injure any tree, shrub, or place within the graveyards aforesaid, he shall, upon conviction, be fined not less than five nor more than fifty dollars for each such offense, and may, in the discretion of the

Court be jailed for a period not to exceed thirty days, or both so fined and jailed.

(Section amended 1989)

11-311. Removing or damaging cemetery flowers, penalties. If any person or persons visiting any cemetery or graveyard within the town who not being authorized so to do shall pluck from any bush any rose, flower, or evergreen, so as to mar or destroy its beauty, or take or carry off any artificial flower or any flower nourished and grown within any cemetery or graveyard, he shall, upon conviction, be fined not less than ten nor more than fifty dollars.

11-312. Trespass in structure or conveyance. Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars, and may in addition to such fine, be jailed for a period not to exceed thirty days.

If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be confined in the county jail for a period not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court.

(See West Virginia Code 61-3B-2; Section amended 1989)

11-313. Trespass on property other than structure or conveyance. (a) Any person who knowingly and without being authorized, licensed, or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing, or cultivation, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(b) If the offender defies or refuses to obey an order to leave, personally communicated to him by the owner, tenant, or

agent of such owner or tenant, or if the offender opens any door, fence, or gate, and thereby exposes animals, crops, or other property to waste, destruction, or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for a period not to exceed thirty days, or both such fine and imprisonment, in the discretion of the court.

(c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county jail for a term not to exceed thirty days, or fined not more than one hundred dollars, or both such fine and imprisonment, in the discretion of the court.

(d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, that the provisions of this article shall not apply in a labor dispute.

(See West Virginia Code 61-3B-3; Section amended 1989)

11-314. Defacing private property, penalty. It shall be unlawful for any person without authority from the owner thereof, or from some authorized agent of such owner, to cut down, mutilate, deface, tear down, destroy or injure any fence, tree, shrub, plant building or other structure lawfully upon the land of another in said town. Any person offending against the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars for each offense; and upon failure of said person to correct, remove, or repair such damage within a reasonable time as directed by the court, each period of forty-eight hours thereafter shall constitute a separate violation of this section.

11-315. Larceny. If any person within the corporate limits of the town commit simple larceny of goods or chattels of the value of less than two hundred dollars, such person shall be guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in the jail for a term not to exceed

thirty days, or fined not to exceed five hundred dollars, or both such fine and jail sentence, in the discretion of the Court.

ARTICLE FOUR

OFFENSES AGAINST PUBLIC POLICY AND GOOD ORDER; PENALTIES

11-401. Keeping or exhibiting gaming table, machine, or device; penalty; seizure of table, machine or devices; forfeiture of money used in such gaming. Any person who shall within the corporate limits of the town keep or exhibit a gaming table, commonly called A.B.C. or E.O. table, or faro bank, or keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination, or which has no name, whether the game, table, bank, machine or device be played with cards, dice, or otherwise, or shall be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine, or gaming device of any character, with the intention of encouraging or enticing any other person to gamble with the said item shall be guilty of a misdemeanor and, upon conviction, may be confined in Jail for a period not to exceed thirty days and be such person shall be fined not less than one hundred nor more than one thousand dollars. Any such table, faro bank, machine, or gaming device, and all money staked or exhibited to allure persons to bet at such table, or upon such gaming device, may be seized by order of the municipal judge and the money so seized shall be forfeited to the town and paid into the treasury of the town, and the table, faro bank, machine, or gaming device shall be completely destroyed: Provided, however, that the provisions of this section shall not extend to coin-operated nonpayout machines with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

(See West Virginia Code 61-10-1; Section amended 1989)

11-402. Permitting gaming table or device on premises; penalty. If any person knowingly permit a gaming table, band, or device, such as is mentioned in the preceding section (11-401) to be kept or exhibited on any premises in his occupation, knowing that the same is being kept or exhibited for the purpose of encouraging or enticing gambling in connection therewith, he or she shall be guilty of a misdemeanor and, upon conviction, may be confined in jail not more than thirty days, and shall be fined not less than one hundred dollars nor more than one thousand dollars.

(See West Virginia Code 61-10-2; Section amended 1989)

11-403. Unlawful to act as doorkeeper, guard, or watch for keeper of gaming table or device; penalty. If any person shall act as doorkeeper, guard, or watch, or employ another person to act as such, for the purpose of protecting any person engaged in gambling from detection, arrest, or capture or for the purpose of protecting any such gaming table, bank, or device, or shall resist, or by any means or device, prevent, hinder, or delay the lawful arrest of such gambler, keeper or exhibitor, or the seizure of the table, bank, or device, or money exhibited or staked thereat, or shall unlawfully take the same from the person seizing it, he shall be guilty of a misdemeanor, and, upon conviction, may be confined in Jail not more than thirty days and such person shall be fined not exceeding one thousand dollars.

(See West Virginia Code 61-10-3; Section amended 1989)

11-404. Playing or betting at gaming tables and devices; playing or betting on games at hotels and public places; penalty. If any person bet or play at any such gaming table, bank, or device as it mentioned in the first section of this article (11-401), or if, at any hotel or tavern or other public place or place of public resort, he gamble or bet on the sides of those who play at any game, whether the game be permitted or licensed or not, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five nor more than one hundred dollars.

