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- Art. 101. Codified Ordinances.
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ARTICLE 101 Codified Ordinances

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| 101.01 | Designation; citation; headings. | 101.06 | Acts by agent or deputy. |
| 101.02 | General definitions. | 101.07 | Conflicting provisions. |
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CROSS REFERENCES

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

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, renumbered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Follansbee, West Virginia, 1987, for which designation "Codified Ordinances" may be substituted. Code, chapter, article and section headings do not constitute any part of the law as contained in the Codified Ordinances.

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

101.02 GENERAL DEFINITIONS.

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

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

101.03 RULES OF CONSTRUCTION.

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

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

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

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

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

101.04 REPEAL OF REPEALING ACT; EFFECT OF REPEAL.

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

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

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

101.05 CONSTRUCTION OF SECTION REFERENCES.

When reference is made to any section or group of sections of the Codified Ordinances, such reference shall extend to and include any amendment of or supplement to the section or group of sections so referred to or any section or sections hereafter enacted in lieu thereof; and unless otherwise provided, whenever a reference to a section or group sections is made in any

amendment or supplement to any section of the Codified Ordinances hereafter enacted, such reference shall be deemed to refer to the section or sections as the same shall then stand or as thereafter amended.

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

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

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

101.06 ACTS BY AGENT OR DEPUTY.

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

101.07 CONFLICTING PROVISIONS.

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

101.08 SEVERABILITY.

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

101.09 USE OF CODIFIED ORDINANCES.

Every Councilmember and officer of the City and every employee designated by the City Manager or Mayor shall receive an up-to-date copy of the Codified Ordinances of the City for use during his term of office or employment. Before leaving office or employment with the City such Councilmember, officer or employee shall return his copy to the City. Failure to do so shall result in a one hundred dollar (\$100.00) charge which shall be deducted from his final paychecks.

101.99 GENERAL PENALTY.

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

ARTICLE 103
Official Standards

103.01 Official City time.
103.02 Grade levels.

103.03 City boundaries.
103.04 Wards.

CROSS REFERENCES

Legal holidays - see W. Va. Code 2-2-1
Daylight savings time - see W. Va. Code 5-1-25
Computation of time - see ADM. 101.03(c)

103.01 OFFICIAL CITY TIME.

Whenever any time or hour of the day is mentioned in the Codified Ordinances or in any ordinance of the City, the time or hour shall mean Eastern Standard Time, or Daylight Saving Time, if then in use, and such Times are hereby adopted as the official standard time of the City.

103.02 GRADE LEVELS.

The datum for the establishment of grades of streets, sidewalks, public places and subdivisions shall be the same so that used by the United States Geological Survey and all ordinances and resolutions establishing grades in the City shall be fixed relative to this datum. (1970 Code Sec. 1-11)

103.03 CITY BOUNDARIES.

The boundaries of the City shall be clearly shown on the official map of the City which is on file in the office of the City Clerk. Immediately after any annexation of territory or other change in the boundaries of the City, the City Manager shall cause an appropriate officer to update such map to reflect such change. (1970 Code Sec. 1-13)

103.04 WARDS.

(a) The City shall be divided into five wards, with one member of the City Council being elected in each ward.

(b) The boundaries of the First, Second, and Third Wards shall remain the same, with one member of City Council being elected from each of such wards, respectively.

(c) The boundaries of the Fourth Ward, which are presently designated as "4A" for the Parkview region of the City and "4B" for the Highland Hills region of the City, shall be realigned as follows:

- (1) The Parkview region of the City, presently known as "4A", shall henceforth be known as the Fourth Ward, with one member of City Council being elected from such ward; and
 - (2) The Highland Hills region of the City, presently known as "4B", shall henceforth be known as the Fifth Ward, with one member of City Council being elected from the ward.
- (Ord. 90/91-12. Passed 6-11-91.)

ARTICLE 105 Public Meetings

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| 105.01 Definitions.
105.02 Regular meetings.
105.03 Special meetings.
105.04 Emergency meetings.
105.05 Open meetings.
105.06 Executive sessions. | 105.07 Exceptions.
105.08 Minutes.
105.09 Monthly meetings.
105.10 Disrupting a meeting.
105.11 Violations.
105.12 Enforcement by injunction. |
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CROSS REFERENCES

Open meetings law - see W. Va. Code Art. 6-9A
 Council meetings - see ADM. 111.01 et seq.

105.01 DEFINITIONS.

- (a) "Decision" means any determination, action, vote, or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at a meeting at which a quorum is present;
- (b) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public;
- (c) "Governing body" means those members of any public body having the authority to make decisions for or recommendations to a public body on policy or administration, the membership of which governing body consists of two or more members;
- (d) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate towards a decision on any matter, but such term does not include:
- (1) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court proceeding;
 - (2) Any on-sight inspection of any project or program.
- (e) "Public body" means any executive, legislative or administrative body or agency of the City, or any Commission, Board, Council, Committee or Sub-Committee, or any other Agency of any of the foregoing, and such term shall not be construed to include the judicial branch of the City of Follansbee;
- (f) "Quorum" means unless otherwise defined by applicable law, a simple majority of the constituent membership of the governing body.
 (Passed 12-10-79)

105.02 REGULAR MEETINGS.

(a) Regular meetings of Council shall be held on the second Monday of each and every month at the Council Chambers of the City Building, at 7:00 p.m.; provided however, that should any day thereby set fall upon a holiday, the regular meeting of Council shall be held on the following Monday, being the third Monday of the month at the same time and place. (Ord. 91/92-5. Passed 5-11-92.)

(b) Regular meetings of Commissions, Boards, Committees, Sub-Committees, and any Agency of the City, may be established by the Agency, and the date and time of the same, upon establishment of the same, shall be published once in a newspaper of general circulation within the City and need not be published again until such time as the date and times of regular meetings are changed. If no regular meeting date and time is established, then notice and service must be given as is required in special meetings of Council. (Passed 12-10-79)

105.03 SPECIAL MEETINGS.

(a) Special meetings of the City Council may be called by the Mayor or by any two Councilpersons, by notice given to all other members of Council, the Mayor, City Clerk and City Attorney, at least forty-eight hours in advance of such meeting.

(b) Special meetings of the Common Council, any Commission, Board, Committee, Sub-Committee or Agency of the City, shall be duly publicized by notification to at least two newspaper of general circulation within the City, by telephone or regular mail, given at least forty-eight hours prior to the time and date of such meeting. Further, the person or persons calling any special meeting of any public body, shall cause to be posted at a door commonly used by the public in the City Building, at least forty-eight hours prior to the date and time of the meeting, stating the date and time of the meeting, and the specific purposes for which the meeting is to be called. Such notice shall specify the time and place of meeting and the purposes for which the meeting is called, and no business shall be transacted at such meeting which is beyond any purpose stated in the call. Any Councilperson may appear at the meeting and waive notice of such meeting, but this fact shall be entered in the journal and notice to such Councilperson shall be deemed to have been waived. (Passed 12-10-79)

105.04 EMERGENCY MEETINGS.

(a) Nothing contained in this article shall be construed to require forty-eight hour public notice of emergency meetings, nor be construed to limit the powers of any governing body or public body, where the meeting is an emergency meeting requiring immediate official action and all Council members, the Mayor, City Clerk and City Attorney have been notified of the purpose of the meeting and the emergency claimed.

(b) Provided however, that where there is any emergency meeting requiring immediate, official action, the minutes of the meeting shall reflect a finding by the body then meeting, that public notice of the meeting was not complied with for the reason that an emergency requiring immediate, official action existed, and further, the basis for the emergency finding. (Passed 12-10-79)

105.05 OPEN MEETINGS.

All meetings of Council, Commissions, Boards, Committees, Sub-Committees, or any Agency of the City, shall be open to the public and shall be held in the Council Chambers at the City Building within the City, except those of the Fire Department, which shall be held at the Fire Department Building. (Passed 12-10-79)

105.06 EXECUTIVE SESSIONS.

An executive session may be held only upon a majority affirmative vote of the members present at such meeting for the following:

- (a) Matters of riot; or
- (b) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal, or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or
- (c) The issuance, denial, suspension or revocation of a license, certificate or registration under the laws of the City, unless the persons seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or
- (d) The physical or mental health of any person, unless such person requests an open meeting; or
- (e) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or
- (f) Any official investigation or matters relating to crime prevention or law enforcement, or civil matters in which the City is directly or indirectly involved; or
- (g) The development of security, personnel or devices; or
- (h) Matters involving or affecting the purchase, sale or lease of property, advanced construction planning, the investment of public funds, or other matters involving competition which, if made public, might adversely affect the financial or other interest of the City.

105.07 EXCEPTIONS.

No provision of this article shall be construed to prevent Council, Commissions, Boards, Committees, Sub-Committees, or any Agency of the City, from holding any executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization hereinafter set forth, under this article for the holding of such executive session and has presented it to the body then meeting, and to the general public, but no decision shall be made in such executive session. (Passed 12-10-79)

105.08 MINUTES.

(a) The Council, Commissions, Boards, Committees, Sub-Committees and any Agency of the City, shall prepare written minutes of all of its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include, at least the following information:

- (1) The date, time and place of the meeting;
- (2) The name of each member of the governing body present and absent;
- (3) All motions, proposals, resolutions, orders, ordinances, findings, and measures proposed, and the name of the person proposing the same and their disposition; and for the results of all votes, and, upon the request of a member, the vote of each member, by name.

(b) Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with other provisions of this article.
(Passed 12-10-79)

105.09 MONTHLY MEETINGS.

Council, Commissions, Boards, Committees, Sub-Committees and any Agency of the City shall be required to meet at least once per month, and act upon the business before it, if any. Each committee of Council shall file a written report with Council at the next regular meeting of Council following the date of the Committee meeting. (Passed 12-10-79)

105.10 DISRUPTING A MEETING.

Nothing herein contained shall be construed to limit and prohibit the removal from meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised. In addition to other penalties provided by law for disrupting a public meeting, the chairman of the meeting then being held may order removal of any person disrupting such meeting, or, the public body then meeting, may be a majority vote, order the removal of any person disrupting the meeting, by ordering a policeman, or any person designated by it to execute such order.
(Passed 12-10-79)

105.11 VIOLATIONS.

Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article, and who willfully and knowingly violate the provisions of this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars (\$500.00) or imprisoned in jail for not more than ten days, or both. (Passed 12-10-79)

105.12 ENFORCEMENT BY INJUNCTIONS.

(a) The County Circuit Court shall have jurisdiction to enforce this article upon petition by any citizen of this State who can show good faith and a valid reason for making the application. No bond shall be required unless the petition appears to be without merit or made with the sole intent of harrassing or delaying or avoiding return by the governing body.

(b) Any injunction granted pursuant to the provisions of this section, may order that actions taken or decisions made in violation of this article, may be enjoined or annulled if the petition therefore was filed within thirty days after the actions were taken or decisions made and may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article; provided, that no bond issue that has been passed

or approved by the governing body may be held void under this section of notice of the meeting at which such bond issue was finally considered was given at least ten days prior to such meeting by Class 1 legal advertisement, published in accordance with the West Virginia Code in a qualified newspaper having a general circulation in the geographic area represented by that governing body. (Passed 12-10-79)



ARTICLE 107 Elections

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| 107.01 Chief Elections Officer.
107.02 City wards.
107.03 Applicability of State law;
exceptions.
107.04 Council to provide specifically
for each City election; notice. | 107.05 Permanent registration system
adopted.
107.06 Filing fees for candidates.
107.07 Campaign posters.
107.08 Election procedures. |
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CROSS REFERENCES

Election precincts - see CHTR. Sec. 7
 Primary elections - see CHTR. Sec. 10
 Election procedures - see CHTR. Sec. 13
 Municipal elections - see W. Va. Code 3-1-2a et seq.
 Special elections - see W. Va. Code 8-5-15(a)

107.01 CHIEF ELECTIONS OFFICER.

The City Clerk shall be the Chief Election Officer for the City. Council may appoint such deputy election officers and may grant said deputy election officers such power and authority as Council deems appropriate from time to time either by resolution of Council or by ordinance. (Ord. 92/93-7. Passed 2-8-93.)

107.02 CITY WARDS.

The City shall be divided into five wards, the boundaries of which shall be as shown on the official map of the City which is on file in the office of the City Clerk. Whenever a change is made in a ward boundary, the City Manager shall cause an appropriate person to revise such map so as to show accurately the ward boundaries as they exist following such change.

107.03 APPLICABILITY OF STATE LAW; EXCEPTIONS.

(a) Except as may be provided otherwise by the City Charter, the Codified Ordinances or other ordinances or resolution of Council, the applicable provisions of West Virginia Code Chapter 3 shall govern of holding of primary, general and special elections. (1970 Code Sec. 8-2)

(b) The following provisions are exceptions to State law. Such provisions shall modify the applicability of State law only to the extent stated below:

- (1) Where the word "county" is used, the word "City" is substituted in lieu thereof.
- (2) Where the word "precinct" is used, the word "ward" is substituted in lieu thereof.

- (3) West Virginia Code 3-3-3 entitled "Voting Absent Voter's Ballot by Personal Appearance" shall be applicable in its entirety with the exception that a person desiring to vote an absent voter's ballot by personal appearance may appear during the regular business hours at the office of the City Clerk to vote not more than fifteen days before the election and on any day thereafter up to and including 5:00 p.m. on the Friday next preceding the date of the election.
- (4) West Virginia Code 3-3-5 entitled "Voting an Absent Voter's Ballot by Mail" shall apply in its entirety with the exception that a person desiring to vote an absent voter's ballot by mail, may, not more than thirty days prior to the election make application by mail to the City Clerk for an official absent voter's ballot or ballots to be voted at such election, except that the Clerk shall not honor any such application for an absent voter's ballot received by him after the Friday at 5:00 p.m. next preceding the date of the election.
- (5) West Virginia Code 3-5-17 entitled "Canvassing and Certifying Returns, Recount Procedure (Primary Elections Nominating Procedures)" shall be applicable in its entirety with the exception that Council, sitting as a Board of Canvassers, shall meet at Council Chambers on the Wednesday next following the date of the primary at 7:00 p.m. and shall proceed to canvass the returns of such election.
- (6) West Virginia Code 3-6-9 entitled "Canvass of Returns; Publication Declaration of Results; Recount; Notice of Recount; Preservation and Subsequent Destruction of Ballots, Records, Etc." shall be applicable in its entirety with the exception that Council shall convene as a canvassing board at the Council Chambers on the Wednesday next succeeding the date of election at 7:00 p.m. for the purposes of canvassing returns.
- (7) Any candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the cost and expenses of such recount in the event the result of the election is not changed by such recount. The amount of such bond shall in no case exceed three hundred dollars (\$300.00). Council shall assess all costs and expenses of such recount against the candidate who demanded such recount without a change in ultimate result of the election which costs and expenses shall include and are not limited to all stenographic fees, all additional Clerk's costs and any other costs arising out of such demand for recount. No stenographer shall be required unless demanded by the person demanding a recount, except that notes shall be taken by the Clerk as required by law.
- (8) Any recount so demanded shall be heard on the second Wednesday next following the date of election at 7:00 p.m.
- (9) West Virginia Code 3-7-6 entitled "Contest; Notices; Time" is applicable in its entirety with the exception that the person contesting the election of another shall within two days after

the result of the election is declared give the contestee notice in writing of such intention, and the person whose election is so contested shall within two days after receiving such notice deliver to the contestant a like list.

