

CODIFIED ORDINANCES OF FOLLANSBEE
PART SEVEN - BUSINESS REGULATION AND TAXATION CODE

CHAPTER ONE - Business Regulation

- Art. 705. Canvassers and Solicitors.
- Art. 709. Sexually Oriented Businesses.

CHAPTER THREE - Taxes and Service Charges

- Art. 741. License Taxes Generally.
- Art. 745. Business and Occupation Tax.
- Art. 749. Nonintoxicating Beer.
- Art. 753. Intoxicating Liquor.
- Art. 757. Private Clubs.
- Art. 761. Public Utilities Service Tax.
- Art. 763. Wine Distributors and Retailers.
- Art. 765. Exchange of Tax Information.

CODIFIED ORDINANCES OF FOLLANSBEE
PART SEVEN - BUSINESS REGULATION AND TAXATION CODE

CHAPTER ONE - Business Regulation
Art. 705. Canvassers and Solicitors.
Art. 709. Sexually Oriented Businesses.

ARTICLE 705
Canvassers and Solicitors

- | | |
|---|---|
| <p>705.01 Uninvited solicitation at private residences.</p> <p>705.02 Administrative officer.</p> <p>705.03 Charitable solicitations.</p> | <p>705.04 Itinerant house-to-house canvassers.</p> <p>705.99 Penalty.</p> |
|---|---|

CROSS REFERENCES

Solicitation of charitable funds - see W. Va. Code Art. 29-19
Obtaining money by false pretenses - see W. Va. Code 61-3-24 et seq.
Trespass - see GEN. OFF. 533.02

705.01 UNINVITED SOLICITATION AT PRIVATE RESIDENCES.

The practice of going in and upon private residences in the City by solicitors, peddlers, hawkers, and itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or occupant of such private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise or disposing of or peddling or hawking the same, is declared to be a nuisance and punishable as such nuisance. (1970 Code Sec. 6-1)

705.02 ADMINISTRATIVE OFFICER.

For the purposes of this article, the term "administrative officer" means the person designated by the City Manager to administer the provisions of this article and the rules and regulations of Council promulgated pursuant thereto; provided, that the City Manager may designate the City Clerk to serve ex officio as administrative officer. The administrative officer is hereby empowered to administer oaths and take acknowledgements which may be required by this article or by rules and regulations promulgated pursuant thereto.
(1970 Code Sec. 6-2)

705.03 CHARITABLE SOLICITATIONS.**(a) Rules and Regulations; Advisory Committee.**

- (1) Council shall, by ordinance or resolution, promulgate rules and regulations for the implementation of this article for the purpose of authorizing, regulating, restricting and controlling the sale of articles to and the begging or solicitation of money or other form of financial assistance from the public.
- (2) Council may, by ordinance or resolution, direct the Mayor to appoint, subject to Council's approval, a committee of representative citizens, which may include one or more members of Council, to prepare and recommend to Council for adoption and promulgation the rules and regulations mentioned in subsection (a)(1) hereof and Council may call upon such committee from time to time for recommendations as to policy in the implementation of the purposes and intent of this article.
- (3) Rules and regulations promulgated pursuant to subsection (a)(1) hereof, shall be maintained on file in the office of the City Clerk, and shall there be open to the public for inspection and use during all regular business hours; and no person shall violate or fail to comply with any such rule or regulation.

(b) Permit Required. No person shall solicit money or any other form of financial assistance, or sell anything or offer anything for sale, for or in behalf of any charitable, religious, patriotic, social, benevolent, fraternal or philanthropic organization or purpose in the City unless such person shall first obtain a permit to do so, which permit shall be issued under the rules and regulations promulgated by Council pursuant to this article.

(c) Applications for Permits. The administrative officer shall receive applications for permits required by this article, which shall be on forms approved by the City Manager. Applications for permits required by this article shall be sworn to by the applicant and shall contain the following information:

- (1) The name of the organization applying for permit and the address of its headquarters.
- (2) The names and addresses of its principal officers and managers.
- (3) The purposes for which the permit is desired, and the use to be made of any receipts derived from activity conducted pursuant to such permit.

- (4) The names and addresses of the persons by whom the receipts are to be disbursed.
- (5) The names and addresses of the persons who will be in direct charge of such sale or solicitation.
- (6) An outline of the method to be used in such solicitation or sale, and the period of time during which the solicitation or sale is to continue.
- (7) The amount of money expected to be realized from the solicitation or sale.
- (8) The amount of wages, fees, commissions, expenses or emoluments to be expended or paid in connection with such solicitation or sale, together with the manner in which the wages, fees, commissions, expenses or emoluments are to be expended and to whom they are to be paid.
- (9) A full statement of the character and extent of the charitable, religious, patriotic, social, benevolent, fraternal or philanthropic work now being done by the applicant organizations.
- (10) Such other information as may be required by the City Manager to assist him in determining whether the permit should be granted under the rules and regulations of the City Council promulgated pursuant to this article.

The failure of an applicant to furnish under oath the information required by this section shall constitute sufficient grounds for denial of the permit applied for.

(d) Action by Administrative Officer Upon Receipt of Application. The administrative officer shall check each application received by him under this article as to its form and sufficiency, and shall return to the applicant any deficient application together with his appropriate comment thereon. The administrative officer shall promptly transmit to the City Manager each application which appears to be in proper form and which contains answers to all questions.

(e) Action by City Manager on Application for Permit.

- (1) The City Manager, upon receipt of an application for permit under this article, shall determine whether the permit should be granted. In making such determination he shall consider the statements made in the application, together with such pertinent facts as may be developed by him, and he shall follow such procedure and make such investigation as may be prescribed in the rules and regulations promulgated by Council pursuant to this article.
- (2) Upon determination by the City Manager that an application for permit meets the requirements of this article and the rules and regulations of Council, he shall indicate his approval by endorsement thereon and return it to the administrative officer; provided, that such endorsement may contain such stipulations and conditions as may be considered by the City Manager to be necessary to make the applied for permit conform to the requirements of this article and the rules and regulations of Council.

- (3) Upon determination by the City Manager that an application for permit should be disapproved because the issuance of such permit would be contrary to the provisions of this article or the rules and regulations promulgated by Council pursuant to this article, he shall indicate his disapproval and the reasons therefor by endorsement on the application, and return it to the administrative officer.