(See West Virginia Code 61-10-4)

11-405. Betting on games of chance; furnishing money or thing of value therefor; penalty. If any person at any place, public or private, bet or wage money or other thing of value on any game of chance, or shall knowingly furnish any money or other thing of value to any other person to bet or wage on any such game, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than five nor more than three hundred dollars.

(See West Virginia Code 61-10-5.)

11-406. Permitting gaming at hotels; penalty. It shall be unlawful for the keeper, owner, of operator of any licensed hotel, tavern, eating house or restaurant, or billiard or pool room, or bowling alley to bet or gamble, or knowingly permit any persons to bet or gamble, in his place of business, for money or any other thing of value. The violation of any provision of this section shall constitute a misdemeanor and, upon

conviction, the offender shall be fined not less than twenty nor more than one hundred dollars, and in addition, said violation shall be sufficient cause for revoking any license issued by the council to said keeper, owner, or operator.

(See West Virginia Code 61-10-6; Section amended 1989)

11-407. Unlawful to trick, game, swindle, or pickpocket; penalty. If any person shall practice any trick, game, or device with intent to swindle; or pick or attempt to pick, or aid in picking pockets; or carry off from any building, enclosure, or lot within the town, property, without the authority of the owner of such property of his or her agents, he shall, upon conviction, be fined not less than fifty nor more than five hundred dollars and may, at the discretion of the judge, be confined in jail for a period not to exceed thirty days.

11-408. vagrancy; penalty.

(Delete on constitutionality grounds, 1989.)

11-409. Loitering; penalty. (a) Any person, individually or as part of a group of persons, on public property, including streets, sidewalks and curbs, or on private property which is regularly open for business to the public, regardless of whether it is open for business at the time, or on or in a vehicle that is on public property or on private property which is regularly open for business to the public regardless of whether it is open for business at the time, who loiters in a manner which is prohibited by shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed \$25.00; for the second offense, such person shall be fined in an amount not to exceed \$50,00; for the third or any subsequent offense, such person shall be fined in an amount not to exceed \$100.00.

Loitering which is prohibited is defined as conduct (1) which creates a nuisance, disturbance or annoyance to the comfort or safety of any person; or (2) which obstructs the free passage of pedestrians or vehicles; or (3) which causes obstruction or interference with any person or vehicle lawfully in any public place or on any private property which is regularly open for business to the public (regardless of whether it is open for business at the time); or (4) which involves the making of unsolicited remarks or gestures of any offensive, disgusting or insulting nature or which are intended to annoy or disturb any person in whose hearing or sight they are made.

(Amended on Aug 26, 2010)

11-410. Unlawful entry; penalty. It shall be unlawful for any person, without the consent or permission of the owner, proprietor, or lessee, to enter into any hall, building, or enclosed ground in said town in which any show, entertainment, athletic event, picnic, or any exhibition of any kind whatever, is being held, for admission to which a charge is sought by such owner, proprietor, or lessee, without paying the announced or posted admission fee. Any person offending against the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars.

(Section amended 1989)

11-411. Throwing missiles at persons, penalties. If a person throws a ball or snowball or any other missile upon any of the roads, streets or alleys of the town which shall injure, annoy, or endanger any person, whether the throwing be with intent to disturb the peace or not, the person so offending shall be guilty of a misdemeanor and, upon conviction, shall be liable to a fine of not less than one nor more than fifty dollars, and if any damage be occasioned to the personal or real property of any person by such act, the person so acting shall be liable also for the damages occasioned.

(Section amended 1989)

11-412. Discharging firearms within the town, penalties. It shall be unlawful for any person to fire or discharge within the town any cannon, gun, pistol, revolver, or firearm, or any firecracker, Squib, rocket or fireworks, except it be in case of necessity, or in the discharge of some public duty, or at a military parade or funeral, or with the permission of the mayor of the town. Any person offending against the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than five nor more than fifty dollars.

(Section amended 1989)

11-413. Unlawful to smoke in designated "No-smoking" areas, penalties. It shall be unlawful for any person to light, smoke, or possess a lighted cigar, cigarette, pipe, or other such object of substance which may tend to constitute a fire hazard when discarded or which may tend to give off any fumes, smoke, or odor that may be offensive or injurious to the public, in any hallway, stairway, or other area of any public building or other structure which is designated by signs or other markings as a "No-Smoking" area. Any person offending against the provisions

of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed ten dollars for each such offense.

11-414. Curfew for juveniles; penalties. It shall be unlawful for any person under the age of 18 to loaf, loiter, or remain unnecessarily on the streets, sidewalks, or other public thoroughfares of the town after the hour of 10:00 p.m. during the months of June, July, and August, and after the hour of 9:00 p.m. during the remaining months of the year; however, this shall not be construed to prohibit the lawful passage along said public thoroughfares of any such person to or from any school or community function or place of business, or when accompanied by a parent or guardian.