- (10) West Virginia Code Article 3-7 shall be applicable in its entirety except that Council shall hear and decide election contests within three days after the time allowed by law for the contestee to deliver to the contestant his notice of contest, or within three days after the contestee delivers to the contestant his notice of contest, whichever comes first.
(Passed 3-8-82)

107.04 COUNCIL TO PROVIDE SPECIFICALLY FOR EACH CITY ELECTION; NOTICE.

(a) In sufficient time before each primary, general or special City election, Council shall, by resolution or ordinance; provide for the selection of polling places and publish notice thereof; appoint one or more ballot commissioners and provide for the preparation of official ballots and for the preparation and publication of sample ballots; appoint such number of commissioners of election or poll clerks, or both, as may be considered necessary of each voting precinct, and if no poll clerks are appointed the commissioners of election shall perform the duties of poll clerks; and provide for all other matters required for the holding of such election in such manner as to conform to the requirements of the City Charter, this article and other City ordinances, without regard to any nonmandatory provision of West Virginia Code Chapter 3.

(b) The City Clerk shall give notice to the public of each City election at least fifteen days prior thereto by publication in a newspaper of general circulation within the City and by posting on the City Hall bulletin board. Each such notice shall state the purpose and date of the election; candidates and questions to be voted upon; the location of polling places and the hours for the opening and closing of the polls; and any other information considered by the City Clerk or Council as desirable to be included in such notice. (1970 Code Sec. 8-3)

107.05 PERMANENT REGISTRATION SYSTEM ADOPTED.

For the conduct of all City elections, the system of "Permanent Registration of Voters" prescribed by West Virginia Code Article 3-2 is hereby adopted, and the use of the registration records established in such system is hereby authorized for all City elections.
(1970 Code Sec. 8-4)

107.06 FILING FEES FOR CANDIDATES.

(a) Filing fees shall be paid to the City Clerk, to be credited to the General Fund, at the time of filing of certificates of candidacy. The filing fee shall be twenty dollars (\$20.00) for each elective office.

(b) No candidate for any of the above specified offices shall have his name printed on the official ballots unless he has paid the filing fee as provided by this section.

107.07 CAMPAIGN POSTERS.

(a) For the purposes of this section the following words and terms shall have the meanings respectively ascribed to them.

- (1) "Campaign posters" includes handbills, placards, posters, photographs, illustrations, slogans, words and figures, and other material which is by any means affixed to structures or other supports, to be viewed by the public and which are intended to influence voters at any primary, special or general election at which any candidate for any public office or any question is to be voted on.
- (2) "Candidate" means any person offering himself to be voted upon for nomination or election to any public office or to any political party committee or to be a delegate to any political party convention; provided, that the word "candidate" as applied to persons seeking the office of President or Vice President of the United States or presidential elector means the Brooke County Committee of the political party to which any such person belongs; and provided further, that as to any campaign poster which supports two or more candidates, a ticket of candidates or the principles or slogans of a political party in support of its candidates generally, the Brooke County committee of the political party intended to benefit by such campaign poster shall be deemed to be the "candidate".
- (3) "Election" includes any election at which one or more candidates are to be voted upon for election to any public office or at which any question is to be voted upon, whether such election be held pursuant to local, State or Federal law.
- (4) "Organization" means any two or more persons organized to support a common position with respect to any question to be submitted at a referendum election, whether or not such persons constitute a corporation, but exclusive of any legally constituted political party committee.
- (5) "Post" means to affix, by any means, a campaign poster to any object having a fixed location.

(b) No person, organization, corporation, or committee shall paint, mark, post, tack, nail or otherwise affix any sign, advertisement, notice, picture, drawing, emblem, poster, printing, writing, or campaign posters on or to any stone, rock, tree, fence, stump, post, pole building, or other structure, which is in, over or upon the right of way of any public road or highway, street, alley or building, or public park or any other municipally owned property, which are intended to invite or draw attention of the public to the candidacy of any person for any public office; and any such device which exists in violation of the provisions of this section shall constitute prima facie evidence that the person whose candidacy appears thereon violated this section.

(c) Any person violating this section, whether as principal agent, or employee, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars (\$100.00); and such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of this section is committed or continued. Every such prohibited sign or other marking is hereby found and declared to be a public nuisance. Upon receiving notice of any violation of this section, the City shall cause the prohibited sign or other marking to be removed within ten days and shall cause the appearance of the property upon which it was affixed to be restored, as near as may be practical, to its condition immediately before such violation occurred. The City shall recover from the persons who hereafter violate this section the amounts expended by the City in labor and/or materials and equipment in removing the sign or other marking and in restoring the appearance of the property on which it was affixed.

(d) The City is empowered to remove any such prohibited sign or other marking in place, upon or over any road taken over by the City for construction or maintenance.
(Passed 3-25-85)

107.08 ELECTION PROCEDURES.

(a) Subject to the exceptions set forth herein-below, the election procedures in regard to all City elections in the City of Follansbee shall henceforth follow State law and procedure and, in particular, the Municipal Election Procedures Guide issued periodically by the West Virginia Secretary of State's Office, and/or any supplement and/or any similar publication pertaining thereto. This provision shall include, but not be limited to, the establishment of the candidate filing period for all municipal elections. Provided, however, that, regardless of the respective dates established by the aforesaid Municipal Election Procedures Guide, the date for drawing for ballot positions for any given election, as well as the date by which a candidate must file a written statement of withdrawal to be removed from a ballot, shall be the first Tuesday immediately following the last day of the candidate filing period.

(b) The election procedures in the City of Follansbee may be further amended from time to time by ordinance as the City Council deems appropriate.
(Ord. 1998-11. Passed 12-14-98.)

ARTICLE 109
Purchases and Contracts

- | | | | |
|--------|---|--------|---|
| 109.01 | Contracts and purchases generally. | 109.03 | Receipt and disbursement of City funds. |
| 109.02 | Standard of conduct of City officers, employees and agents. | 109.04 | Liability of City officers and employees. |

CROSS REFERENCES

Purchasing; competitive bidding - see W. Va. Code 8-12-10
Conflict of interest - see ADM. 111.09
City Manager's power to contract bids - see ADM. 123.04

109.01 CONTRACTS AND PURCHASES GENERALLY.

No member of Council or officer or employee of the City shall contract any debt, either for labor, services or materials, in the name of the City and chargeable to the City, unless authorized to do so by the Codified Ordinances, by ordinance or by a proper order or resolution of Council, which shall distinctly state the person authorized to contract such debt and authorize the expenditure of a maximum amount therefor. In no case shall such expenditure exceed such maximum amount, and in any case where such member of Council, officer or employee shall contract a debt, unless authorized to do so as aforesaid, the City shall disclaim any liability therefor and refuse payment thereof; provided, that the provisions of this section shall not interfere with the general powers and duties of the City Manager as set forth in the Charter, the Codified Ordinances and other ordinances of the City.
(1970 Code Sec. 2-2)

109.02 STANDARD OF CONDUCT OF CITY OFFICERS, EMPLOYEES AND AGENTS.

(a) In compliance with Section 570.507 of the Federal Regulations for Community Development Block Grant Funds, a Code and standard of conduct, is hereby established and shall govern the performance of all officers, employees and agents of the City contracting with an expending Federal grant funds. Such officers, employees and agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors of the City, or any person, firm or corporation urging support of any ordinance, motion or resolution.

(b) Any officer, employees or agents of the City who violates this standard shall be subject to removal from office if he is an officer of the City, as defined by the laws of the State, the Charter and the Codified Ordinances, and if he is an employee or other agent, he shall be subject to dismissal from his position with the City. Further, any officer, employee or agent who violates the standard set forth herein shall further be subject to a fine of up to five hundred dollars (\$500.00) and confined to jail for a period not to exceed thirty days. (Passed 4-10-78)

109.03 RECEIPT AND DISBURSEMENT OF CITY FUNDS.

All moneys, securities, notes and similar instruments belonging to the City which shall come into the possession or custody of city officers and employees shall be paid over without delay to the City Manager and no money shall be paid out by the City Manager except on order over the signatures of any two of the following City officials: The Mayor, City Clerk and the City Manager. (Passed 6-11-84)

109.04 LIABILITY OF CITY OFFICERS AND EMPLOYEES.

City officers and employees charged with the enforcement of the Codified Ordinances acting in good faith and without malice for the City in the discharge of their official duties, shall not thereby render themselves liable personally and they are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of their duties. Any suit brought against a City officer or employee, because of such act or omission performed by him in the enforcement of any provision of the Codified Ordinances shall be defended by the City Attorney until final termination of the proceedings. (1970 Code Sec. 2-4)

CHAPTER THREE - Legislative
 Art. 111. Council.
 Art. 113. Ordinances and Resolutions.

ARTICLE 111
 Council

- | | | | |
|--------|--|--------|--|
| 111.01 | Presiding officer. | 111.07 | Sergeant at Arms. |
| 111.02 | Organization meeting. | 111.08 | Quorum. |
| 111.03 | Rules generally. | 111.09 | Conflicts of interest. |
| 111.04 | Committees of Council. | 111.10 | Journal and ordinance books. |
| 111.05 | Preparation of agenda. | 111.11 | Annual publication of financial statement. |
| 111.06 | Attendance of City officers Council-persons. | 111.12 | Legislative procedure. |

CROSS REFERENCES

Exercise of corporate powers - see CHTR. Sec. 5
 Election; term - see CHTR. Sec. 7
 Removal from office - see CHTR. Sec. 11
 Vacancies - see CHTR. Sec. 14
 Bond; oath - see CHTR. Sec. 16
 Records - see CHTR. Sec. 24
 Vote of Mayor - see CHTR. Sec. 25
 Meetings; quorum - see CHTR. Sec. 26
 Powers and duties - see CHTR. Sec. 27

111.01 PRESIDING OFFICER.

At all sessions of Council the Mayor shall preside, and in his absence the City Clerk shall preside, and in the absence of both the Mayor and the City Clerk the senior councilmember then in attendance, according to tenure and age, shall preside.
 (1970 Code Sec. 2-5)

111.02 ORGANIZATION MEETING.

On the Second Monday in July of each odd-numbered year Council shall meet and proceed to have the oath of office administered to the newly elected City officers, adopt rules for the government of Council, provide for committees of Council, determine the amounts and conditions of official bonds for which no such provisions have been made, if any, and take such other action within the competence of Council as may be necessary or appropriate for the proper organization of the City government under the provisions of State law, the Charter and the Codified Ordinances. (1970 Code Sec. 2-7)

111.03 RULES GENERALLY.

(a) Council shall by ordinance or resolution adopt, and may from time to time amend, rules for its government and for the order of procedure at meetings. Such rules may include, but are not limited to, attendance and deportment of members at Council meetings; penalizing and expelling councilpersons; order of business and rules for procedure at meetings; referral to committees of subjects before the Council; the conduct of hearings; and the attendance of witnesses and the production of books and papers at hearings; and such other matters as may be appropriate for inclusion therein and not inconsistent with State law, the City Charter or the Codified Ordinances.

(b) In situations not otherwise provided for, the ordinary rules of parliamentary practice shall govern Council in all cases to which they are applicable, when not inconsistent with the City Charter, these rules or any ordinance or order of Council. (1970 Code Sec. 2-8)

111.04 COMMITTEES OF COUNCIL.

(a) Standing Committees. The following committees shall be standing committees:

- (1) Finance Committee: This committee shall relate to the regulation of taxation, budget, purchases, revenues, expenditures, appropriations, and all matters of finance.
- (2) General Committee: This committee shall have general jurisdiction over the regulation of all matters except finance. The Mayor, or any chairman so appointed or designated by the Mayor, shall preside over this committee.
- (3) Committee of the Whole: When Council decides to go into a Committee of the Whole, the Mayor shall preside. The rules of Council, insofar as practicable, shall be observed in the Committee of the Whole, except that no limit shall be placed on the frequency of speaking, that the yeas and nays shall not be taken, and that a motion to rise and report progress shall always be in order and shall be decided without debate. The Clerk of Council shall be required to attend all Council meetings of the Committee of the Whole.

(Ord. 95-19. Passed 12-11-95.)

(b) Meetings. Each committee shall meet regularly to consider matters within its jurisdiction either referred to the committee or initiated by the committee itself. A committee meeting may be called by its chairman, any two of its members or the Mayor.

(c) Reports.

- (1) A committee shall report in writing to Council at the regular meetings of Council the following:
 - A. The matter referred to the committee;
 - B. The findings of the committee; and
 - C. The recommendations of the committee.
- (2) The committee shall keep a record of all its proceedings and shall file one copy with the City Clerk who shall keep the same in a bound volume, and one copy each with the department involved, the City Manager, the Mayor, the City Attorney and each councilperson.
- (3) All reports shall be signed by all members of the committee. If a committee member dissents from the majority report, such member may file a dissenting report or may note on the report submitted by the majority the matter to which he dissents and the reasons therefor. The form of the report shall be substantially as follows:

COMMON COUNCIL OF THE
CITY OF FOLLANSBEE, WEST VIRGINIA

COMMITTEE:

MATTER REFERRED TO COMMITTEE:

BY WHOM REFERRED:

DATE REFERRED:

FINDINGS OF COMMITTEE:

RECOMMENDATIONS OF COMMITTEE:

Dated: _____

COMMITTEE

BY: _____
ITS CHAIR PERSON

MEMBER

MEMBER

(d) Special Committees. Council may, by ordinance or resolution from time to time, create one or more special or ad hoc committees when, in the judgment of Council, there is a subject before Council which should be referred to a committee other than to one of the standing committees. The provisions of subsection (a) hereof, shall be applicable to special committees, except that special committees may be discharged when they have served their purposes and prior to the next ensuing biennial organization meeting of Council.
(1970 Code Sec. 2-9)

(e) All Committees. The members of standing and special committees shall be appointed, and committee chairmen shall be designated, by the presiding officer of Council at the time any such appointment or designation is to be made; provided, that if two councilpersons object, then such appointment or designation shall require confirmation by a majority of the councilpersons present, and the vote of each councilperson shall be entered in the journal. (Passed 1-11-78)

111.05 PREPARATION OF AGENDA.

(a) Every ordinance, resolution and document to come before Council for consideration, except as hereinafter provided, must be filed with the City Manager before noon on the Tuesday before the day on which Council meets.

(b) The City Manager shall have ready for delivery at 4:30 p.m., on the Friday prior to the day of Council meeting an agenda which follows the pattern of the order of business which lists all reports, communications, orders, ordinances, resolutions contract-documents or matters to come before Council.