(f) Issuance of Permit; Duration; Conditions; Fee; Validation. The administrative officer shall issue a permit to each applicant whose application under this article has been approved by the City Manager, such permit to be for the period of time specified in the application; provided, that no permit shall be valid for a period in excess of three months, subject to renewal for another three month period upon application to and approval by the City Manager. Permits issued upon applications endorsed by the City Manager with stipulations or conditions shall be written so as to contain such conditions and stipulations, and, in any case, the approved application shall be deemed to be a part of the permit itself.

No permit under this section shall be valid until the applicant has paid to the City Manager a permit fee of one dollar (\$1.00) nor until the City Manager has, by his signature thereon, acknowledged receipt of such payment.

(g) Approved Applications for Permits to Remain on File. Each application for permit under this article which is approved and for which a permit is issued shall be placed on file in the office of the administrative officer and shall there remain on file for a period of at least two years following the expiration date of the permit to which it relates; and during such period shall be open to the public for inspection and use during all regular business hours.

(h) Permits Nontransferable. Any permit issued pursuant to this article shall be nontransferable, but the permittee may use any number of solicitors and representatives as shall be reported to and approved by the City Manager.

(i) Suspension or Revocation. Any permit issued pursuant to this article may be suspended or revoked by the City Manager upon noncompliance on the part of the permittee with the terms and conditions of the permit or the approved application for such permit, or upon evidence of fraud or misrepresentation committed by the permittee or his solicitors or representatives in and about the solicitation, sale or offer for sale authorized by the permit, or if, in the opinion of the City Manager any practice pursued or any act committed in the solicitation or disposition of the proceeds is unfair, unjust or inequitable or is in violation of any rule or regulation promulgated by the City Council pursuant to this article.

(j) Appeals. An applicant for a permit or a permit holder under the provisions of this article may appeal from any action of the City Manager to Council; provided, that notice of such appeal shall be filed with the City Clerk within fourteen days of the date of the action appealed from. No formal method of procedure shall be necessary for making such appeal.

(k) Disposition of Fees; Payment of Expenses. All fees paid to the City Manager by virtue of this article shall be deposited in the general fund. The operating expenses required in the administration of this article shall be paid by the City Manager from the general fund of the City.

(l) Exemptions. Nothing contained in this article shall be construed to prevent or forbid any pastor, priest, rabbi, rector, minister of the gospel or the governing body of any church, or the members or officers of any established society, association or corporation that is organized exclusively for charitable, religious, patriotic, social, benevolent, fraternal or philanthropic purposes, not operated for profit and in which none of the net earnings of such organization inure to the pecuniary benefit of any person, shareholder or individual, from conducting without permit a private solicitation or sale among the members thereof; and nothing contained in this article shall grant the City Manager the right to deny a permit to any pastor, priest, rabbi, rector, minister of the gospel or the governing body of any church to conduct a public sale or solicitation upon application which meets the requirements of this article and the rules and regulations of Council promulgated pursuant to this article. (1970 Code Secs. 6-3 to 6-17)

(m) Charitable solicitations made by persons or organizations within the City by the sale of articles to and/or the begging or solicitation of money or other form of financial assistance from the public shall be restricted to privately owned real estate only. Provided, however, that such charitable solicitations may also be made on the public sidewalk located immediately in front of any business located within the City if, and only if the person or organization desiring to so solicit on the public sidewalk shall first obtain prior written permission from each and every business owner on whose front sidewalk said solicitation will be made; and such person or organization desiring to solicit on a public sidewalk shall submit the aforesaid written permission statements to the City at the time of application for a permit.

- (1) The aforesaid written permission statements shall indicate the name, address, and telephone number of the person or organization requesting permission to solicit, the reason for the solicitation, and the date(s) and time(s) of solicitation. Such written permission statements shall be signed by the owner of each business where the solicitation is scheduled to take place, or by the owner's authorized agent, and, as well, by the person coordinating the charitable solicitation.
- (2) Any permit issued by the City in regard to charitable solicitation shall limit the charitable solicitation to those public sidewalks located in front of those businesses whose owners have previously signed written permission statements and, as well, to privately owned real estate. No charitable solicitation shall be permitted on the public sidewalk in front of any business whose owner did not sign a permission statement or anywhere else within the City. (Ord. 90/91-2. Passed 9-10-90.)

705.04 ITINERANT HOUSE-TO-HOUSE CANVASSERS.

(a) Defined. For the purpose of this article, an itinerant house-to-house canvasser means any person who goes from house to house or from place to place in person, or who calls from house to house or from place to place by means of telephone in the City, selling or offering to sell or take orders for goods, wares, merchandise or any other article for future delivery, or for services to be performed in the future, or for the making, manufacturing or repairing of any article or thing; provided, that this definition shall not include newsboys or any driver operating a regular route who solicits additional customers on such route when such solicitation is only incidental to his regular duties or any person having in the City a bona fide permanent address or place of business.

(b) Certificate of Registration Required. No person shall engage in the occupation of itinerant house-to-house canvasser within the City without having on his person a certificate of registration procured from the administrative officer, with the approval of the Chief of Police, pursuant to the provisions of this article.

(c) Application for Certificate. Any person desiring to engage in the occupation of house-to-house canvasser shall apply to the administrative officer for a certificate of registration. Such application shall be made on a form provided by the administrative officer and shall show, and contain in addition to such other information as that officer may desire, the following:

- (1) The name and description of the applicant.
 - (2) The permanent home address and local address of the applicant.
 - (3) If employed, the name and address of the applicant's employer.
 - (4) A photograph of the applicant taken within ninety days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.
 - (5) The fingerprints of the applicant.
 - (6) A statement as to whether the applicant has been convicted of any felony or misdemeanor involving moral turpitude, the nature of the offense, the time committed and the punishment or penalty assessed therefor.
- Each application shall be signed and sworn to by the applicant.

(d) Investigation of Applicants. Each sworn application for a certificate of registration shall be transmitted promptly by the administrative officer to the Chief of Police, who shall conduct such investigation as may be necessary to determine the applicant's police record, if any. If the Chief of Police shall find that the applicant has no record of conviction of felony or misdemeanor involving moral turpitude and is not charged with any such offense and appears to be of good moral character, he shall endorse his approval upon the application, and if he finds otherwise his endorsement shall indicate disapproval, and in either case he shall promptly return the application to the administrative officer.

(e) Issuance, Content and Duration of Certificate: Fee: Validation.