In the event any such person under the age of 18 shall be found by any law-enforcement official to be in violation of this section, such person shall be taken into protective custody until he can be released into the custody of a parent or guardian, which parent or guardian shall be informed of his responsibility for any future violations of this or any other section of this code by his minor child or ward. For a second or further violation of this section, such child or ward shall be taken into said protective custody and, upon conviction, his parent or guardian shall be fined not more than fifty dollars.

Article 14A

Municipal Police Officers and Firemen Procedure for
Investigation

8-14A-1. Definitions

Unless the context clearly indicates otherwise, as used in this article:

(1) "Police officer" or fireman" means any police officer or fireman of a police or fire department employed by the city or municipality but shall not include the highest ranking officer of such police or fire department.

(2) "Under investigation" or under interrogation" means any situation in which any police officer or fireman becomes the focus of inquiry regarding any matter which may result in punitive action.

(3) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(4) "Hearing board" means a board which is authorized by the chief of police or chief of the fire department to hold a hearing on a complaint against a law-enforcement officer or fireman and which consists of three numbers, all to be selected from law enforcement officers or fireman with that agency, or law enforcement officers or firemen of another agency with the approval of the chief of police or chief of the fire department of the other agency and who have had no part in the investigation or interrogation of the law enforcement officer or fireman under investigation. One of the members of the board shall be appointed by the chief of police or chief of the fire department, one shall be appointed by the police officers or firemen of that agency, and these two members of the board shall, by mutual agreement appoint the third member of the board: Provided, that should the first two members of the board fail to agree upon the appointment of the third member of the board with five days they shall submit to the policemen's civil service commission or to the firemen's civil service commission, as may be appropriate or if there be no civil service commission, to the chief judge of the circuit court of the county, a list of four qualified candidates from which list the commission of the chief judge shall appoint the third member of the board. Provided however, that in the event one or more

members of the board cannot be appointed as otherwise provided in this section, then the chief judge shall appoint a sufficient number of citizens of the municipality as may be necessary to constitute the board. At least one member of the hearing board shall be of the same rank as the law enforcement officer or fireman against whom the complaint has been filed.

(5) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence. (1932, 1st Ex. Sess., c.4.)

8-14A-2. Investigation and interrogation of a police officer or fireman.

When any police officer or fireman is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police or fire department, which could lead to punitive action, such interrogation shall be conducted under the following conditions.

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer or fireman is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police or fireman being interrogated at any place other than his residence, such officer or fireman shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer or fireman occurs during his regular duty hours such officer or fireman shall not be released from employment for any work missed due to interrogation.

(2) Any police officer or fireman under investigation shall be informed of the nature of the investigation prior to any interrogation. Such officer shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. No more than THREE interrogators at one time shall question the officer or fireman under investigation.

(3) No police officer or fireman under interrogation shall be subjected to offensive language or threatened with

punitive action. No promise of reward shall be made as an inducement to answering questions.

(4) The complete interrogation of any police officer or fireman shall be recorded, either written, taped or transcribed. Upon request of the law enforcement officer or fireman under investigation or his counsel, and upon advance payment of the reasonable cost thereof a copy of the record shall be made available to him not less than TEN days prior to any hearing.

(5) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any police officer or fireman, then that officer or fireman shall have the right to be represented by counsel who may be present at all times during such interrogation.

Nothing herein shall prohibit the immediate temporary suspension, pending an investigation, from duty of any police officer or fireman who reports for duty under the influence of alcohol or controlled substances which would prevent the officer or fireman from performing his duties as defined in Chapter Sixty-A (60A-1-101 et seq.) of this code, or under the influence of an apparent mental or emotional disorder. (1932, 1st Ex. Sess., c.4.)

8-14A-3. Hearing

(a) If the investigation or interrogation of a police officer or fireman results in the recommendation of some punitive action, then, before taking such action the police or fire department shall give notice to the police officer or fireman that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved and be delivered to the police officer or fireman no later than TEN days prior to the hearing. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) The hearing shall be conducted by the hearing board of the police or fire department except that in the event the recommended punitive action is discharge, suspension or reduction in rank or pay, and such action has been taken the hearing shall be pursuant to the provisions of Article Fourteen, Section Twenty (8-14-20) and Article Fifteen, Section Twenty-Five (8-14-25) of this Chapter, if applicable. Both the police or fire department and the police or fireman shall be given

ample opportunity to present evidence and argument with respect to the issues involved.

(c) With respect to the subject of any investigation or hearing conducted pursuant to this section, the hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts and other documents.

(d) Any decision, order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the police officer or fireman, or to his attorney of record. (1932, 1st Ex. Sess. C.4).

8-14A-4. Right to refuse to disclose personal finances, exceptions.

No police officer or fireman shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the police officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered. (1932, 1st Ex. Sess., c.4)

8-14A-5. Appeal

Any police officer or fireman adversely affected by any decision, order or action taken as a result of a hearing as herein provided shall have the right to appeal the same to the policemen's or fireman's civil service commission, if applicable, in the manner provided for in Section Nineteen (8-14-19), Article Fourteen and Section Twenty-Five (8-15-25), Article Fifteen of this chapter,