(c) No matters shall be considered by Council which have not been properly placed upon the agenda; provided, that Council may amend the agenda and place new matters thereon by a majority vote of Council at the commencement of the meeting at which such matter is to be considered; provided further, that nothing herein shall operate to prohibit the free discussion of any matter by Council, nor simple orders directing preliminary work.

111.06 ATTENDANCE OF CITY OFFICERS COUNCILPERSONS.

(a) The following officers shall attend all regular meetings of Council: The Mayor, City Manager, City Clerk, City Attorney, all members of Council and any other officer requested by Council to be present.

(b) All officers who miss more than three regular meetings shall not be paid for any missed meeting thereafter within that fiscal year.

111.07 SERGEANT AT ARMS.

The Chief of Police shall designate a police officer to attend each regular meeting of Council to serve as Sergeant at Arms. The Sergeant at Arms shall execute orders directed to him by Council or its presiding officer and preserve order at meetings.

111.08 QUORUM.

A majority of the members elected to Council shall constitute a quorum to do business, but a smaller number may adjourn from time to time. (1970 Code Sec. 2-12)

111.09 CONFLICTS OF INTEREST.

(a) No member of Council shall vote upon any order, measure, resolution, ordinance or proposition in which such member may be interested other than as a resident of the City. (1970 Code Sec. 2-14)

(b) In addition to any legal penalties provided for a violation of subsection (a) hereof, any vote cast by a Council member who has a conflict of interest shall be of no force and effect.

(c) Any Council member introducing any legislation shall reveal the nature of any private contact if any, which led to the introduction of such legislation.

(d) Whether or not there is a conflict of interest, where not set forth in law, shall be determined by a two-thirds vote of Council.

111.10 JOURNAL AND ORDINANCE BOOKS.

The City Clerk shall keep the journal of Council and shall enter therein an accurate record of all the proceedings, ordinances, resolutions, orders and other actions taken by Council; and this journal shall be maintained in his office in a well-bound book or books. The City Clerk shall also maintain in his office a book to be known as the book of ordinances, in which he shall enter a copy of each ordinance adopted by Council. The books required by this section shall be completely indexed, and shall be open to the inspection of any citizen of the City.

111.11 ANNUAL PUBLICATION OF FINANCIAL STATEMENT.

Within ninety days after the beginning of each fiscal year, Council shall cause to be prepared, verified and published a financial statement as required by West Virginia law. (1970 Code Sec. 2-17)

111.12 LEGISLATIVE PROCEDURE.

(a) Motions in Writing. When required by any member, every motion or proposition shall be reduced to writing before action is taken thereon.

(b) Reference to Standing Committee. When a motion is made for reference of any subject to a standing committee, and it is moved to substitute a select committee instead, the question of reference to a standing committee shall be put first.

(c) Motions to Adjourn. A motion to adjourn shall always be in order, unless Council is engaged in voting, but being decided in the negative, it shall not again be entertained until some action, call or order takes place.

(d) Order of Motions When Question Before Council. When a question or proposition is before Council or under debate, no motion shall be in order except the following; the motions shall have precedence in the order named:

- (1) To adjourn.
- (2) To take a recess.
- (3) To proceed to the orders of the day.
- (4) To lay on the table.
- (5) For the previous question.
- (6) To postpone to a day certain.
- (7) To commit.
- (8) To amend.
- (9) To postpone indefinitely.

(e) Motion to Take From The Table. A motion to take from the table shall be in order when that order of business is being transacted in which such matter to be taken up was decided without debate, provided that the mover may be permitted to state briefly his reasons for motion.

(f) Reconsideration. A motion to reconsider a vote must be made by a member voting with the prevailing side; such motion, to be in order, must be made not later than the next regular meeting after such vote was taken, and the same shall take precedence of all other questions, except a motion to adjourn. No

motion to reconsider shall be made more than once on any matter or subject, and the same number of votes shall be required to reconsider any vote of Council as is required to pass or adopt the matter voted upon.

(g) Previous Question. When the previous question is moved and seconded by two members, it shall be put in these words: "Shall the main question now be put?" It must be sustained by a majority vote and until decided shall preclude further debate, and all amendments and motions, except one motion to adjourn and one motion to lay on the table, but it shall not preclude pending amendments from being put in their order before the main question. If a motion for the previous question is not sustained, the subject under consideration shall be proceeded with the same as if the motion had not been made.

(h) Yeas and Nays. When demanded by two members of Council, the yeas and nays shall be taken on the adoption of any resolution or any question or proposition submitted to Council. In taking the yeas and nays, the Clerk shall call the names of the members in alphabetical order and the President shall announce the result of such vote. The Clerk may be required to read the vote taken upon the demand of any member.

ARTICLE 113
Ordinances and Resolutions

- | | |
|-----------------------------------|---|
| 113.01 Introduction. | 113.06 Procedure for enacting ordinances. |
| 113.02 Approval by City Attorney. | 113.07 Action of Council by ordinance. |
| 113.03 Distribution of copies. | 113.08 Enacting emergency ordinance. |
| 113.04 Form. | |
| 113.05 Forms of pronouncements. | |

CROSS REFERENCES

- Appropriation of City funds - see CHTR. Sec. 27
 Franchises - see CHTR. Sec. 30
 Annexation - see CHTR. Sec. 31
 Proposed ordinances to be filed with the City Manager - see ADM.
 111.05(a)
 City Clerk to be custodian of all records - see ADM. 127.01
-

113.01 INTRODUCTION.

All ordinances and resolutions shall be introduced in Council in printed, typed or written form, with the name of the Council member, City Manager or City Attorney endorsed thereon. Any member of Council may instruct the City Clerk to endorse the designation "By Request" on any ordinance or resolution which is being introduced to Council in his name.

113.02 APPROVAL BY CITY ATTORNEY.

All proposed ordinances shall be approved by the City Attorney and bear his notation that they are correct in form. The City Clerk shall attach to each proposed ordinance a brief digest of the provisions thereof, and where it is proposed to amend an existing ordinance, such digest shall indicate the change sought to be made.

113.03 DISTRIBUTION OF COPIES.

The City Manager shall prepare copies of all proposed ordinances and resolutions, together with copies of the statement of the City Manager in the form provided in Section 113.02, for distribution to all members of Council, together with the agenda for the meeting at which it is to be introduced, not later than 4:30 p.m. on the Friday prior to the Council meetings.

113.04 FORM.

Each proposed ordinance or resolution shall contain not more than one subject which shall be clearly stated in the title; provided that the general appropriations ordinance and budget ordinance may contain the various subjects

and accounts for which money is appropriated, and a recodification ordinance need not be subject to the above requirement. Each proposed ordinance or resolution shall be appropriately numbered, indexed and filed in the Office of the City Clerk. The enacting clause of all ordinances passed by Council shall be: "Be it enacted by the City of Follansbee."

113.05 FORMS OF PRONOUNCEMENTS.

(a) Pronouncements of Council may be made in the following forms:

- (1) Ordinances.
- (2) Emergency ordinance.
- (3) Resolution.
- (4) Orders and motions.

(b) An ordinance cannot be passed on the day on which it was introduced. An emergency ordinance, resolution, order or motion may be passed on the day which it was introduced.

113.06 PROCEDURE FOR ENACTING ORDINANCES.

(a) An ordinance shall be read by title at not less than two meetings with at least one week intervening between each meeting, unless a member 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.

(b) An ordinance shall not be finally passed until after such publication by title and persons interested have been given an opportunity to attend a meeting of Council and be heard with respect to the ordinance.

(c) If any additional requirements are specified in other provisions of the West Virginia law for the passage of ordinances, then such other different or additional requirements shall be applicable.

113.07 ACTION OF COUNCIL BY ORDINANCE.

In the following enumerated cases, the action of Council shall be by ordinance:

- (a) Levying taxes or providing for the collection of fees of any kind.
- (b) Requiring a license to do business.
- (c) Relating to offenses and penalties.
- (d) Authorizing the issuance of bonds or other forms of indebtedness.
- (e) Providing for a public improvement.
- (f) Providing for the purchase of private property by the City or for the sale of property belonging to the City.
- (g) Laying out or vacating a public street, alley or way.
- (h) Relating to zoning.

- (i) Granting franchises to public utilities.
- (j) Providing for contractual or other agreement with another jurisdiction.
- (k) When otherwise required by law.

113.08 ENACTING EMERGENCY ORDINANCES.

Council may enact an ordinance at the same meeting at which it is introduced in the case of pressing public emergency which would make procedure under Section 113.06 dangerous to the public safety or morals; such action may be taken only after a suspension of the rules of procedure and then upon the affirmative vote of two-thirds of the members of Council. The nature of the emergency shall be set out in full in the ordinance.

CHAPTER FIVE - Administrative

- Art. 121. Mayor.
- Art. 123. City Manager.
- Art. 125. City Attorney.
- Art. 127. City Clerk.
- Art. 129. Police Department.
- Art. 131. Fire Department.
- Art. 133. Water Board.
- Art. 134. Sanitary Board.
- Art. 135. Planning Commission.
- Art. 137. Board of Park and Recreation
Commissioners.
- Art. 138. Public Library.
- Art. 139. Employees Generally.

ARTICLE 121 Mayor

121.01 Powers and duties generally.

CROSS REFERENCES

- Election; term - see CHTR. Sec. 7
 - Removal from office - see CHTR. Sec. 11
 - Vacancy - see CHTR. Sec. 14
 - Bond; oath - see CHTR. Sec. 16
 - Duties - see CHTR. Sec. 19
 - Voting - see CHTR. Sec. 25
-

121.01 POWERS AND DUTIES GENERALLY.

The Mayor shall be recognized as the Chief Executive Officer of the City for all civil and ceremonial purposes, for all legal proceedings involving the City, including the service of process, and for acts or transactions involving the preservation of law and order, and the application to the City of martial law. In addition, he shall have and may exercise all such rights, powers and immunities as may be provided by the City Charter, the general law of the State, the Codified Ordinances and other ordinances, as well as such other rights, powers and immunities as may be reasonably appropriate to the performance of his duties as Mayor under the City Charter or the general law of the State. (1970 Code Sec. 2-20)

ARTICLE 123 City Manager

- | | |
|---|---|
| 123.01 Chief administrative officer.
123.02 Specific powers and duties.
123.03 Supervision by Mayor or Council.
123.04 Purchasing agent. | 123.05 Compensation.
123.06 Maintenance of fiscal accounts and records.
123.07 Additional fiscal duties.
123.08 Park and recreation operation and maintenance. |
|---|---|

CROSS REFERENCES

Powers and duties – see CHTR. Sec. 19

Preparation of Council agenda – see ADM. 111.05(a)

123.01 CHIEF ADMINISTRATIVE OFFICER.

The City Manager shall be the chief administrative officer of the City, and the administration of the City's business and financial affairs and the operations of the City's departments, offices and agencies shall be subject to his supervision and control, except as may be provided otherwise by the City Charter, State law or this article.

(1970 Code Sec. 2-21)

123.02 SPECIFIC POWERS AND DUTIES.

(a) The City Manager shall recommend to Council, for adoption, such measures and resolutions as he may deem expedient.

(b) The City Manager may employ competent experts to advise him in planning the improvement of public works, streets, sewers, water and sanitation systems, etc., within the limits of funds appropriated for such purposes.

(c) The City Manager shall supervise, improve, protect and maintain City property and equipment; purchase, lease and dispose of City properties, supplies, and equipment in accord with orders or policy guidance of Council, supervise the operation of the various heads of the City departments, offices and agencies who are subject to his supervision and orders; and make rules and regulations for the efficient and economical operation thereof.

(d) The City Manager shall prepare and submit to Council the proposed annual budget, and prepare and make recommendation, by a monthly budget report, to the Mayor and Council with respect to financial and fiscal policies.

(1970 Code Sec. 2-22)

(e) The City Manager may issue rules, not inconsistent with the Charter or ordinances, outlining the general administrative procedures of the City, which rules shall be binding upon all departments, officials and employees which are subject to his authority. He may provide for a system of administrative regulations, to be issued by department heads and for the manner of numbering, indexing and filing such rules and administrative regulations.

(f) The City Manager shall prepare or cause to be prepared the agenda for all Council meetings.

(g) The City Manager, subject to the approval of Council, shall hire all employees of the City and he may, with such approval, discharge them at any time, except as may be provided otherwise by the Charter, State law or the Codified Ordinances or for other City agencies and authorities vested with such powers.

(h) The City Manager may assign any City officer or employee who is subject to his supervision and orders to perform services in any one or more departments, offices and agencies of the City government as the need for such services occur, excepting those officers and employees who are subject to the exclusive control of another agency created by law.

(i) The City Manager shall issue all City licenses, permits and certificates which are not by law, City Charter, the Codified Ordinances or other ordinance required or authorized to be issued by some other authority of the City government.

(j) The City Manager shall prepare and cause to be served by the Police Department all orders and notices of Council, and all orders and notices of officers of the City for which the preparation and service thereof is not otherwise provided by law, City Charter, the Codified Ordinances or other ordinance.
(A.O.)

123.03 SUPERVISION BY MAYOR OR COUNCIL.

(a) The Mayor and Council and its committees, in exercising lawful supervision over those departments, offices and agencies of the City government which are under the supervision and control of the City Manager, shall deal therewith only through the City Manager; provided, that in exceptional cases Council may, by resolution which sets out the reason for exception, authorize noncompliance with all but the proviso of this subsection.

(b) Neither the Mayor nor any councilperson shall interfere with any decision or action made by law, the City Charter, the Codified Ordinances or other ordinance authorized to be made or taken by the City Manager or by any officer, employee or agent of the City whose position and duties are subject to supervision and control by the City Manager.

(c) Nothing in this section shall be construed to prohibit direct communication between the Mayor or Council and its committees with any officer, employee or agent of the City with respect to any matter for which such person is, whether by law, the City Charter, the Codified Ordinances or other ordinance, responsible directly to the Mayor or to Council. (1970 Code Sec. 2-19)

123.04 PURCHASING AGENT.

(a) The City Manager shall be ex officio purchasing agent for the City and shall purchase all supplies, materials, services and equipment for the City and any and all departments thereof as needed within budgetary appropriations; provided, however, that the City Manager shall not make any contract or purchase involving an expenditure in excess of one thousand dollars (\$1,000) without first obtaining the prior consent of City Council so to do. The City Manager's authority to contract for or purchase supplies, materials, services and equipment for the City in an amount not to exceed one thousand dollars (\$1,000) shall be applicable to and shall extend only to such supplies, materials, services and equipment which are required in the normal and regular administration, operation and maintenance of the City. Regardless of their cost, any contract for or purchase of supplies, materials, services, equipment or any other things which are not required for the normal and regular administration, operation and maintenance of the City, as well as any and all capital expenditures, shall not be made by the City Manager without the prior approval of City Council. The aforesaid one thousand dollars (\$1,000) limitation on the City Manager's spending authority shall pertain to each item purchased as a whole. No item shall be permitted to be purchased in parts, nor shall multiple invoices or split invoices be utilized to purchase any one item.