- (1) Subject to the provisions of this article, the administrative officer shall issue a certificate of registration to each applicant whose application bears endorsement by the Chief of Police indicating approval. Each certificate of registration shall contain a photograph of the registrant as contained in his application, and shall expire one year from the date of issuance.

- (2) No certificate of registration under this article shall be valid until the applicant has paid to the City Manager a certificate fee of five dollars (\$5.00) nor until the City Manager has, by his signature thereon, acknowledged receipt of such payment.

(f) Separate Registration and Fee Required. In the case of registration by a corporation or other entity employing more than one agent, canvasser or solicitor, a separate registration of each such agent, canvasser or solicitor shall be made and a separate fee charged for each such registration unless exempted by subsection (j) hereof.

(g) Display of Certificates by Registrants. No person to whom a certificate of registration has been issued pursuant to the provisions of this article, shall fail, neglect or refuse to display such certificate of registration upon demand of any police officer of the City or any person to whom such registrant offers goods or services for sale.

(h) Revocation of Certificate. The administrative officer shall revoke any certificate of registration issued pursuant to the provisions of this article for any false statement made in the application for such certificate or for dishonest or improper dealing with the public.

(i) Resident House-to-House Canvassers. Any person engaging in the business of house-to-house selling and not covered by the provisions of this article shall, on applying to the administrative officer, be issued a certificate so stating. No fee shall be charged for this certificate; except, that the City shall be reimbursed for the cost of issuing such certificate, which cost shall not exceed one dollar (\$1.00).
(1970 Code Secs. 6-18 to 6-26)

(j) Exemptions. Any organization which is exempt by law, court decision, or other governmental authority, whether such organization be charitable, religious, patriotic, social, benevolent, fraternal or philanthropic or not, shall not be required to obtain a permit under this section, and shall not be in any manner prohibited from exercising their legal and/or constitutional rights afforded in writing to the City Manager prior to any solicitation as set forth in previous sections:

- (1) The name of the organization;
- (2) The names and addresses of the persons who will be in direct charge of soliciting at private residences;
- (3) A statement of the character and kind of the organization;
- (4) The tax exempt number of the organization as obtained from the Internal Revenue Service of the United States government, if the organization has such a tax exempt number.
- (5) The nature and type of the activity intended to occur from door to door at private residences.

(Passed 7-12-82)

705.99 PENALTY.

(EDITOR'S NOTE: See Section 101.99 for general Code penalty.)

ARTICLE 709
Sexually Oriented Businesses

709.01	Purpose and intent.	709.15	Regulations pertaining to exhibition of sexually explicit films or videos.
709.02	Definitions.	709.16	Exterior portions of sexually oriented businesses.
709.03	Classification.	709.17	Signage.
709.04	Permit and/or license required.	709.18	Persons younger than eighteen prohibited from entry; attendant required.
709.05	Issuance of permit and/or license.	709.19	Massages or baths administered by person of opposite sex.
709.06	Fees.	709.20	Exemptions.
709.07	Inspection.	709.21	Notices.
709.08	Expiration of permit and/or license.	709.22	Injunction.
709.09	Suspension.	709.23	Separability.
709.10	Revocation.	709.99	Penalty.
709.11	Transfer of permit and/or license.		
709.12	Locational restrictions.		
709.13	Pre-existing locations.		
709.14	Additional regulations for adult motels.		

CROSS REFERENCES

Indecency and obscenity - see GEN. OFF. Art. 517

709.01 PURPOSE AND INTENT.

It is the purpose of this article to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City of Follansbee, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials. (Ord. 98-10. Passed 8-10-98.)

709.02 DEFINITIONS.

(a) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) "Adult bookstore" or "adult video store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; and
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas". A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

(c) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

- (1) Persons who appear in a state of semi-nudity; or
- (2) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (4) Persons who engage in lewd, lascivious or erotic dancing or performance that are intended for the sexual interests or titillation of an audience or customers.

(d) "Adult motel" means a hotel, motel or similar commercial establishment that:

- (1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; and

- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.
- (e) "Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (f) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".
- (g) "Director" means the Chief of Police and any such employee(s) of the Police Department as he may designate to perform the duties of the Director under this article.
- (h) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (i) "Escort agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (j) "Establishment" means and includes any of the following:
- (1) The opening or commencement of any sexually oriented business as a new business;
 - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
 - (4) The relocation of any sexually oriented business.
- (k) "Licensed day-care center" means a facility licensed by the State of West Virginia, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for four or more children under eighteen years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
- (l) "Permittee and/or licensee" means a person in whose name a permit and /or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- (m) "Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.
- (n) "Nudity" or a "state of nudity" means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(o) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(p) "Semi-nude" means a state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(q) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(r) "Sexually oriented business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or sexual encounter center.

(s) "Specified anatomical areas" means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

(t) "Specified sexual activities" means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(u) "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exist on October 17, 1995.

(v) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means, or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. 98-10. Passed 8-10-98.)

709.03 CLASSIFICATION.

Sexually oriented businesses are classified as follows:

- (a) Adult arcades;
- (b) Adult bookstores or adult video stores;
- (c) Adult cabarets;
- (d) Adult motels;
- (e) Adult motion picture theaters;

- (f) Adult theaters;
- (g) Escort agencies;
- (h) Nude model studios; and
- (i) Sexual encounter centers. (Ord. 98-10. Passed 8-10-98.)

709.04 PERMIT AND/OR LICENSE REQUIRED.

(a) It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license, issued by the Director.

(b) An application for a permit and/or license must be made on a form provided by the City of Follansbee. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business.

The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(c) The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Department and building official.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten (10%) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

(e) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.

(f) Application for a permit, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The intended operator shall be required to give the following information on the application form:

- (1)
 - A. The name, street address (and mailing address if different) and West Virginia driver's license number of the intended operator;
 - B. The name and street address (and mailing address if different) of the owner(s);
- (2) The name under which the establishment is to operated and a general description of the services to be provided;
- (3) The telephone number of the establishment;
- (4) The address, and legal description of the tract of land on which the establishment is to be located;
- (5) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and

- (6) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
- (g) The application shall be accompanied by the following:
 - (1) Payment of the application fee in full;
 - (2) If the establishment is a West Virginia corporation, a certified copy of the articles of incorporation, together with all amendments, thereto;
 - (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
 - (4) If the establishment is a limited partnership formed under the laws of West Virginia, a certified copy of the certificate of limited partnership, together with all amendments thereto;
 - (5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
 - (6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
 - (7) If the persons identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;
 - (8) Any of items (2) through (7), above shall not be required for a renewal application if the applicant states that the documents previously furnished the director with the original application or previous renewals thereof remain correct and current.
- (h) The application shall contain a statement under oath that:
 - (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - (2) The applicant has read the provisions of this article.
- (i) A separate application and permit shall be required for each sexually oriented business.
- (j) If the establishment is in operation it may remain in operation during the pendency of its application for a permit and/or license under the provisions of this article, inclusive of an period(s) of judicial review of administrative action.
(Ord. 98-10. Passed 8-10-98.)