(b) Any and all supplies, materials, services, equipment or any other things purchased by the City which cost in excess of five thousand dollars (\$5,000) shall be purchased on competitive bids. All proposals for such shall be upon precise specifications, and notice of the requirement of the City shall be given to prospective bidders who are best able to furnish the same at the lowest responsible price. All purchases shall be ordered by the City Manager and only upon approval of City Council shall payment be made.

(c) No person, agency, committee or commission shall make any purchase except through the City Manager as purchasing agent for the City, or through a purchase order duly issued by the City Manager as purchasing agent for the City. (Ord. 96-12. Passed 12-9-96.)

123.05 COMPENSATION.

The City Manager shall receive such fixed compensation for regular services as Council shall determine prior to the initiation of his regular term of office, and as well, receive such compensation for additional services during his term of office as Council shall determine to be fair and reasonable.

123.06 MAINTENANCE OF FISCAL ACCOUNTS AND RECORDS.

The City Manager shall establish and maintain accounts and accounting records of the City government including the accounting records of the departments, offices and agencies thereof. The construction accounts of any public improvement, or of any local or temporary facility, shall be entered in a separate volume and carefully indexed. He shall keep complete books of account showing all financial transactions of the City and each department, all receipts and expenditures made by the City, the sources of all income and the purposes of all expenditures. He shall enter in the municipal assessment docket all special assessments made for public improvements, showing the name of the owner of the property, the particular property on which the assessment is levied, the date of the entry, and the minute book and page showing the entry of the ordinance or resolution creating the assessment, and the maturing time of the assessment. When and as installments upon principal and interest on each assessment shall be paid, he shall enter such payments showing the amount paid upon principal and the amount on interest, under the heading and in the account of such special assessment. When the special assessment, principal and interest shall have been paid in full, he shall make an entry in red ink on the face of the account showing that the special assessment is fully satisfied and paid. (1970 Code Sec. 2-35)

123.07 ADDITIONAL FISCAL DUTIES.

The City Manager shall:

- (a) Collect, and deposit promptly in the depository designated by Council, all taxes, special assessments, fines and other money due to the City, as provided in the West Virginia Code 8-13-15.
- (b) Within ninety days after the beginning of each fiscal year, prepare and verify under oath a statement of receipts and expenditures of the City during the previous fiscal year and submit such statement to Council for publication, as provided in West Virginia Code 8-13-23.
- (c) Verify and approve disbursements.
- (d) Prepare and submit to the Mayor and Council such financial and fiscal reports as may be required.
- (e) Prepare and submit to the Mayor and Council such financial and fiscal reports as may be required.
- (f) Prepare all vouchers and payrolls of the City.
- (g) Conduct such routine or special audits as may be required by Council.
- (h) Perform such other duties of a fiscal or financial nature as may from time to time be required of him by Council.

123.08 PARK AND RECREATION OPERATION AND MAINTENANCE.

(a) The maintenance and operation of the park and recreation system of the City is withdrawn from the Park Board and the same is hereby established to be under the jurisdiction of the Office of the City Manager.

(b) The City Manager shall have complete control and management of all properties operated in connection with the public parks and recreation system for the City. The City Manager shall have the power to use such City personnel and employ such persons as may be necessary for the operation and maintenance of the parks and recreation system under his control, at such wages and salaries as he shall deem proper, and as Council shall approve. The City Manager shall have full and complete control of all the employees of the park and recreation system provided, however, that with respect to the recreational programs operated under and through the parks and recreation system, the City Manager shall recommend to Council a Recreation Director, who shall operate the recreation programs of the parks and recreation system, including but not limited to, the renting of any facilities in the parks and recreation system, the direction and operation of concessions and swimming facilities and the directing of any and all recreational programs implemented in the parks and recreation system. Council shall recommend such recreational programs as it deems needed and may prescribe the duties and terms of employment of the Director.

(c) All fees, rentals and charges made for the use of the parks and recreation system, shall be subject to the approval of Council.

(d) Council, shall from time to time, recommend all useful and needful measures for the policies and operations of the parks and recreation system, which the City Manager shall implement.

(Passed 11-9-87)



ARTICLE 125
City Attorney

125.01 Qualifications.
125.02 Powers and duties.

125.03 Compensation.

CROSS REFERENCES
Powers and duties - see CHTR. Sec. 21

125.01 QUALIFICATIONS.

The City Attorney shall be a member in good standing of the West Virginia Bar.

125.02 POWERS AND DUTIES.

The City Attorney shall have the powers and perform the duties specified for this office by State law, Charter, the Codified Ordinances and other ordinances and resolutions of Council. More specifically:

- (a) He shall be the legal adviser, attorney and counsel for Council and its committees, the Mayor and City Manager, and all officers, boards and commissions of the City government, and; upon their written request, he shall render to them his written opinion on any legal matter pertaining to their official duties.
- (b) He shall prepare all official bonds, contracts, deeds and other instruments in writing in which the City is concerned, and shall endorse thereon his approval as to form.
- (c) He shall prepare all ordinances for presentation to Council and, at the request of any member of Council, he shall prepare any resolution which is to be presented to Council.
- (d) He shall perform such other professional duties as may be required of him by Council. (1970 Code Sec. 2-33)

125.03 COMPENSATION.

(a) The City Attorney shall receive such fixed compensation for regular services as Council shall determine prior to the initiation of his regular term of office, and as well, receive such compensation for additional services during his term of office as Council shall determine to be fair and reasonable. (A.O.)

(b) The City Attorney shall be paid three hundred dollars (\$300.00) per year to help defray some of the office and/or other expenses which the City Attorney incurs in regard to his representation and/or handling of City matters.

- (1) The money paid to the City Attorney pursuant to this subsection shall be in addition to the City Attorney's presently established compensation.
- (2) The method of payment of the herein expense money shall be within the sole discretion of the City Manager.
- (3) The herein established expense money shall commence being paid to the City Attorney on July 1, 1997.
(Ord. 1997-12. Passed 6-9-97.)

(c) The City Attorney shall be paid the exact same compensation as the regular members of the Building Enforcement Agency for his advice and assistance to the said Building Enforcement Agency.

- (1) The compensation paid to the City Attorney for advising and assisting said Building Enforcement Agency shall be in addition to the City Attorney's presently established compensation.
- (2) In addition to the monthly compensation which is to be paid to the City Attorney for advising and assisting the Building Enforcement Agency as established herein, the City Attorney shall still be paid additional compensation for any and all legal services requested by the said Building Enforcement Agency from time to time including, but not limited to, title searches and the preparation of contracts.
- (3) The herein additional monthly compensation shall commence on July 1, 1997. (Ord. 1997-11. Passed 6-9-97.)

ARTICLE 127 City Clerk

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| 127.01 Custodian of records.
127.02 Authority to administer oaths;
take acknowledgments. | 127.03 Additional powers and
duties.
127.04 Transcribing minutes. |
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CROSS REFERENCES

Election - see CHRT. Sec. 7
 Removal from office - see CHTR. Sec. 11
 Vacancy in office - see CHTR. Sec. 14
 Bond; oath - see CHTR. Sec. 16
 Duties - see CHTR. Sec. 20
 Record of proceedings; ordinances - see CHTR. Sec. 24
 Chief elections officer for City - see ADM. 107.01

127.01 CUSTODIAN OF RECORDS.

(a) The City Clerk shall be custodian of all City records, books, documents, correspondence and other instruments and papers for which the custody is not elsewhere provided, and he shall prepare and certify copies thereof for persons lawfully entitled thereto, and shall charge therefor such fees as may be specified by resolution of Council.

(b) No person shall remove any record or other item of City property from the office of the City Clerk without written permission from the City Clerk to do so, but the City Clerk shall not deny such permission as to any item which is the subject of a written order of Council or a valid subpoena duces tecum issued by a court of competent jurisdiction.
(1970 Code Sec. 2-27)

127.02 AUTHORITY TO ADMINISTER OATHS; TAKE ACKNOWLEDGMENTS.

The City Clerk shall have authority to administer oaths and affirmations and to take acknowledgments required by the City Charter, the Codified Ordinances or other ordinance or by State law, except in any instance wherein State law prescribes that an oath or affirmation be administered or an acknowledgment be taken by some specific officer other than a City Clerk. (1970 Code Sec. 2-28)

127.03 ADDITIONAL POWERS AND DUTIES.

The City Clerk shall exercise such other powers and perform such other duties as may be prescribed by him by resolution of Council or direction of the Manager.
(1970 Code Sec. 2-31)

127.04 TRANSCRIBING MINUTES.

The taking and transcribing of minutes at all committee meetings of Council shall henceforth be the additional duties of the City Clerk. (Ord. 1994-4. Passed 2-14-94.)

ARTICLE 129
Police Department

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| 129.01 Duties generally. | 129.06 School zone officers. |
| 129.02 Organization; personnel. | 129.07 Service of notices. |
| 129.03 Chain of command. | 129.08 Ranks of captain; |
| 129.04 Duties of Chief of Police. | lieutenant established. |
| 129.05 Rules and regulations. | 129.09 Uniform allowance. |

CROSS REFERENCES

Elections see CHTR. Sec. 7
Removal from office - see CHTR. Sec. 11
Vacancy in office - see CHTR. Sec. 14
Bond; oath - see CHTR. Sec. 16
Duties - see CHTR. Sec. 22

129.01 DUTIES GENERALLY.

The Police Department shall enforce the penal provisions of the Codified Ordinances and other City ordinances and the laws of the State; preserve law and order within the City; and perform such related duties as may be required by State law, the Codified Ordinances or other ordinances. (1970 Code Sec. 18-1)

129.02 ORGANIZATION; PERSONNEL.

The Police Department shall consist of such personnel, having such ranks and receiving such compensation, as may from time to time be authorized by Council; and the organization of the Department shall be as prescribed by the Mayor, after consultation with the Chief of Police, and approved by resolution, order or motion of Council. (1970 Code Sec. 18-2)

129.03 CHAIN OF COMMAND.

The Police Department chain of command shall run from the Mayor to the Chief of Police and from him down through the officers and personnel of the Department in order of rank to the lowest authorized rank; and no member of the Police Department shall disobey or fail to comply with any lawful order given him by a superior officer in line of duty. (1970 Code Sec. 18-3)

129.04 DUTIES OF CHIEF OF POLICE.

The Chief of Police, under the control and supervision of the Mayor, shall be the commanding officer of the Police Department, and he shall discharge such duties as may be required by him by the Codified Ordinances or other ordinance or resolution of Council or by State law, and, in addition, he shall:

- (a) See to the preservation of peace and order throughout the City and the protection of property in and throughout the City, and, to that end, cause all violators of the Codified Ordinances and other ordinances, and State law, to be apprehended.
- (b) Supervise the Police Department, and require of all members of the police force the proper discharge of their respective duties.
(1970 Code Sec. 18-4)
- (c) Maintain proper records of criminal acts, criminals and arrests, investigations and inspections made by the Department, and submit to Council on a monthly basis or as often as requested, a report summarizing the information contained in such records.
(Passed 2-8-82)
- (d) Cause to be served and executed any process or notice issued by any court or officer of the City. (1970 Code Sec. 18-4)

129.05 RULES AND REGULATIONS.

The Chief of Police shall prepare rules and regulations not inconsistent with State law, the Codified Ordinances or other ordinance, for the government of the Police Department and the personnel, property and equipment thereof. Such rules and regulations, when approved by the Mayor by endorsement thereon and approved by resolution of Council, and when filed in the office of the City Clerk for public inspection and use, with a copy thereof filed in the headquarters of the Police Department for the information of all members, shall be binding on all members of the Department; and no member of the Department shall violate or fail to comply with any such rule or regulation which has been so promulgated, approved and filed. (1970 Code Sec. 18-5)

129.06 SCHOOL ZONE OFFICERS.

- (a) Council may require special zone police officers to give bond, payable to the City, with such sureties and in such penalty as Council may see fit, conditioned for the faithful performance of their duties.
- (b) In accordance with West Virginia law, the Mayor with the consent and approval of Council may appoint special school zone police officers for the City, as in the opinion of Council may be deemed necessary.
- (c) Special school zone police officers appointed in accordance with this section shall serve at the will and pleasure of the Mayor; but they shall take rank next below patrolman, and shall be subject to the orders of the Chief of Police.
- (d) Special school zone police officers shall have the duty of controlling and directing traffic upon parts of streets or roads at or near schools, and shall, in the performance of such duty, be vested with all the powers of City police officers.
- (e) Special school zone police officers shall be in uniform and shall display a badge or other sign of authority, as prescribed by the Chief of Police with approval of Council.

129.07 SERVICE OF NOTICES.

The Chief of Police may designate police officers to act as City messengers to summon members of Council and committees to meet, to deliver all official messages from the Mayor, City Manager, Council or chairman of any joint or special committee of Council, to act as bailiff of the Municipal court, and to serve legal process and notices issuing from the Municipal court or any department or office of the City government.

129.08 RANKS OF CAPTAIN; LIEUTENANT ESTABLISHED.

(a) There is hereby established within the Police Department the ranks of Captain and Lieutenant, with the Captain having the highest rank and the Lieutenant having the next highest rank in authority.

(b) In the absence of the Chief of Police to exercise his authority as vested in him over the Police Department by the laws of the State, the City Charter and Code, the Captain shall exercise such powers; and, in the absence of the Chief of Police and the Captain, the Lieutenant shall exercise such powers.

(c) The policeman in the Police Department who has accumulated the longest seniority within the Department shall be designated "Captain" while the person who has accumulated the second longest seniority within the Department, shall be designated as "Lieutenant". In the absence of the Chief, the Captain, or the Lieutenant, the officer having the most seniority of those on duty shall have superior authority to those of lesser seniority.

(d) The Captain and the Lieutenant may receive such compensation for their ranks as counsel shall determine by resolution. (Ord. 87/88-8. Passed 2-8-88.)

129.09 UNIFORM ALLOWANCE.

(a) Each individual who is employed as a full-time or part-time police officer by the City shall be required to wear a designated uniform and clothing while working for the City. Such designated uniform and clothing shall be established by Council.

(b) There is hereby granted an allowance of two hundred seventy-five dollars (\$275.00) per full-time police officer per fiscal year beginning July 1, of each year and ending June 30, the following year. For purposes of this section only, a full-time police officer shall be defined as any police officer who is employed by the City on a full-time basis and who works at least forty hours per week.

(c) There is hereby granted an allowance of one hundred thirty-seven dollars and fifty cents (\$137.50) per part-time police officer per fiscal year beginning July 1, of each year and ending June 30, the following year. For purposes of this section only, a part-time police officer shall be defined as any police officer who is not employed by the City on a full-time basis and who works at least thirty-two hours per week. Any part-time police officer who works less than thirty-two hours per week shall not be entitled to receive a uniform and clothing allowance.

(d) No full-time or part-time police officer shall be entitled to a carry-over of any unused allowance from one fiscal year to the next fiscal year.

(e) The uniform and clothing allowance is non-transferable between individual police officers.

(f) Any purchase made by any full-time or part-time police officer in excess of the allowance during any one fiscal year shall be the sole financial responsibility of the individual so making that purchase.

(g) Any purchase made by any full-time or part-time police officer shall be made at a vendor approved by the City Manager, and the full-time and part-time police officers shall submit the statement for costs to the City Manager for payment.

(h) This section shall supersede and prevail over any and all previous uniform and clothing allowance ordinances heretofore enacted in regard to police officers, and all such previous uniform and clothing allowance ordinances shall be and hereby are ordained null and void and of no force and effect. (Ord. 90/91-1. Passed 7-9-90.)

ARTICLE 131 Fire Department

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| 131.01 | Fire Department created. | 131.07 | Response to fire alarms. |
| 131.02 | Rules and regulations. | 131.08 | Assisting police officers. |
| 131.03 | Fire Chief duties and authority. | 131.09 | False fire alarms;
interfering with Department. |
| 131.04 | Supervision of officers and
members. | 131.10 | Charges for response outside
City limits. |
| 131.05 | Authority at fires and alarm
of fires. | | |
| 131.06 | Assistant Fire Chief. | | |

CROSS REFERENCES

Power to governing body - see W. Va. Code 8-15-1
 Fire protection contracts - see W. Va. Code 8-15-3, 8-12-5(56)
 Volunteer fire companies - see W. Va. Code 8-15-4 et seq.
 Authority of local fire departments - see W. Va. Code Art. 29-3A

131.01 FIRE DEPARTMENT CREATED.

There is hereby created a Fire Department. The Fire Department shall be under the direction and control of the City Manager and the Chief of the Fire Department.

131.02 RULES AND REGULATIONS.

(a) The City Manager in consultation with the Chief of the Fire Department, shall promulgate rules and regulations governing the Fire Department. At least one copy of such rules and regulations shall be maintained on file at all times in the Fire Department headquarters and at least one copy thereof shall be maintained on file at all times at each station house. All such file copies shall be readily available to all members of the Fire Department.

(b) After such rules and regulations have been approved by resolution of Council, no member of the Fire Department shall violate any such rule or regulation.

131.03 FIRE CHIEF DUTIES AND AUTHORITY.

(a) Supervision Over Apparatus and Equipment. The Chief of the Fire Department shall have supervision over the engine houses, truck and all the apparatus belonging to the Fire Department.

(b) Assignment of Duties. He shall have power to assign any and all the members of the Department to their respective duties, and to enforce a compliance therewith.

(c) Enforcing Orders and Regulations. He shall see that all rules and regulations of the Department are strictly enforced, and that proper discipline is observed and maintained by the officers and men.

(d) Monthly Reports. He shall report monthly to Council, through the City Manager, the operations of the Department for the preceding month, the number of alarms and fires, the loss and insurance so far as ascertained, the conditions of the houses and apparatus, together with such suggestions as he may deem advisable for the best interest and efficiency of the Department.

(e) Books and Records. He shall keep at his office such books of record as Council and the City Manager may prescribe, and see that the books of each company are kept in conformity with established rules and regulations.

(f) Repairs to Apparatus. He shall have supervision over all needed repairs to apparatus and the charge of all supplies, and shall issue them upon requisitions properly made, subject to the approval of the City Manager.

(g) Complaints of Misconduct. He shall diligently inquire into any and all complaints of misconduct made by citizens against men while on duty; and for any neglect of duty or violation of the rules and regulations of the Department, he shall report his findings promptly to the City Manager for appropriate action.

(h) Specific Records to be Kept. He shall keep in his office a record of all fires and of all facts concerning such fires including statistics as to the extent of such fires and the damage caused thereby, and whether such losses were covered by insurance, and if so, in what amount. Such records shall be made daily from the reports made by the Fire Department officers and inspectors.

(i) Absence from Duty. In absence of the Chief from duty, for any cause, his powers and duties shall be exercised and performed by the Assistant Chief.

(j) Badge. The badge of the office of the Chief shall be a design approved by Council, and such badge shall remain the property of the Fire Department.

131.04 SUPERVISION OF OFFICERS AND MEMBERS.

Subject only to the superior authority of the City Manager the Chief of the Fire Department shall have the absolute command, control, charge, management, discipline and supervision of every officer and member in the Fire Department. He shall take cognizance of any and all neglect of duty by any of such officers, or by any of the members thereof.

131.05 AUTHORITY AT FIRES AND ALARM OF FIRES.

(a) The Chief of the Fire Department shall have sole control, management and command at fires and alarms of fires over all officers and members of the Department, and all the apparatus and appurtenances belonging to the Department.

(b) The Chief shall have absolute control, authority and command over the police force, or any officer thereof, at the scene of any fire and during the time and continuance of any fire or conflagration, and all orders issued to the police force, or officers thereof, shall be explicitly obeyed and performed by them.

131.06 ASSISTANT FIRE CHIEF.

In the absence of the Chief, the Assistant Fire Chief shall command the Fire Department and shall have the powers and perform the duties of the Chief. He shall have such other powers and perform such other duties as may be prescribed for him by the City Manager, the Mayor or by the Chief.

131.07 RESPONSE TO FIRE ALARMS.

When a fire alarm is sounded all officers and firemen of the Fire Department, whether at the department headquarters, hose houses, or out in the City, shall respond to the alarm promptly, and they may requisition passing vehicles to carry them to the scene of the fire, and take all proper measures for the extinguishing and prevention of fires.

131.08 ASSISTING POLICE OFFICERS.

All members of the Fire Department shall aid and assist any police officer in making an arrest when required by him, or when it is evident that such police officer is in need of assistance. Members of the Fire Department shall at all times and in every way possible aid all officers of the Police Department by giving information and rendering assistance, and shall endeavor to promote the interest of the Police Department.

131.09 FALSE FIRE ALARMS; INTERFERING WITH DEPARTMENT.

No person shall raise a false alarm of fire or interfere with the lines or other equipment of the Fire Department, or tamper with the fire alarm boxes or hinder or delay, or in any way interfere unnecessarily with the Fire Department or any member thereof going to, while at, or returning from any fire that may occur or alarm given or at any practice run or drill.

131.10 CHARGES FOR RESPONSE OUTSIDE CITY LIMITS.

The City shall charge any person, corporation or entity which owns, leases, or has an interest in any property outside the City limits on which the Fire Department has extinguished any fire or provided other emergency service. Such charge shall be determined by the City Manager and Fire Chief based on the equipment used, hours expended, mileage and any other relevant criteria.

ARTICLE 133 Water Board

133.01	Creation.	133.06	Duty of Board to restore property damaged by its activities.
133.02	Composition; appointment of members.	133.07	Publication of financial statement.
133.03	Organizational meetings; official bonds.	133.08	Procedure for disbursement of funds.
133.04	Compensation and expenses of Board members.	133.09	Bonding of employees who handle money.
133.05	Powers, duties and limitations.		

133.01 CREATION.

The Follansbee Water Board is hereby created pursuant to Chapter 8, Article 19 of the Act. All management, control and operation of the City's waterworks system shall be transferred from the Follansbee Combined Board to the Follansbee Water Board.
(Ord. 96-8. Passed 8-12-96.)

133.02 COMPOSITION; APPOINTMENT OF MEMBERS.

The Water Board shall be composed of the Mayor or the City Manager of the City of Follansbee as chairman and two persons appointed by Council. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the City, whether holding a paid or unpaid office, shall be eligible to appointment on the Water Board until at least one year after the expiration of the term of his public office.
(Ord. 96-8. Passed 8-12-96.)

133.03 ORGANIZATIONAL MEETINGS; OFFICIAL BONDS.

As soon as may be practicable following the appointment of a new member, the Water Board shall hold an organizational meeting and choose a vice chairman from among its members, and a secretary and treasurer, who may be one person and need not be a Water Board member, and such officer shall hold office at the will of the Water Board. No bond shall be required of the Water Board members as such, but the treasurer, whether a member of the Water Board or not, shall give bond in an amount equal to the sum of money which may at any one time be in his hands as treasurer of the Water Board, and otherwise conditioned according to law. (Ord. 96-8. Passed 8-12-96.)

133.04 COMPENSATION AND EXPENSES OF BOARD MEMBERS.

All members of the Water Board may be compensated as determined by Council and shall be reimbursed from waterworks funds for all necessary expenses incurred in the discharge of their duties, but there shall be no liability upon the City for any salary or expenses so incurred. (Ord. 96-8. Passed 8-12-96.)

133.05 POWERS, DUTIES AND LIMITATIONS.

(a) The Water Board shall have the supervision and control of the custody, administration, operation and maintenance of the waterworks system, which is now owned or may hereafter be acquired or constructed by the City.

(b) The Water Board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to the Water Board by this article and under and by virtue of Chapter 8, Article 19 of the Act, as the same now exists and may hereafter be amended; but the powers of the Water Board shall be subject to all restrictions and limitations contained in said Article 19 as the same now exists or may hereafter be amended. Any contract relating to the financing of the acquisition and construction of any such waterworks shall be approved by Council before the same shall be effective.

(c) The Water Board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other personnel as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Water Board shall direct. All such compensation and all expenses incurred in carrying out the provisions of said Article 19 shall be paid solely and only from funds provided under authority of said Article 19, and the Water Board shall not exercise or carry out any authority or power given it so as to bind the Water Board or the City beyond the extent to which money shall have been or may be provided under the authority of said Article 19. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of five thousand dollars (\$5,000) shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the Water Board to reject any and all bids.

(d) The construction, acquisition, improvement, equipment, custody, operation and maintenance of the waterworks system and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the Water Board.

(e) The Water Board shall operate, manage and control the waterworks system and may order and complete any extensions, betterments and improvements of and to the waterworks system that the Water Board may deem expedient if funds therefor be available or made available as provided by law, and shall establish rules and regulations for the use and operation of the waterworks system, and to do all things necessary or expedient for the successful operation thereof, and the Water Board shall have in addition hereto any and all powers granted to it by said Article 19, or which may be granted to it by amendments to said Article 19, hereafter made, subject to any and all restrictions and limitations therein contained. (Ord. 96-8. Passed 8-12-96.)

133.06 DUTY OF BOARD OF RESTORE PROPERTY DAMAGED BY ITS ACTIVITIES.

All public ways or public works damaged or destroyed by the Water Board in carrying out its authority under this article shall be restored or repaired by the Water Board and placed in their original condition, as nearly as practicable, if requested so to do by the proper authorities, out of the funds provided pursuant to the provisions of Chapter 8, Article 19 of the Act. (Ord. 96-8. Passed 8-12-96.)

133.07 PUBLICATION OF FINANCIAL STATEMENT.

The Water Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Chapter 59, Article 3 of the Act, and the publication area for such publication shall be the City. Such statement shall contain an itemized account of the receipts and expenditures of the Water Board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of the Water Board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the Water Board as soon as practicable after the close of the fiscal year. The statement shall be sworn to by the chairman and secretary and treasurer of the Water Board. (Ord. 96-8. Passed 8-12-96.)

133.08 PROCEDURE FOR DISBURSEMENT OF FUNDS.

All funds under the supervision of the Water Board shall be disbursed, as disbursements are required, by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Water Board. All such disbursements shall be approved by the Water Board. (Ord. 96-8. Passed 8-12-96.)

133.09 BONDING OF EMPLOYEES WHO HANDLE MONEY.

The Water Board may from time to time, in its discretion, require any of its employees to furnish a good and suitable indemnity bond, with a recognized and reputable surety, conditioned upon the faithful discharge of their duties as such, and to deliver up and pay over all money as provided by law. The Water Board shall require all persons who collect or otherwise handle funds of the Water Board to furnish a good and proper bond, with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bond shall be in an amount equal to the sum of money which may at any one time be in the hands of such person or persons, as may be determined by the Water Board. (Ord. 96-8. Passed 8-12-96.)



ARTICLE 134 Sanitary Board

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| 134.01 Creation.
134.02 Composition; appointment of members.
134.03 Organizational meetings; official bonds.
134.04 Compensation and expenses of Board members.
134.05 Powers, duties and limitations. | 134.06 Duty of Board to restore property damaged by its activities.
134.07 Publication of financial statement.
134.08 Procedure for disbursement of funds.
134.09 Bonding of employees who handle money. |
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CROSS REFERENCES

Composition - see W. Va. Code 16-13-18
 Publication of financial statement - see W. Va. Code 16-13-18a

134.01 CREATION.

The Follansbee Sanitary Board is hereby created pursuant to Chapter 16, Article 13 of the Act. All management, control and operation of the City's sewerage system shall be transferred from the Follansbee Combined Board to the Follansbee Sanitary Board. (Ord. 96-8. Passed 8-12-96.)

134.02 COMPOSITION; APPOINTMENT OF MEMBERS.

The Sanitary Board shall be composed of the Mayor or the City Manager of the City of Follansbee as chairman, and two persons appointed by Council, one of whom, during the period of construction of any sewer facilities or additions to the existing sewerage system must be a registered professional engineer. The engineer member of the Sanitary Board need not be a resident of the City. After the construction of such sewer facilities or any additions thereto have been completed, the engineer member may be succeeded by a person not an engineer. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the City, whether holding a paid or unpaid office, shall be eligible to appointment on the Sanitary Board until at least one year after the expiration of the term of his public office. (Ord. 96-8. Passed 8-12-96.)

134.03 ORGANIZATIONAL MEETINGS; OFFICIAL BONDS.

As soon as may be practicable following the appointment of a new member, the Sanitary Board shall hold an organizational meeting and choose a vice chairman from among its members, and a secretary and treasurer, who may be one person and need not be a Sanitary Board member, and such officers shall hold office at the will of the Sanitary Board. No bond shall be required of the Sanitary Board members as such, but the treasurer, whether a member of the Sanitary Board or not, shall give bond in an amount equal to the sum of money which may at any one time be in his hands as treasurer of the Sanitary Board, and otherwise conditioned according to law. (Ord. 96-8. Passed 8-12-96.)

134.04 COMPENSATION AND EXPENSES OF BOARD MEMBERS.

All members of the Sanitary Board may be compensated as determined by Council and shall be reimbursed from sewer works funds for all necessary expenses incurred in the discharge of their duties, but there shall be no liability upon the City for any salary or expenses so incurred. (Ord. 96-8. Passed 8-12-96.)

134.05 POWERS, DUTIES AND LIMITATIONS.

(a) The Sanitary Board shall have the supervision and control of the custody, administration, operation and maintenance of the sewerage system, which is now owned or may hereafter be acquired or constructed by the City.

(b) The Sanitary Board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to the Sanitary Board by this article and under and by virtue of Chapter 16, Article 13 of the Act, as the same now exists and may hereafter be amended; but the powers of the Sanitary Board shall be subject to all restrictions and limitations contained in said Article 13 as the same now exists or may hereafter be amended. Any contract relating to the financing of the acquisition and construction of any such sewer works shall be approved by Council before the same shall be effective.

(c) The Sanitary Board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other personnel as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Sanitary Board shall direct. All such compensation and all expenses incurred in carrying out the provisions of said Article 13 shall be paid solely and only from funds provided under the authority of said Article 13, and the Sanitary Board shall not exercise or carry out any authority or power given it so as to bind the Sanitary Board or the City beyond the extent to which money shall have been or may be provided under the authority of said Article 13. No contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount the sum of five thousand dollars (\$5,000) shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the Sanitary Board to reject any and all bids.