709.05 ISSUANCE OF PERMIT AND/OR LICENSE.

(a) The Director shall approve the issuance of a permit and/or license to an applicant within thirty days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under eighteen years of age.
- (2) An applicant or an applicant's spouse is overdue in his payment to the City, the State of West Virginia or the United States Government of taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.
- (4) An applicant is residing with a person who has been denied a permit and/or license by the City to operate a sexually oriented business within the preceding twelve months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve months.
- (5) The premises to be used for the sexually oriented business have not been approved by the Health Department, Fire Department or building official as being in compliance with applicable laws or ordinances.
- (6) The permit and/or license fee required by this article has not been paid.
- (7) An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

(b) The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c) The Health Department, Fire Department and building official shall complete their certification that the premises is in compliance or not in compliance within twenty days of receipt of the application by the Director. The certification shall be promptly presented to the Director.

(d) In the event that the Director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within forty five days of the receipt of its application by the Director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten days at any time before the notice is issued in order to make modifications necessary to comply with this article.

(e) An applicant may appeal the decision of the Director regarding a denial to City Council by filing a written notice of appeal with the City Clerk within fifteen days after the applicant is given notice of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may submit a memorandum in response to the memorandum filed by the applicant on appeal to City Council. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the City Council shall vote to either uphold or overrule the Director's decision. Such vote shall be taken within twenty-one calendar days after the date on which the City Clerk receives the notice of appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal, unless the establishment is already in operation, in which event the establishment may remain in operation in accordance with this article. (Ord. 98-10. Passed 8-10-98.)

709.06 FEES.

The annual fee for a sexually oriented business permit and/or license is one thousand five hundred dollars (\$1,500.00). This fee is to be used to pay for the cost of the administration and enforcement of this article. (Ord. 98-10. Passed 8-10-98.)

709.07 INSPECTION.

An applicant, or permittee and/or licensee shall permit representatives of the Police Department, municipal, county and state health departments, Fire Department, or other City or State departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the licensure/permitting and regulatory provisions of this article, at any time it is occupied or open for business. (Ord. 98-10. Passed 8-10-98.)

709.08 EXPIRATION OF PERMIT AND/OR LICENSE.

(a) Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in this article. Application for renewal should be made at least thirty days before expiration date; the expiration of the permit and/or license will not be affected.

(b) When the Director denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Director finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety days have elapsed since the date denial became final. (Ord. 98-10. Passed 8-10-98.)

709.09 SUSPENSION.

The Director shall suspend a permit and/or license for a period not to exceed thirty days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

- (a) Violated or is not in compliance with any section of this article;
- (b) Became impaired or intoxicated through the use of alcoholic beverages while on the sexually oriented business premises;
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises. (Ord. 98-10. Passed 8-10-98.)

709.10 REVOCATION.

(a) The Director shall revoke a permit and/or license if a cause of suspension occurs and the permit and/or license has been suspended within the proceeding twelve months.

- (b) The Director shall also revoke a permit and/or license if he determines that:
- (1) A permittee and/or licensee gave false or misleading information in the material submitted during the application process;
 - (2) A permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
 - (5) A permittee and/or licensee or an employee has knowingly allowed an act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;

- (6) A permittee and/or licensee is delinquent in payment to the City, State or Federal governments for any taxes for fees past due;
- (7) The owner or operator of the permitted establishment knowingly allowed a person under eighteen years of age to enter the establishment; or
- (8) There was a change of owner or operator for which a transfer application was not timely filed.

(c) When the Director revokes a permit and/or license, the revocation shall continue for one year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one year from the date revocation became effective. If, subsequent to revocation, the Director finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety days have elapsed since the date the revocation became effective.

(d) After denial of an application by the Director and City Council, or denial of a renewal of application, or suspension or revocation of a permit and/or license by the Director, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly review by the court as in extraordinary remedy proceeding.
(Ord. 98-10. Passed 8-10-98.)

709.11 TRANSFER OF PERMIT AND/OR LICENSE.

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.
(Ord. 98-10. Passed 8-10-98.)

709.12 LOCATIONAL RESTRICTIONS.

Sexually oriented businesses shall be permitted in any area of the City provided that:

(a) The sexually oriented business may not be operated within 1,000 feet:

- (1) A church, synagogue or regular place of religious worship;
- (2) A public or private elementary or secondary school;
- (3) A boundary of any primarily residential area;
- (4) A public park;
- (5) A licensed day-care center; or
- (6) Another sexually oriented business.

(b) A sexually oriented business may not be operated in the same building, structure or portion thereof, containing another sexually oriented business.

(c) For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, primarily residential area, residential lot, or licensed day care center.

(d) For purposes of subsection (c) hereof, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. (Ord. 98-10. Passed 8-10-98.)

709.13 PRE-EXISTING LOCATIONS.

(a) Any business lawfully operating on the effective date of this article that is in violation of the locational requirements of this article shall be deemed a pre-existing location. The pre-existing location will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty days or more. Such pre-existing location shall not be increased, enlarged, extended or altered except that it may be changed to a non-sexually oriented business. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the permissible location and the later-established business(es) is the pre-existing location.

(b) A sexually oriented business lawfully operating as a permissible location is not rendered a pre-existing location by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or primarily residential area within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when a application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked. (Ord. 98-10. Passed 8-10-98.)

709.14 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (Ord. 98-10. Passed 8-10-98.)

709.15 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty square feet of floor space, a film, video cassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in

the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any or patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restroom may not contain video reproduction or player equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's stations.
- (6) It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (7) No viewing room may be occupied by more than one person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.
- (9) It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (Ord. 98-10. Passed 8-10-98.)

709.16 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

(a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any word, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.

(c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

- (1) The establishment is a part of a commercial multi-unit center; and
- (2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business. (Ord. 98-10. Passed 8-10-98.)