(d) The construction, acquisition, improvement, equipment, custody, operation and maintenance of the sewerage system and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the Sanitary Board.

(e) The Sanitary Board shall operate, manage and control the sewerage system and may order and complete any extensions, betterments and improvements of and to the sewerage system that the Sanitary Board may deem expedient if funds therefor be available or made available as provided by law, and shall establish rules and regulations for the use and operation of the sewerage system and of other sewers and drains connected therewith so far as they may affect the operation of the sewerage system, and to do all things necessary or expedient for the successful operation thereof, and the Sanitary Board shall have in addition hereto any and all powers granted to it by said Article 13, or which may be granted to it by amendments to said Article 13, hereafter made, subject to any and all restrictions and limitations therein contained. (Ord. 96-8. Passed 8-12-96.)

134.06 DUTY OF BOARD TO RESTORE PROPERTY DAMAGED BY ITS ACTIVITIES.

All public ways or public works damaged or destroyed by the Sanitary Board in carrying out its authority under this article shall be restored or repaired by the Sanitary Board and placed in their original condition, as nearly as practicable, if requested so to do by the proper authorities, out of the funds provided pursuant to the provisions of Chapter 16, Article 13 of the Act. (Ord. 96-8. Passed 8-12-96.)

134.07 PUBLICATION OF FINANCIAL STATEMENT.

The Sanitary Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Chapter 59, Article 3 of the Act, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the Sanitary Board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of the Sanitary Board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the Sanitary Board as soon as practicable after the close of the fiscal year. The statement shall be sworn to by the chairman and secretary and treasurer of the Sanitary Board. (Ord. 96-8. Passed 8-12-96.)

134.08 PROCEDURE FOR DISBURSEMENT OF FUNDS.

All funds under the supervision of the Sanitary Board shall be disbursed, as disbursements are required, by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Sanitary Board. All such disbursements shall be approved by the Sanitary Board. (Ord. 96-8. Passed 8-12-96.)

134.09 BONDING OF EMPLOYEES WHO HANDLE MONEY.

The Sanitary Board may from time to time, in its discretion, require any of its employees to furnish good and suitable indemnity bond, with a recognized and reputable surety, conditioned upon the faithful discharge of their duties as such, and to deliver up and pay over all money as provided by law. The Sanitary Board shall require all persons who collect or otherwise handle funds of the Sanitary Board to furnish a good and proper bond, with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bond shall be in an amount equal to the sum of money which may at any one time be in the hands of such person or persons, as may be determined by the Sanitary Board. (Ord. 96-8. Passed 8-12-96.)



ARTICLE 135
Planning Commission

EDITOR'S NOTE: There are no sections in Article 135.
This chapter has been established to provide a place for
cross references and future legislation.

CROSS REFERENCES

Authority to establish - see W. Va. Code 8-24-1
General provisions - see W. Va. Code 8-24-5
Adoption of comprehensive plan - see W. Va. Code 8-24-16 et seq.
Approval of subdivision plats - see W. Va. Code 8-24-28 et seq.
Zoning recommendations - see W. Va. Code 8-24-42 et seq.



ARTICLE 137
Board of Park and Recreation Commissioners (Repealed)

EDITOR'S NOTE: Former Article 137 was repealed by an Ordinance passed November 9, 1987. See Section 123.08 for the applicable park and recreation regulations.



ARTICLE 138
Public Library

138.01 Established.

CROSS REFERENCES

Authority to establish library - see W.Va. Code 8-12-5(38)
Public libraries - see W.Va. Code Art. 10-1

138.01 ESTABLISHED.

The City shall establish, maintain, upkeep, and operate a public library in the City of Follansbee. (Ord. 94-17. Passed 11-14-94.)



ARTICLE 139 Employees Generally

- | | |
|--|--|
| <p>139.01 Bonds.</p> <p>139.02 Filling vacancies in certain offices.</p> <p>139.03 Removal of certain officers.</p> <p>139.04 Compensation.</p> <p>139.05 State Public Employees Retirement System.</p> <p>139.06 Group life, hospital and</p> | <p>139.07 Sick leave.</p> <p>139.08 Funeral leave.</p> <p>139.09 Holidays.</p> <p>139.10 Vacations.</p> <p>139.11 Social Security.</p> <p>139.12 Employee uniform and medical insurance. clothing allowance.</p> <p>139.13 Personnel policy.</p> |
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CROSS REFERENCES

Social Security - see W. Va. Code 5-7-5
 Compensation of officers and employees - see W. Va. Code 8-5-12
 Conflict of interest - see W. Va. Code 8-5-19
 Bonds - see W. Va. Code 8-12-5(46), (47); 6-2-11
 Insurance and indemnification - see W. Va. Code 8-12-7 et seq.
 Retirement benefits - see W. Va. Code Art. 8-22
 Military leave - see W. Va. Code 15-1F-1

139.01 BONDS.

(a) The following officers and employees of the City shall be bonded as set forth herein:

City Manager	\$100,000
Municipal Court Judge	1,000
City Clerk	1,000
Police officers	3,500

(b) Other City officers and employees who, in the line of duty, receive or have custody of City money, funds, property or other assests of the City may be bonded as Council shall prescribe by resolution, order or otherwise.

139.02 FILLING VACANCIES IN CERTAIN OFFICES.

(a) Whenever a vacancy shall occur, from any cause, in the office of Mayor, Councilperson, City Attorney, City Clerk, Chief of Police or any other elective office, Council shall immediately fill such office by a majority vote of Council, and such appointee shall hold office until the next election according to the nominations hereinafter set forth.

(b) Whenever a vacancy shall occur from any cause in the office of Mayor or Councilperson, Council shall immediately fill such office from applications for such position filed with the office of the City Clerk.

(c) Whenever a vacancy shall occur from any cause, in the office of City Attorney, City Clerk, Chief of Police or City Manager, Council shall immediately fill such office from nominations for such office by the Mayor.
(1970 Code Sec. 2-19.1)

139.03 REMOVAL OF CERTAIN OFFICERS.

(a) Neither the City Manager nor any person appointed to fill a vacant elective position, shall be removed from office prior to the expiration of his term without good cause; and without being afforded a hearing before the Council, if the person proposed to be removed shall, upon notice to him of the termination of his services, request such hearing. The hearing shall be open to the public at the request of the officer proposed to be removed, and in any case he shall have the right to be represented by counsel and to have process for the attendance of witnesses and the production of books and papers in his behalf.

(b) This section shall not apply to any officer until he has served in office for a period of six months following his initial appointment, nor to any officer appointed to serve at the will and pleasure of the appointing authority.

(c) All elected and appointed officials of the City may be removed from office, in addition to the method and grounds provided in the West Virginia Code, on the following grounds:

- (1) When disqualified from holding the office under any provision of the State Constitution, or any law of the State or of the United States of America, whether such disqualification arose before or after his induction into office;
- (2) For official misconduct, malfeasance in office, incompetance, neglect of duty or gross immorality.

(d) For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by the subsection:

- (1) "Incompetence" means the wasting or misappropriation of public funds by any officers, habitual drunkenness, habitual addiction to the use of narcotic drugs, adultery, neglect of duty or gross immorality on the part of any officer.
- (2) "Incompetent person" means any appointee or employee of any officer, including Council and any of the boards of the City, who willfully wastes or misappropriates public funds or who is guilty of habitual drunkenness, habitual addiction to the use of narcotic drugs, neglect of duty, adultery or gross immorality.
- (3) "Neglect of duty or official misconduct" means the willful waste of public funds by any officer or officers; or the appointment by him or them of an incompetent or disqualified person to any office or position and the retention of such person in office, or in the position to which he was appointed, after such incompetency or disqualification is made to appear, when it is in the power of such officer to remove such incompetent or disqualified person. "Neglect of duty" additionally includes any of the following acts:
 - A. Failure to attend three consecutive regular meetings, without the approval of Council.
 - B. Willful violation of any provisions of the Charter or ordinances of the City, or the lawful order of any officer of the City.

(Passed 1-13-74)

139.04 COMPENSATION.

(a) City officers shall receive such compensation as from time to time may be provided by ordinance subject to applicable limitations and restrictions of law.

(b) City employees shall receive such compensation as from time to time may be provided by resolution of Council, subject to applicable provisions and restrictions of law.

(c) City employees occupying the position of City Manager and Public Works Director shall be paid on a monthly salary basis, and shall not have their salary reduced for the first day of any sick leave, nor shall either office be paid overtime pay.

(d) All other full time City employees shall be paid on an hourly rate, and as well, shall be scheduled for a forty hour work week. Overtime for such City employees shall be applied to rates on those hours worked in excess of forty hours in any one work week, and employees must work forty hours per week to be eligible for overtime.

(e) The work week of each City employee shall be established as extending from 12:01 a.m. Sunday to 12:00 midnight the following Saturday. All overtime rates shall comply with federal, State and local law.

(f) Council may by ordinance or resolution from time to time provide special compensation to persons for service rendered to the City for which adequate compensation is not otherwise provided.

139.05 STATE PUBLIC EMPLOYEES RETIREMENT SYSTEM.

(a) Pursuant to West Virginia Code 5-10-16, the City hereby elects to be a participating public employer and thereby includes its eligible employees in the membership of the Public Employees Retirement System.
(Passed 7-1-78.)

(b) Any and all elected officials of the City are permitted to elect to join and participate in the Public Employees Retirement System.

- (1) In the event that any elected official should elect to participate in the Public Employees Retirement System, such elected official shall be treated exactly the same as any full time employee of the City in regard to contributions and all other matters pertaining to the retirement system; provided, however, that in regard to an elected official's participation in said Retirement System, the entire pension contribution shall be made by said elected official with no contribution being made by the City.
- (2) For any and all elected officials who elect to participate in the Public Employees Retirement System, that elected official's pension contribution shall be regularly deducted off of his/her gross compensation, before taxes. The City shall regularly pay the requisite pension contribution as a benefit for each elected official who chooses to participate in the Public Employees Retirement System, the same as if said elected official was a full time employee of the City.
(Ord. 1997-10. Passed 5-12-97.)

139.06 GROUP LIFE, HOSPITAL AND MEDICAL INSURANCE.

(a) Council may by resolution provide for group life insurance and group hospitalization and medical insurance coverage for all regular, full time officers and employees of the City and their eligible dependents, in such amounts and on such terms deemed to be equitable, with the premiums therefor to be paid by the City; and Council is hereby authorized to levy each year a tax sufficient to pay such premiums.

(b) In the procurement of insurance as provided in subsection (a) hereof, Council may obtain inclusion in such insurance policies coverage for nonregular and part time officers and employees of the City and their eligible dependents, so as to afford such persons the benefit of group insurance low-cost premiums; provided, that the City shall not pay the premium for any insurance policy authorized by this subsection. (1970 Code Sec. 15-4.)

(c) It shall be the duty of Council to procure group life insurance on the lives of volunteer firemen of the City, in such amount and on such terms deemed to be equitable, and to levy each year a tax sufficient to pay the premium therefor. (1970 Code Sec. 15-5)

139.07 SICK LEAVE.

(a) "Sick leave" means an absence because of illness or injury which is not related to or arising out of the course of the employee's employment with the City. "Annually" means each fiscal year. (Passed 7-1-78.)

(b) Eighteen work days with pay shall be allowable annually as sick leave to each employee who has been in the employ of the City for a maximum period of one year. Such leave, if not exhausted in the year in which it accrues, may be carried over from year to year until forty-five days have been accumulated; provided however, that with regard to the three day waiting period, being the initial three days of illness, an employee shall be paid for two of such days if his sickness extends beyond the three day period, such that if his sickness extends beyond such three day period, he shall be paid for every day of sickness except one day, subject to all other limitations contained in this section with respect to total sick day benefits and accrued sick day time accumulated. (Passed 7-1-78; 3-14-79.)

(c) One or more physicians' certificates may be required to be presented to the appropriate City official before compensation for such absence is allowed. (Passed 7-1-78.)

(d) When a City employee who is covered under the hospitalization policy of the City is compiled or required by law to retire before attaining the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual and sick leave, if any, shall be credited toward an extension of the hospitalization insurance coverage provided by the City according to the following formula:

- (1) Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement, and, for a retired employee, his spouse and dependents, such insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement.
- (2) Notwithstanding the provisions of subsection (d) hereof, no employee shall receive more than forty-five days of leave plus any unused vacation day.
- (3) If that employee becomes deceased during his period of extended coverage, all remaining sick or vacation days earned by the former employee, shall apply to coverage for his serving spouse. (Passed 8-11-86.)

139.08 FUNERAL LEAVE.

Any employee shall be entitled to leave of three days following the death of any member of his immediate family, should any of such three days fall on a regular working day. Immediate family for the purpose of this section shall include spouse, children, mother or father, mother-in-law or father-in-law. (Passed 7-1-78.)

139.09 HOLIDAYS.

(a) The following days are authorized and established as holiday for City employees free from work without reduction in pay:

- | | |
|--|----------------------------------|
| (1) January 1 | - New Year's Day; |
| (2) January 15 | - Martin Luther King's Birthday; |
| (3) Third Monday of February | - President's Day; |
| (4) The last Monday in May | - Memorial Day; |
| (5) June 20 | - West Virginia Day; |
| (6) July 4 | - Independence Day; |
| (7) First Monday in September | - Labor Day; |
| (8) Second Monday in October | - Columbus Day; |
| (9) November 11 | - Veteran's Day; |
| (10) Fourth Thursday of November | - Thanksgiving Day; |
| (11) The Fourth Friday in November; | |
| (12) December 25 | - Christmas Day; |
| (13) The day after December 25 when it falls on a Thursday or the day before December 25 when it falls on a Tuesday; and | |
| (14) Any national, state, and city election days, both primary and general. (Ord. 95-16. Passed 11-13-95.) | |

(b) Holidays will begin at 12:01 a.m. on the holidays designated and will continue for twenty-four hours thereafter.

(c) To be eligible for holiday pay, an employee shall have been available for work for his full work day immediately preceding, and immediately following the recognized holidays, unless absent because of certified illness or injury, in which case a doctor's certificate may be required by the appropriate City official before compensation for such holiday is allowed.

(d) When the designated holiday occurs on Sunday, it will be celebrated on the following Monday. When the holiday occurs on a Saturday it will be celebrated on the preceding Friday.

139.10 VACATIONS.

(a) For the purpose of this section, the following words and phrases shall have the meanings respectively ascribed as follows:

- (1) "Full time employee" means any employee regularly employed for a minimum average of thirty-five or more hours per week.
- (2) "Weeks vacation" means seven consecutive days including Saturday and Sunday, at the regular pay rate per forty hours or week. Authorized legal holiday falling within the vacation period shall not be counted. Vacation time accrued under this section shall not exceed one full week of vacation in any year of service. As in the case of regular vacations, all vacations earned under this section shall be computed prior to June 30 of each year, and all earned days of vacation not taken prior to such date shall be forfeited. The Chief of Police shall verify to the City Manager, at the end of each month accrued vacation time of each policeman earned under this section.

- (3) Vacations earned under this section shall be computed as of May 1, of each year, based on time accrued in the preceding twelve month period. Such vacations shall be listed on the vacation schedule.
- (b) A full time employee shall become entitled to a vacation upon the completion of one full year of employment.
- (c)
 - (1) Each full time appointed employee who has been employed by the City more than one year and not in excess of two years shall be entitled to one week of vacation per year with regular pay.
 - (2) Each full time appointed employee who has been employed by the City more than two years shall be entitled to two weeks of vacation per year with regular pay.
 - (3) Each full time appointed employee who has been employed by the City more than ten years shall be entitled to three weeks of vacation per year with regular pay. (Passed 7-1-78.)
- (d) All vacations scheduled and approved by the department head shall not be final until approved by the City Manager.
- (e) All vacations shall be completed prior to June 30 of each fiscal year, and all earned days of vacation not taken prior to such date shall be forfeited.
- (f) The City Manager, upon the recommendation of the head of any department, reserves the right to change the time for any scheduled and finally approved vacation whenever in the City Manager's discretion the welfare of the City requires such a change.
- (g) The duration of any vacation of any City employee shall be subject to the approval of the City Manager.
- (h) No City employee shall be entitled to elect not to take a vacation and receive pay in lieu of the vacation by working such vacation.
- (i) All vacation pay shall be computed at the rate per hour or per week, whichever is applicable, in force immediately prior to such vacation, for each eligible employee. (Passed 7-1-78.)

139.11 SOCIAL SECURITY.

- (a) For the purposes of this section, the term "State Agency" means the State Auditor, in his capacity as the State Agency as defined in West Virginia Code 5-7-2.
- (b) This section is enacted by Council pursuant to West Virginia Code 5-7, and it shall be construed to render it in conformity with that statute and the applicable federal law and the agreement mentioned in West Virginia Code 5-7-3.

(c) It is the purpose of this section to obtain the coverage of the federal old age and survivor's insurance, commonly called "Social Security," for eligible employees of the City, subject to the approval of the State Agency, as a regular part of the annual City budget for which annual levy is made.

(d) All services which constitute employment as defined in West Virginia Code 5-7-2 and which are performed in the employ of the City shall be covered by this section.

(e) The total amount of employees' contributions and the matching amount to be provided by the City from year to year shall be determined as provided in West Virginia Code 5-7-5 and the plan thereunder as presented by the City to the State Agency and approved thereby, as such plan may have been or may hereafter be amended and approved from time to time; and such matching amount to be paid by the City shall, each year, be included as a separate item of estimated expenditure for which levy is to be made.

(f) The City shall make such reports, in such form and containing such information, as the State Agency may from time to time require, and comply with such provisions as the State Agency or as the Federal Agency, mentioned in subdivision (5) of subsection (a) of West Virginia Code 5-7-5, may from time to time find necessary to assure the correctness and verification of such reports.

(g) The City shall pay into the contribution fund, as defined in West Virginia Code 5-7-6, such amounts as are required to be paid by subsections (c) and (d) of West Virginia Code 5-7-5.

(h) The State Agency is authorized to terminate any plan submitted to it pursuant to this section, in its entirety, if it finds that there has been a failure to comply substantially with any provisions contained therein or any provisions of West Virginia Code 5-7 or necessary federal laws and regulations, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State Agency and be consistent with applicable federal law.
(1970 Code Secs. 15-6 to 15-14)

139.12 EMPLOYEE UNIFORM AND CLOTHING ALLOWANCE.

(a) Each hourly public employee is hereby required to wear designated uniform and clothing while working for the City.

(b) There is hereby granted an allowance of one hundred fifty dollars (\$150.00) per hourly public works employee per fiscal year beginning July 1, of each year and ending June 30, the following year.

(c) No employee shall be entitled to a carry-over of an unused allowance from one fiscal year to the next fiscal year.

(d) The uniform allowance is non-transferable between individual hourly public works employees.

(e) Any purchase made by an employee in excess of the allowance during any one fiscal year shall be the sole financial responsibility of the individual so making that purchase.

(f) Any purchase made by an hourly public works employee shall be made at a vendor approved by the City Manager, and the hourly public works employee shall submit the statement for costs to the City Manager for payment.

(g) Mandatory uniform rules are as follows:

- (1) The uniform shall be either a long or short sleeve workshirt of a light blue or chambrey color, along with standard denim blue jeans. A denim blue jean jacket is optional.
 - (2) Each uniform shall bear a City patch on the shirt and/or denim jackets, which shall be located with respect to the shirt, on the left upper side of the shirt, and with respect to the jacket, on the right upper side of the jacket.
 - (3) Each City employee shall carry pocket identification tags during all working hours. Clip identification tags with the employee's picture on the tag must be worn by any employee at all times when that employee is about to enter any residence or establishment during City working hours.
 - (4) No torn, unlaundered or excessively faded shirt or pants is permitted to be worn by any employee during working hours.
 - (5) Any violation of the dress code shall subject the employee to disciplinary action on a per calendar year basis. Any violation for the first time during a calendar year shall result in a verbal warning to the employee; any second violation shall result in a written warning; and any third violation shall result in the employee being laid off from work for three days without pay. Any employee shall have the right to appeal any disciplinary action to Council as a Whole.
 - (6) The uniform herein prescribed shall be worn by any and all hourly public works employees during working hours including any overtime. Should an emergency arise whereby the public works employee is called out to work, then that employee shall be exempt from the provisions of this section, but is encouraged to comply with this section.
 - (7) Any employee making a fraudulent purchase of clothing and/or uniform not approved and charged to the City, shall automatically be suspended for three days without pay in addition to all other penalties prescribed by federal, state and/or local law.
 - (8) Any person exempt from wearing denim blue jeans shall wear a navy blue shirt and pants with the City patch on the shirt. Exemptions may be granted by the City Manager to any employee who for health reasons duly certified by a medical physician, cannot comply with the provisions of this section.
- (Passed 12-14-88)

139.13 PERSONNEL POLICY.

(a) The City shall henceforth utilize a written personnel policy to govern employment of all City employees.

(b) Each and every employee of the City shall be given one copy of such personnel policy upon passage of this section.

(c) The City shall hold at least one informational session wherein the City's personnel policy will be explained and wherein City employees shall be given the opportunity to ask questions and voice concerns.

(d) Any and all additions, deletions, and/or alterations of the City's written personnel policy shall be accomplished in the future by resolution, without the necessity of enacting any additional ordinances.

(e) A copy of the City's original personnel policy shall be attached to Ordinance 91/92-1 and incorporated therein by reference. (Ord. 91/92-1. Passed 11-11-91.)



CHAPTER SEVEN - Judicial
 Art. 171. Municipal Court.
 Art. 177. Juries.

ARTICLE 171
 Municipal Court

- | | | | |
|--------|--|--------|---|
| 171.01 | Jurisdiction, powers and duties. | 171.11 | Judgment of guilty includes judgment for costs. |
| 171.02 | Search warrants. | 171.12 | Enforcement of penalties and costs. |
| 171.03 | Docket; Chief of Police. | 171.13 | Payment of court costs by City. |
| 171.04 | Warrant required; exception. | 171.14 | Suspension of execution of judgments. |
| 171.05 | Procedure upon arrests without warrant. | 171.15 | Appeals. |
| 171.06 | Issuance of warrants at request. | 171.16 | Contempt. |
| 171.07 | Failure of accused person to appear for trial. | 171.17 | Jury trials. |
| 171.08 | Continuances on motion of accused. | 171.18 | Contempt; entry of convictions on docket. |
| 171.09 | Continuances on motion of other than accused. | 171.19 | Street labor in default of fine payment. |
| 171.10 | Continuances, default in recognizance. | | |

CROSS REFERENCES

- Powers and duties; records - see CHTR. Sec. 32
 General rights of appeal - see W. Va. Code 8-24-1
 Costs for crime victims reparation fund - see W. Va. Code 14-2A-4
 Costs for funding law enforcement training academies - see W. Va. Code 30-29-4

171.01 JURISDICTION, POWERS AND DUTIES.

The Municipal Court Judge shall exercise all of the powers and duties set forth in the City Charter and the West Virginia Code. The Municipal Court shall have criminal jurisdiction over violations of the Codified Ordinances and all other ordinances of the City.

171.02 SEARCH WARRANTS.

Upon proper complaint, the Municipal Court Judge shall issue search warrants in connection with the violation of any provision of the Codified Ordinances or other City ordinance.

171.03 DOCKET; CHIEF OF POLICE.

The Chief of Police shall keep a wellbound book in his office, which book shall be called the "docket." Such docket shall contain a record of each case brought before the Municipal Court Judge and the disposition thereof. The Chief of Police shall index the docket in such a manner as to provide a ready reference to each case and to keep such index current. Unless the City Manager, with the approval of Council shall appoint some other person, the Chief of Police shall be ex officio Clerk of the Municipal Court.

171.04 WARRANT REQUIRED; EXCEPTION.

Proceedings before the Municipal Court Judge shall be by warrant of arrest in the name of the City, except that when an offense of which the Municipal Court Judge has jurisdiction is committed in his presence, or in that of a City police officer, either of them may forthwith apprehend the offender or cause him to be apprehended, and in such case the offender may be tried before the Municipal Court Judge and dealt with according to law.

171.05 PROCEDURE UPON ARREST WITHOUT WARRANT.

When a person arrested without a warrant is brought before the Municipal Court Judge, a complaint shall be filed and a warrant issued forthwith. The officer executing the warrant shall make return thereof to the Municipal Court Judge.

171.06 ISSUANCE OF WARRANTS AT REQUEST.

Any member of the Police Department without affidavit, or any citizen upon a sworn affidavit may make a complaint that an offense has been committed. It shall then be the function of the Judge of the Municipal Court to issue a warrant if proper under the law.

171.07 FAILURE OF ACCUSED PERSON TO APPEAR FOR TRIAL.

If a warrant or summons is returned executed and the accused person fails to appear within the space of one hour after the time designated for the trial, the case may be proceeded into, heard and determined as if there were an appearance by the accused. Or the Municipal Court Judge may, in his discretion, after hearing the evidence, issue his process requiring the officer to whom it shall be directed to arrest the accused and bring him, either forthwith or at some designated time, before him to hear judgment in the case.

171.08 CONTINUANCES ON MOTION OF ACCUSED.

Continuances may be granted as justice may require. If one is granted at the instance of the accused, he may be required to enter into a recognizance, payable to the City, with approved security, in a sum determined by the Municipal Court Judge conditioned for his appearance at the time and place named in the order of continuance, to answer further as to the alleged offense, and failing compliance, may be committed to jail until that time, but such imprisonment shall not continue longer than five days.

171.09 CONTINUANCES ON MOTION OF OTHER THAN ACCUSED.

If the continuance is not at the instance of the accused, he may be allowed to depart until the time appointed for the trial upon entering into his own recognizance, payable and conditioned as in Section 171.08, or without recognizance, as may be deemed right and proper.

171.10 CONTINUANCES, DEFAULT IN RECOGNIZANCE.

In case default is made in the condition of any recognizance entered into by virtue of this article, it shall be noted on the docket; and in the event that payment is not made of the sum named as the penalty thereof, an action may be maintained thereon in the name of the City in any court of competent jurisdiction to recover the amount of the penalty against the accused and his sureties. In such action the court may give judgment for the whole of the penalty, or remit it, in whole or in part, and render judgment upon such terms and conditions as may be deemed reasonable.

171.11 JUDGMENT OF GUILTY INCLUDES JUDGMENT FOR COSTS.

Upon the final hearing of any proceeding to punish for an offense, if judgment is given against the accused, such judgment shall include the costs incurred by the City, or due to any officer in that behalf, in addition to court costs equal to those assessable by the Brooke County Magistrate Court for a similar offense, and any fees required by law.
(Ord. 1998-7. Passed 4-13-98.)

171.12 ENFORCEMENT OF PENALTIES AND COSTS.

The Municipal Court Judge shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof in default of such payment and he may commit the party in default to jail for not to exceed ten days.

171.13 PAYMENT OF COURT COSTS BY CITY.

If the judgment be in favor of the person accused, he shall recover his costs, and the Municipal Court Judge shall certify such costs to the City Manager for payment, as well as those incurred by the City. And if the judgment be against such person and the costs incurred by the City cannot be collected from him, they also shall be reported by the Municipal Court Judge to the City Manager for payment. Costs shall be held to include the fees of witnesses, as in cases before magistrates.

171.14 SUSPENSION OF EXECUTION OF JUDGMENTS.

After judgment, execution may be suspended by the Municipal Court Judge upon such terms as may be imposed by him and agreed to by the party convicted.

171.15 APPEALS.

Every person sentenced under this article by the Municipal Court Judge to imprisonment or to the payment of a fine of ten dollars (\$10.00) or more (and in no case shall a fine of less than ten dollars (\$10.00) be given if the defendant, his agent or attorney object thereto) shall be allowed an appeal de novo to the County Circuit Court, upon entering into an appeal bond with surety deemed sufficient in a penalty double the amount of fine and costs, with condition that the person appealing will perform and satisfy any judgment which may be rendered against him by the Circuit Court on such appeal. Any such appeal must be perfected within ten days from and after the date upon which the sentence is imposed. If such appeal is

taken, the appeal bond and other papers in the case shall be forthwith delivered by the Clerk to the Clerk of the Court to which such appeal is taken, 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 Court.

171.16 CONTEMPT.

The Municipal Court Judge may punish for contempt of court a person guilty of any of the following acts and in no other case:

- (a) Contemptuous or insolent behavior toward the Judge while engaged in the trial of a case or in any other judicial proceeding;
- (b) Any breach of the peace, willful disturbance or indecent conduct in the presence of the Judge while so engaged, or so near as to obstruct or interrupt the proceedings;
- (c) Violence or threats of violence to the Judge or any officer, juror, witness or party going to, attending or returning from, any judicial proceeding before the Court with respect to anything done or to be done in the course of such proceeding;
- (d) Flagrant misbehavior of any officer of the City acting in his official capacity with respect to any action or judicial proceeding had or pending before the Court, or any process, judgment, order or notice herein; or
- (e) Willful resistance by an officer of the Court, juror, witness, party or other person to any lawful process or order of the Court. The Judge may, if necessary, issue a warrant of arrest for such person, who shall be given an opportunity to be heard. In the event such person is adjudged guilty of contempt, the person shall be fined not more than fifty dollars (\$50.00) for the first offense. For a second offense pertaining to the same matter the person shall be fined not more than one hundred dollars (\$100.00). For the third or any subsequent offense pertaining to the same matter the person shall be fined not more than one hundred dollars (\$100.00), or imprisoned in the County jail not more than ten days or both.

An appeal to the Circuit Court of such conviction shall lie as in criminal cases.