709.17 SIGNAGE.

(a) Notwithstanding any other City ordinance, code, or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than one primary sign and one secondary sign, as provided herein.

(b) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plane, rectangular in shape;
- (3) Not exceed seventy-five square feet in area; and
- (4) Not exceed ten feet in height; ten feet in length; nor ten feet in height distance from the ground to the lowest or bottom portion of the sign.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one display surface. Such display surface shall:

- (1) Be a flat plane, rectangular in shape;
- (2) Not exceed twenty square feet in area;
- (3) Not exceed five feet in height and four feet in width; and
- (4) Be affixed or attached to any wall or door of the enterprise.

(f) The provisions of item (1) of subsection (b) and subsection (c) and (d) shall also apply to secondary signs. (Ord. 98-10. Passed 8-10-98.)

709.18 PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY: ATTENDANT REQUIRED

(a) It shall be unlawful to allow a person who is younger than eighteen years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(b) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen unless such attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's, or chauffeur's driver's license; or
 - (2) A valid personal identification certificate issued by the State of West Virginia reflecting such person is eighteen years of age or older.
- (Ord. 98-10. Passed 8-10-98.)

709.19 MESSAGES OR BATHS ADMINISTERED BY PERSON OF OPPOSITE SEX.

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. (Ord. 98-10. Passed 8-10-98.)

709.20 EXEMPTIONS.

It is a defense to prosecution under this article that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school licensed by the State of West Virginia; a college, junior college, or university supported entirely or partly by taxation;
 - (b) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
- (Ord. 98-10. Passed 8-10-98.)

709.21 NOTICES.

(a) Any notice required or permitted to be given by the Director or any other city office, division, department or other agency under this article to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application that has been received by the Director, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

(b) Any notice required or permitted to be given to the Director by any person under this article shall not be deemed given until and unless it is received in the office of the Director.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the Director in writing of any change of residence or mailing address. (Ord. 98-10. Passed 8-10-98.)

709.22 INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this article is subject to a suit for injunction as well as prosecution for criminal violations as provided herein, all in addition to the suspension and revocation powers of the Director for noncompliance with the provisions of this article. (Ord. 98-10. Passed 8-10-98.)

709.23 SEPARABILITY.

If any section, subsection, or clause of this article shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby. (Ord. 98-10. Passed 8-10-98.)

709.99 PENALTY.

Whoever violates any provision of this article shall in addition to any other actions which may be taken by the Director hereunder, be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than thirty days or both. (Ord. 98-10. Passed 8-10-98.)

CHAPTER THREE - Taxes and Service Charges

- Art. 741. License Taxes Generally.
- Art. 745. Business and Occupation Tax.
- Art. 749. Nonintoxicating Beer.
- Art. 753. Intoxicating Liquor.
- Art. 757. Private Clubs.
- Art. 761. Public Utilities Service Tax.
- Art. 763. Wine Distributors and Retailers.
- Art. 765. Exchange of Tax Information.

ARTICLE 741 License Taxes Generally

- | | | | |
|--------|--|--------|---|
| 741.01 | Legislative findings; purpose. | 741.22 | Theaters and public shows. |
| 741.02 | Definitions. | 741.23 | Collection agencies. |
| 741.03 | Payment and term of license. | 741.24 | Employment agencies. |
| 741.04 | Fees to constitute debts due the City. | 741.25 | Billiard, pool, bowling alleys and bagatelle tables. |
| 741.05 | Applicability; nontransferability. | 741.26 | Stores. |
| 741.06 | Effect of imposition of license tax. | 741.27 | Gasoline retailers and wholesalers. |
| 741.07 | Acts prohibited. | 741.28 | Fees for certain trades, professions, or occupations. |
| 741.08 | Effect of license. | 741.29 | Hearing aid fitters. |
| 741.09 | Duties and powers of City Manager. | 741.30 | Outdoor advertising. |
| 741.10 | License fees cumulative. | 741.31 | Dental corporations. |
| 741.11 | Change in name or partners. | 741.32 | Funeral establishments. |
| 741.12 | Applicability of Article. | 741.33 | Medical corporations. |
| 741.13 | Display of certificate. | 741.34 | Nursing homes and personal care homes. |
| 741.14 | Fees for owning and operating coin-operated amusement devices or vending machines. | 741.35 | Hospitals. |
| 741.15 | Coin-operated laundromats; car wash. | 741.36 | Hawker and peddler. |
| 741.16 | Circus, carnivals and other public shows. | 741.37 | Itinerant vendors. |
| 741.17 | Trading stamps. | 741.38 | Barber and beautician schools. |
| 741.18 | Fortunetellers. | 741.39 | Insurers. |
| 741.19 | Wholesale dealers in tobacco. | 741.40 | Construction; severability. |
| 741.20 | Junk dealers or their agents. | 741.41 | False statements prohibited. |
| 741.21 | Pawnbrokers. | 741.42 | Prosecution; injunctions. |
| | | 741.43 | Effective date. |
| | | 741.44 | Registration of nonlicensed business. |
| | | 741.99 | Penalty. |

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-4

Business franchise registration certificate tax - see
W. Va. Code Art. 11-12

Limitation on municipal tax - see W. Va. Code 11-12-4

Collection of taxes - see W. Va. Code 8-13-15 et seq.

741.01 LEGISLATIVE FINDINGS; PURPOSE.

Council hereby finds that in order to provide essential Municipal services, City revenue needs require the imposition of the following license taxes upon the businesses and commercial ventures listed in this article.

741.02 DEFINITIONS.

(a) Except where otherwise defined in this article, businesses, occupations, trades, commercial ventures and terms of art used in Sections 741.14 through 741.27 have those meanings given them in the West Virginia Code, as amended and in force on January 1, 1970.

(b) Except as otherwise defined in this article, terms, phrases, occupations, trades, commercial ventures and terms of art used in sections of this article other than those referred to in subsection (a) hereof shall have the meaning given to them in the West Virginia Code, as amended and currently in force and, when there is more than one such meaning, they shall have the meaning given in the sections of the West Virginia Code imposing any State license tax correlative to the City's license tax.

(c) "Fee" and "tax" may be used interchangeably to refer to the charges imposed under this article.

(d) "Person" includes, wherever the context will permit, not only natural persons, but all other legal entities such as partnerships, corporations, business trusts and the like.