171.17 JURY TRIALS.

In all cases where required by the Constitution or Statutes of the State, the Municipal Court Judge shall empanel a jury to hear the evidence and decide the case. The Court shall promulgate rules for the selection and empaneling of jurors in such cases. All costs incurred in connection with jury trials shall be awarded against, and be payable by the party against whom judgment is rendered.

171.18 CONTEMPT; ENTRY OF CONVICTIONS ON DOCKET.

The conviction for contempt, specifying the particular circumstances of the offense and judgment thereon, shall be entered by the Municipal Court Judge in his docket. A warrant of commitment for the term of imprisonment may

be issued by the Judge commanding an officer to take the offender to the jail and the jailer to imprison him therein for the term. The judgment may include, in addition to the fine, all costs in the case, including costs of arrest and keeping in prison the offender. An appeal may be taken from such judgment of the Judge, as in other cases, to any court of competent jurisdiction in the County.

171.19 STREET LABOR IN DEFAULT OF FINE PAYMENT.

In case the fine imposed by any judgment of the Municipal Court costs are not promptly paid, the Judge may sentence the party in default to work out the amount of the fine and costs under the direction, control and the custody of the City Manager on the public streets or other work of the City, at a rate not below the minimum wage of the City existing at that time. In case the party in default shall fail or refuse to do the work so required of him, the party shall be imprisoned until the amount of the fine and the costs shall be paid or the party in default shall signify his willingness to do the work required of him, but the term of imprisonment in such case shall not exceed thirty days. During the time that any party fined as aforesaid shall be engaged in so working out the amount of the fine and costs imposed upon him, he shall be deemed in the custody of the officer and shall be boarded at the expense of the City.



ARTICLE 177
Juries

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| 177.01 Declaration of policy. | 177.09 Assignment of jurors to jury panels; additional drawing. |
| 177.02 Prohibition of discrimination. | 177.10 No exemptions. |
| 177.03 Definitions. | 177.11 Excuses from jury service. |
| 177.04 Jury Commission | 177.12 Discharge of excess jurors. |
| 177.05 Master list. | 177.13 Competency of jurors when City is a party. |
| 177.06 Selection of names for jury wheel or box. | 177.14 Challenging compliance with selection procedures. |
| 177.07 Drawings; notice of duty; qualification forms. | 177.15 Preservation of records. |
| 177.08 Disqualification from jury service. | |

CROSS REFERENCES

State law provisions - see W. Va. Code Ch. 52

177.01 DECLARATION OF POLICY.

It is the policy of the city that all persons selected for jury service be selected at random from a fair cross section of the population of the area served by the Municipal Court, and that all citizens have the opportunity in accordance with this article to be considered for jury service and an obligation to serve as jurors when summoned for that purpose.

177.02 PROHIBITION OF DISCRIMINATION.

A citizen may not be excluded from jury service on account of race, color, religion, sex, national origin or economic status.

177.03 DEFINITIONS.

As used in this article:

- (a) "The court" means the Municipal Court of the City of Follansbee, and includes, when the context requires, any judge of the court;
- (b) "Clerk" means Clerk of the Municipal Court and includes any Deputy Municipal Court Clerk;
- (c) "Master list" means the voter registration lists and drivers' license lists for the Municipality which may be supplemented with names from other sources prescribed pursuant to Section 177.05 in order to foster the policy and protect the rights secured by this article; Provided, that in the case the Municipal Judge chooses to employ a jury box in place of a jury wheel, that "master list" means the voter registration lists for the City.
- (d) "Voter registration lists" means the official records of persons registered to vote in the most recent general election;
- (e) "Drivers' license lists" means the official records of persons licensed by the State to operate motor vehicles and who reside within the City and have applied for a driver's license or renewal of a driver's license within the preceding two years.
- (f) "Jury wheel" means any electronic system in which are placed names or identifying numbers of prospective jurors taken from the master list and from which names are drawn at random for jury panels;
- (g) "Jury box" means any physical, nonelectronic device in which are placed names or identifying numbers of prospective jurors taken from the master list and from which names are drawn at random for jury panels.

177.04 JURY COMMISSION.

(a) A Jury Commission shall be established in the City to manage the jury selection process under the supervision and control of the Municipal Court. The Jury Commission shall be composed of the Clerk of the Municipal Court and two jury commissioners appointed for a term of four years by the Municipal Judge. The terms of office for commissioners shall commence upon appointment. Those jury commissioners appointed by the Municipal Judge in office when this section takes effect shall continue in office, unless removed, until the expiration of their respective terms of office.

No jury commissioner, after having served four years, shall be eligible to serve a successive additional term. The jury commissioners must be citizens of the United States, residents of the City and well known members of opposing political parties of the City; the chairman of a political party shall be ineligible for appointment. The jury commissioners shall receive as compensation for their services, while necessarily employed, an amount to be fixed by the Municipal Judge in accordance with the rules of the Supreme Court of Appeals.

(b) Jury commissioners may be removed from office by the Municipal Judge, for official misconduct, incompetency, habitual drunkenness, neglect of duty or gross immorality. Vacancies caused by death, resignation or otherwise shall be filled for the unexpired term in the same manner as the original appointments.

(c) Before entering upon the discharge of duties, a jury commissioner shall take and subscribe to an oath to the following effect:
State of West Virginia,

County of _____, to wit:

I, _____ do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and will faithfully discharge the duties of jury commissioner to the best of my skill and judgment and that I will not place any person upon the jury list in violation of law.

177.05 MASTER LIST.

(a) Each Jury Commission must employ either a jury wheel or a jury box. The choice of employing a jury wheel or jury box is in the discretion of the Municipal Judge.

(b) (1) If the Municipal Judge chooses to employ a jury wheel, the Jury Commission shall compile and maintain a master list consisting of all voter registration lists and driver license lists for the City, supplemented with names from other lists of persons resident therein, such as lists of utility customers, property and income taxpayers, and motor vehicle registrations, which the supreme court of appeals may designate. In compiling the master list the Commission shall avoid the duplication of names.

(2) If the Municipal Judge chooses to employ a jury box, the Jury Commission shall compile and maintain a master list consisting of all voter registration lists for the City. In compiling the master list the Commission shall avoid duplication of names.

(c) Whoever has custody, possession or control of any of the lists making up or used in compiling the master list, shall make the list available to the Jury Commission for inspection, reproduction and copying at all reasonable times.

(d) The master list is open to the public for examination.

177.06 SELECTION OF NAMES FOR JURY WHEEL OR BOX.

(a) The Jury Commission for the City shall maintain a jury wheel or jury box, into which the Commission shall place the names or identifying numbers of prospective jurors taken from the master list.

(b) The jury wheel or jury box shall include at least 200 names. From time to time a larger or additional number may be determined by the Jury Commission or ordered by the Municipal Judge to be placed in the jury wheel or jury box. In October of each even-numbered year the jury wheel or jury box shall be emptied and refilled as prescribed in this article: Provided, that the Jury Commission shall take measures to ensure that a sufficient number of jurors has been drawn from the earlier jury wheel or jury box before it is emptied to provide jurors for all jury panels until the jury wheel or jury box is refilled and additional jurors may be drawn therefrom; and those jurors drawn from the former wheel or box shall remain eligible as jurors until the last day of December of that year, and if drawn for a particular jury which has not finished hearing or deciding the matter before it by the last day of December of that year, such person shall remain eligible as a juror for that particular unfinished case until such case is finished or the juror is otherwise discharged as provided by law.

(c) The names or identifying numbers of prospective jurors to be placed in the jury wheel or jury box shall be selected by the Jury Commission at random from the master list in the following manner; the total number of names on the master list shall be divided by the number of names to be placed in the jury wheel or jury box and the whole number next greater than the quotient shall be the "key number," except that the key number shall never be less than two. A "starting number" for making the selection shall then be determined by a random method from the numbers from one to the key number, both inclusive. The required number of names shall then be selected from the master list by taking in order the first name on the master list corresponding to the starting number and then successively the names appearing in the master list at intervals equal to the key number, recommencing if necessary at the start of the list until the required number of names has been selected. Upon recommencing at the start of the list, or if additional names are subsequently to be selected for the master jury wheel or jury box, names previously selected from the master list shall be disregarded in selecting the additional names. The Jury Commission is not required to, but may, use an electronic or mechanical system or device in carrying out its duties.

(d) Prior to implementing the procedure described in subsection (c), the Commission shall strike from the master list names of all those persons who have served as jurors in the preceding two years.

177.07 DRAWINGS; NOTICE OF DUTY; QUALIFICATION FORMS.

(a) The Municipal Judge shall provide by order rules relating to the random drawing by the Jury Commission of panels from the jury wheel or jury box for juries in Municipal Court. Upon receipt of the direction and in the manner prescribed by the Court, the Jury Commission shall publicly draw at random from the jury wheel or jury box the number of jurors specified.

(b) If a jury is ordered to be drawn, the Clerk thereafter shall cause each person drawn for jury service to be served not less than thirty days before the date for which the persons are to report for jury duty with a summons either personally or by registered or certified mail, return receipt requested, addressed to the person at their usual residence, business or post office address, requiring them to report for jury service at a specified time and place.

(c) If the summons provided in subsection (b) hereof is served by registered or certified mail, the Clerk shall also serve in the same mail with the summons a juror qualification form accompanied by instructions to fill out and return the form by mail to the Clerk within ten days after its receipt. If the summons provided in subsection (b) hereof is served personally, such service shall also include a like juror qualification form with similar instructions to complete and return the form. The juror qualification form is subject to approval by the Municipal Judge as to matters of form and shall elicit the name, address of residence, sex, race and age of the prospective juror and whether the prospective juror:

- (1) Is a citizen of the United States and a resident of the City;
- (2) Is able to read, speak and understand the English language;
- (3) Has any physical or mental disability substantially impairing the capacity to render satisfactory jury service;
- (4) Has served as a municipal, magistrate, petit or grand juror within the previous two years;
- (5) Has lost the right to vote because of criminal conviction; and
- (6) Has been convicted of perjury, false swearing or other infamous offense.

The juror qualification form shall contain the prospective juror's declaration that the responses are true to the best of the prospective juror's knowledge and an acknowledgement that a willful misrepresentation of a material fact may be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than thirty days, or both. Notarization of the juror qualification form shall not be required. If the prospective juror is unable to fill out the form, another person may do it for the prospective juror and indicate that such person has done so and the reason therefor. If it appears there is an omission, ambiguity or error in a returned form, the Clerk shall again send the form with instructions to the prospective juror to make the necessary addition, clarification or correction and return the form to the Clerk within ten days after its second receipt.

(d) Any prospective juror who fails to return a completed juror qualification form as instructed shall be directed by the Jury Commission to appear forthwith before the Clerk to fill out the juror qualification form. At the time of the prospective juror's appearance for jury service, or at the time of any interview before the Court or Clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the Court or Clerk, at which time the prospective juror may be questioned, but only with regard to the responses to questions contained on the form and ground for the prospective juror's excuse or disqualification. Any information thus acquired by the Court or Clerk shall be noted on the juror qualification form.

(e) A prospective juror who fails to appear as directed by the Commission pursuant to subsection (b) hereof shall be ordered by the Court to appear and show cause for failure to appear as directed. If the prospective juror fails to appear pursuant to the Court's order or fails to show good cause for failure to appear as directed by the Jury Commission, such prospective juror is guilty of civil contempt and shall be fined not more than one hundred dollars (\$100.00).

(f) Any person who willfully misrepresents a material fact on a juror qualification form or during any interview described in subsection (b) hereof for the purpose of avoiding or securing service as a juror, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

177.08 DISQUALIFICATION FROM JURY SERVICE.

(a) The Court, upon request of the Jury Commission or a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service. The Clerk shall enter this determination in the space provided on the juror qualification form and on the alphabetical lists of names drawn from the jury wheel or jury box.

(b) A prospective juror is disqualified to serve on a jury if the prospective juror:

- (1) Is not a citizen of the United States, at least eighteen years old and a resident of the City;
- (2) Is unable to read, speak and understand the English language;
- (3) Is incapable, by reason of substantial physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician's certificate as to the disability and the certifying physician is subject to inquiry by the Court at its discretion;

- (4) Has served as a municipal, magistrate, petit or grand juror within the previous two years;
- (5) Has lost the right to vote because of a criminal conviction; or,
- (6) Has been convicted of perjury, false swearing or other infamous offense.

(c) A prospective juror sixty-five years of age or older is not disqualified from serving, but shall be excused from service by the Court upon the juror's request.

177.09 ASSIGNMENT OF JURORS TO JURY PANELS; ADDITIONAL DRAWING.

(a) The jurors drawn for jury service shall be assigned at random by the Clerk to each jury panel in a manner prescribed by the Court.

(b) If there is an unanticipated shortage of available jurors drawn from the jury wheel or jury box the Court may require the Chief of Police to summon a sufficient number of jurors selected at random by the Clerk from the jury wheel or jury box in a manner prescribed by the Municipal Judge.

(c) The names of the qualified jurors drawn from the jury wheel or jury box and the contents of jury qualification forms completed by the jurors shall be made available to the public.

177.10 NO EXEMPTIONS.

No qualified prospective juror is exempt from jury service.

177.11 EXCUSES FROM JURY SERVICE.

(a) The Court, upon request of a prospective juror or on its own initiative, shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror should be excused from jury service. The Clerk shall enter this determination in the space provided on the juror qualification form.

(b) A person who is not disqualified for jury service under Section 177.08 may be excused from jury service by the Court upon a showing of undue hardship, extreme inconvenience or public necessity, for a period the Court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the Court's direction.

177.12 DISCHARGE OF EXCESS JURORS.

The Court may, upon the appearance of an excess number of qualified jurors, dispense with the attendance of the unneeded jurors on any one day the Court is sitting, as long as such discharge from duty is conducted in a random fashion and in a manner consistent with the spirit of this article.

177.13 COMPETENCY OF JURORS WHEN CITY IS A PARTY.

In any suit or proceeding in which the City is a party, no person is incompetent as a juror because such person is an inhabitant or taxpayer of the City.

177.14 CHALLENGING COMPLIANCE WITH SELECTION PROCEDURES.

(a) Within seven days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings and in a criminal case to quash the warrant or for other appropriate relief on the ground of substantial failure to comply with this article in selecting the jury.

(b) Upon motion filed under subsection (a) hereof containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this article, the moving party is entitled to present in support of the motion the testimony of the jury commissioners or the Clerk, any relevant records and papers not public or otherwise available used by the jury commissioners or the Clerk, any other relevant evidence. If the Court determines that in selecting a jury there has been a substantial failure to comply with this article, the Court shall stay the proceedings pending the selection of the jury in conformity with this article, quash a warrant or grant other appropriate relief.

(c) In the absence of fraud, the procedures prescribed by this section are the exclusive means by which a person may challenge a jury on the ground that the jury was not selected in conformity with this article.

177.15 PRESERVATION OF RECORDS.

All records and papers compiled and maintained by the jury commissioners or the Clerk in connection with selection and service of jurors shall be preserved by the Clerk for at least four years after the jury wheel or jury box used in their selection is emptied and refilled, or for any longer period ordered by the Court.