741.03 PAYMENT AND TERM OF LICENSE.

Except as otherwise specified in this article, the entirety of any license fee designated as an annual fee shall be billed on or about June 1 in each year, and shall be paid within thirty days of the bill being sent. All annual licenses provided for by this article shall be issued for a term of one year beginning on July 1 and ending on the next succeeding June 30. Where licenses of other periods are authorized by this article, they shall be of such duration, and shall begin and end on such dates, as the City Manager may provide; but the City Manager shall select such dates as State law requires, if any, for any correlative State licenses, certificates or permits.

741.04 FEES TO CONSTITUTE DEBTS DUE THE CITY.

The fees provided for in this article shall constitute debts due to the City and may be collected by the City Manager by an appropriate action in either the Circuit Courts or Magistrate Courts of West Virginia.

741.05 APPLICABILITY; NONTRANSFERABILITY.

Except where otherwise expressly provided herein, the fees provided for herein apply to any person undertaking the herein described activities, trades or professions for any part, no matter how small, of a given time period in which the fee is imposed. Except where otherwise expressly provided herein, the licenses provided for in this article are not transferable; that is, the payment by one person of a license fee provided for in this article shall not exempt or excuse a purchaser from, a successor to, or assignee of, any such person from the payment of the prescribed fee for the maintenance or possession of a particular license for the conduct of a particular activity. The licenses provided for herein are nontransferable personal privileges. The fees provided for in this article apply only to persons engaging in the specified acts, having the specified ownership, or carrying on the specified operation or conduct of a trade or business where the foregoing are located within the geographic limits of the City.

741.06 EFFECT OF IMPOSITION OF LICENSE TAX.

In every case where this article imposes a license tax or fee, it shall be deemed that a license is required to perform the activity and that a license can and must be issued by the City Manager with respect to that activity, but only upon payment of the requisite fee and completion of the requisite application. The imposition of a license tax by this article shall mean that the payment of the tax is a prerequisite to the lawful conduct of the activity upon which the tax is imposed.

741.07 ACTS PROHIBITED.

Whenever a license tax is imposed by this article, no person shall engage in the activity or occupation upon which the fee is levied, nor own or operate any device upon which the fee is levied, without first paying the tax and acquiring the license provided for under this article.

741.08 EFFECT OF LICENSE.

In any case in which a license is required by this article, the issuance of the license shall be deemed a prerequisite to the lawful conduct of the activity for which the license is required. Issuance of any license under this article shall not, however, make valid or legal any act not otherwise valid or legal or not otherwise authorized by other provisions of law. Nothing in this article shall authorize any act, activity or ownership not otherwise lawful.

741.09 DUTIES AND POWERS OF CITY MANAGER.

The City Manager shall have the power to prepare application forms for any licenses required under this article. The application may contain questions on or blanks for any information reasonably deemed necessary by the City Manager. The City Manager is expressly authorized to require applicants

to have, and to provide evidence of, a valid and existing West Virginia Business Franchise Registration Certificate. Proper completion of an application is a condition precedent to the City Manager having any duty to issue a license. Upon proper completion of a license application and payment of the requisite fee, the City Manager shall issue the requested license to the applicant. The form of the license and information thereon shall be such as the City Manager may reasonably prescribe. The City Manager, or his designated agent, shall have the power to examine activities and locations of each business to determine compliance with this article.

741.10 LICENSE FEES CUMULATIVE.

The license fees imposed in this article are cumulative and the imposition of any one fee does not preclude the imposition of other fees upon any one individual or entity. The fees imposed by this article are imposed for engaging in certain trades or activities, or for the use or possession of certain devices. The pursuit of a particular trade or activity, or the ownership or use of a particular device, shall not excuse a person or entity from the requirement for a license and payment of a license fee for each such activity or device for which, if engaged in or possessed singly, a license requirement and license fee would be imposed.

741.11 CHANGE IN NAME OR PARTNERS.

A change in the name under which a person does business shall not require the person to seek any new license for any activity licensed under a prior name; nor shall the withdrawal or addition of partners to a partnership require the partnership to obtain a new license, provided that the partnership always retains at least one partner who was a member of the firm at the time the license was granted.

741.12 APPLICABILITY OF ARTICLE

The provisions of this article, where inconsistent with State or Federal law, shall be superseded by such laws.

741.13 DISPLAY OF CERTIFICATE.

The licenses provided for in this article shall be evidenced by license certificates. The holder of a license shall display the license certificate in a prominent place at or near the location of the licensed activity or device, and shall make the license certificate available for inspection by City police, City Manager or his designated agent.

741.14 FEES FOR OWNING AND OPERATING COIN-OPERATED AMUSEMENT DEVICES OR VENDING MACHINES.

(a) Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section.

(b) The liability for the license to operate any type of coin-operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract which has been

recorded in the applicable county clerk's office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

(c) The annual license fee to own and operate a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character shall be fifty cents (50¢) for each section of any such device which is operated on the coin-in-the-slot principle.

(d) The annual license fee to own and operate any coin-operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents (50¢) for every such locker or device.

(e) The annual license fee to own and operate any coin-operated amusement or music devices, shall be as follows:

- (1) Where a person owns fewer than twenty such devices, the fee for each device is:

For one-cent devices	\$ 2.00
For five-cent devices	5.00
For ten-cent devices	10.00
For devices requiring more than ten cents	12.50
- (2) Where a person owns and operates twenty or more such devices, the aggregate fee to the owner is:

For one-cent devices	\$ 50.00
For five-cent devices	150.00
For ten-cent devices	225.00
For devices requiring more than ten cents	300.00

The operator of more than one type of device shall pay the highest fee prescribed.

- (3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

(f) The annual license fee to own and operate coin-operated merchandise or service devices shall be as follows:

- (1) Where a person owns and operates fewer than twenty such devices, the fee for each device is:

For one-cent devices	\$ 2.00
For five-cent devices	5.00
For ten-cent devices	10.00
For devices requiring more than ten cents	12.50
- (2) Where a person owns and operates twenty or more such devices, the aggregate annual fee to the owner is:

For one-cent devices	\$ 50.00
For five-cent devices	100.00
For ten-cent devices	150.00
For devices requiring more than ten cents	250.00

The operator of more than one type of device shall pay the highest fee prescribed.

- (3) Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of coins necessary to make the device function.

(g) No license fee shall be required of stores or businesses owning and operating machines or devices described in this section and owned by them in their own licensed stores. Provided, however, that where the principal business is the operation of the machines or devices, then the licenses shall be obtained as outlined above.

(h) The provisions of this section shall not be applicable to any pay telephone, postage stamp vending machines or currency changing machines operated on the coin-in-the-slot principle.

741.15 COIN-OPERATED LAUNDROMATS; CAR WASH.

Coin-operated laundromats and car washes shall pay an annual license fee as follows:

1-5 Devices	\$15.00
6-9 Devices	3.00 each
10 or more Devices	30.00

741.16 CIRCUS, CARNIVALS AND OTHER PUBLIC SHOWS.

(a) The license to exhibit a circus or menagerie, a circus and menagerie combined, wild west show, or other itinerant show not exhibited in a theater, opera house or other permanent place for public shows, shall be thirty-five dollars (\$35.00).

(b) The provisions of this section shall not apply to any educational, literary, dramatic, musical or benevolent society, or volunteer fire companies, not conducted for private profit, where such exhibitions are confined to one county, unless professional or paid talent, other than director, is employed in such exhibitions.

741.17 TRADING STAMPS.

The annual license fee to sell or offer for sale merchants' trading stamps, premium stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods, shall be thirty-five dollars (\$35.00). Provided, however, that this section shall not apply to any coupon or similar device issued and redeemed by a manufacturer or packer.

741.18 FORTUNETELLERS.

The annual license fee to act as a fortuneteller, palmist, phrenologist, spiritualist, medium, clairvoyant, mindreader or any other person who performs the art or profession of telling the past or forecasting the future shall be thirty-five dollars (\$35.00).

741.19 WHOLESALE DEALERS IN TOBACCO.

(a) Definitions. When used in this section the following words, terms and phrases and any variations thereof required by the context, shall have the meaning ascribed to them below except where the context indicates a different meaning.

- (1) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.
- (2) "Person" means any individual firm, association, company, partnership, corporation, joint stock company, club, agency, syndicate, municipal corporation or other political subdivision of this State, trust, receiver, trustee, fiduciary and conservator.
- (3) "Wholesaler" includes any person who:
 - A. Purchases cigarettes directly from the manufacturer; or
 - B. Purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona-fide resale to retail dealers or to other persons for the purposes of resale only; or
 - C. Services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to the maintenance of warehousing facilities for the storage and distribution of cigarettes.Nothing contained herein shall prevent a person from qualifying in different capacities as both a "wholesaler" and "retailer" under the applicable provisions of this article.
- (4) "Sale at wholesale" means any bona-fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(b) Fees. The annual license fee to sell, as a wholesale dealer, tobacco as defined herein shall be divided into three classes, as follows:

- (1) Class A. All dealers who sell up to 750,000 packages of cigarettes, twenty-five dollars (\$25.00);
- (2) Class B. All dealers who sell from 750,000 packages of cigarettes to 1,500,000 packages, fifty dollars (\$50.00);
- (3) Class C. All dealers who sell more than 1,500,000 packages of cigarettes, seventy-five dollars (\$75.00).

741.20 JUNK DEALERS OR THEIR AGENTS.

(a) Definitions.

- (1) "Junk" as used in this section, means old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old scrap ferrous or nonferrous metals.
- (2) "Junk dealers" includes all persons engaged in the business of buying or selling junk as defined in subsection (a)(1) hereof.
- (3) "Junk dealer's agents" includes all persons who buy or sell junk as defined in subsection (a)(1) hereof for or on behalf of a junk dealer, as defined in subsection (a)(2) hereof, but the term "junk dealer's agent" shall not be construed to include any persons regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the State.
- (4) "Itinerant junk collector" includes only such persons who gather junk from place to place with the aid of a cart or vehicle hand drawn or propelled, who have no fixed place of business.
- (5) "Nonresident junk dealer" or "nonresident junk dealer's agent" includes all persons who act as junk dealers or junk dealer's agents who are nonresidents of the State and all firms so engaged whose members are nonresidents of the State and all corporations which have not been admitted to hold property and transact business in the State.

(b) Fees. The annual license fee to act as a resident junk dealer shall be twenty-five dollars (\$25.00); to act as a resident junk dealer's agent, ten dollars (\$10.00); to act as a nonresident junk dealer or his agent who buys or solicits for the purchase of junk within the State, thirty five dollars (\$35.00); to act as an itinerant junk collector, two dollars (\$2.00).

741.21 PAWNBROKERS.

The annual license fee to engage in the business of pawnbroker shall be thirty-five dollars (\$35.00). "Pawnbroker" includes any person, firm, partnership, association or corporation engaged in the business of lending money on deposit or pledge of personal property or other valuable thing, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product.

741.22 THEATERS AND PUBLIC SHOWS.

The license fee for the operation of a theater, opera house or other permanent place for public shows shall be thirty-five dollars (\$35.00).

741.23 COLLECTION AGENCIES.

The annual license fee to engage in the business of a collection agency shall be thirty-five dollars (\$35.00). For the purposes of this section, solicitation, by or through an agent shall be considered to be engaging the business of a collection agency.

741.24 EMPLOYMENT AGENCIES.

The annual license fee to conduct the business of an employment agent, to receive applications for employment, to hire or contract with persons for employment shall be thirty-five dollars (\$35.00).

741.25 BILLIARD, POOL, BOWLING ALLEYS AND BAGATELLE TABLES.

The annual license fee to keep or maintain a bowling alley, a billiard, pool or bagatelle table, or table of like kind, for public use, where any charge is made for the use of the same, shall be thirty-five dollars (\$35.00).

741.26 STORES.

(a) As used in this section:

- (1) "General store" means any store or stores or any mercantile establishment in which goods, wares, or merchandise of any kind are purchased, ordered, sold or offered for sale either at retail or wholesale;
- (2) "Person" includes any group or combination acting as a unit, individual, committee, guardian, trustee, executor, administrator, partnership, copartnership, joint adventure, association, trust, firm or corporation, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management; and
- (3) "Special store" means any store or stores or any mercantile establishment or establishments, in which goods, wares, or merchandise of any kind except cigarettes, tobacco products and soft drinks are purchased, ordered, sold or offered for sale, either at retail or wholesale, and which contains no coin-operated device or devices, owned and operated by the store proprietor.

(b) Every person establishing, operating or maintaining one or more special stores within the City under the same general management, supervision or ownership shall pay the annual license tax of five dollars (\$5.00) for each store.

(c) Every person establishing, operating or maintaining one or more general stores within this City under the same general management, supervision or ownership shall pay the annual license tax of fifteen dollars (\$15.00) for each store.

(d) The establishment, operation or maintenance of stores by the following shall be exempt from the license tax imposed by this article:

- (1) The United States of America, the State of West Virginia and its political subdivisions;
- (2) Religious and charitable organization;
- (3) Any person or persons engaged within this State in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced.

(e) The license fee provided for in this section shall be one half of that prescribed in subsections (b) and (c) hereof, if the license applicant seeks a license for any period of less than one calendar year.

741.27 GASOLINE RETAILERS AND WHOLESALERS.

For each location at which a gasoline retailer operates, he shall be required to obtain a license, which shall be obtained annually at a cost of thirty-five dollars (\$35.00).

741.28 FEES FOR CERTAIN TRADES, PROFESSIONS OR OCCUPATIONS.

(a) Unless otherwise indicated below, there shall be a license tax imposed, on an annual basis, upon each person practicing in the following trades, professions or occupations within the City. The fees shall be in the amounts listed below, and shall enable the payor to purchase a license to engage in the trade, profession or occupation for one year unless some other fee period is indicated, in which case the fee will purchase a license for that period.

- (1) For architects, a fee of fifteen dollars (\$15.00);
- (2) For attorneys, a fee of five dollars (\$5.00);
- (3) For auctioneers, a fee of fifteen dollars (\$15.00);
- (4) For barbers, beauticians and manicurists fifteen dollars (\$15.00);
- (5) For chiropractors, a fee of fifteen dollars (\$15.00);
- (6) For dentists, a fee of fifteen dollars (\$15.00);
- (7) For embalmers, a fee of fifteen dollars (\$15.00);
- (8) For engineers, a fee of fifteen dollars (\$15.00);
- (9) For funeral directors, a fee of fifteen dollars (\$15.00);
- (10) For landscape architects, a fee of fifteen dollars (\$15.00);
- (11) For land surveyors, a fee of fifteen dollars (\$15.00);
- (12) For insurance brokers, a fee of ten dollars (\$10.00);
- (13) For midwives, a fee of ten dollars (\$10.00);
- (14) For nursing home administrators, a fee of fifteen dollars (\$15.00);
- (15) For occupational therapists, a fee of five dollars (\$5.00);
- (16) For optometrists, a fee of ten dollars (\$10.00);
- (17) For osteopathic physicians and surgeons, a fee of ten dollars (\$10.00);

- (18) For pharmacists, a fee of fifteen dollars (\$15.00);
- (19) For physical therapists, a fee of fifteen dollars (\$15.00);
- (20) For physicians, surgeons and podiatrists, a annual fee of fifteen dollars (\$15.00);
- (21) For practical nurses, a fee of five dollars (\$5.00);
- (22) For private detectives and investigators, a fee of fifteen dollars (\$15.00);
- (23) For psychologists, a annual fee of fifteen dollars (\$15.00);
- (24) For radiologic technologists, a annual fee of ten dollars (\$10.00);
- (25) For real estate brokers, a fee of fifteen dollars (\$15.00);
- (26) For real estate salesmen, a fee of fifteen dollars (\$15.00);
- (27) For registered professional nurses, a fee of five dollars (\$5.00);
- (28) For social workers, a fee of five dollars (\$5.00);
- (29) For veterinarians, an annual fee of five dollars (\$5.00).
- (30) For any other category not set forth above, an annual fee of fifteen dollars (\$15.00).

741.29 HEARING AID FITTERS.

Any person (natural or artificial) engaged in the practice of dealing in or fitting hearing aids shall be required to pay an annual license fee of thirty-five dollars (\$35.00).

741.30 OUTDOOR ADVERTISING.

An annual license fee of thirty-five dollars (\$35.00) is imposed upon each person who engages in the business of outdoor advertising.

741.31 DENTAL CORPORATIONS.

An annual license fee of thirty-five dollars (\$35.00) is imposed on each dental corporation for the privilege of doing business.

741.32 FUNERAL ESTABLISHMENTS.

An annual license fee of thirty-five dollars (\$35.00) is hereby imposed upon each funeral establishment doing business within the City.

741.33 MEDICAL CORPORATIONS.

An annual license fee of thirty-five dollars (\$35.00) is hereby imposed upon each medical corporation doing business within the City.

741.34 NURSING HOMES AND PERSONAL CARE HOMES.

Upon nursing homes, there is imposed a license fee equal to four dollars (\$4.00) for each patient bed; upon personal care homes, there is imposed a license fee equal to two dollars (\$2.00) per bed.

741.35 HOSPITALS.

Upon each hospital there is imposed an annual license fee in an amount varying in accord with the following table:

- (a) For hospitals with 5-49 beds, a fee of twenty dollars (\$20.00);
- (b) For hospitals with 50-99 beds, a fee of thirty dollars (\$30.00);
- (c) For hospitals with 100-199 beds, a fee of forty dollars (\$40.00);
- (d) For hospitals with 200 or more beds, a fee of fifty dollars (\$50.00).

741.36 HAWKER AND PEDDLER.

On each hawker or peddler there is imposed a license fee as follows:

On foot	\$ 10.00
Vehicle under 1/2 ton	15.00
Vehicle under 1 ton	50.00
Vehicle under 2 tons	100.00
More than two tons	15.00 plus \$100.00 for every additional ton or fraction thereof.

741.37 ITINERANT VENDORS.

Itinerant vendors shall be charged a license fee of thirty-five dollars (\$35.00).

741.38 BARBER AND BEAUTICIAN SCHOOLS.

Upon every barber and beautician school there is imposed an annual fee of thirty-five dollars (\$35.00).

741.39 INSURERS.

Upon every corporation or entity acting as an insurer, there is imposed an annual license fee of thirty-five dollars (\$35.00).

741.40 CONSTRUCTION; SEVERABILITY.

The provisions of this article shall be construed so as to make them consistent with State law and consistent with the correlative statutes providing for State licensing fees. If any section or sections of this article shall, even when so construed, be found to be in violation of the laws or constitutions of the State or the United States, or shall be found to be an attempted exercise of power not granted to the City, the resulting invalidity of that section or those sections shall not mean the remaining sections of this article shall not be enforced. It is the intent of Council that each license tax imposed herein should be imposed, even if other license taxes provided for herein could not have been imposed.

741.41 FALSE STATEMENTS PROHIBITED.

No person shall knowingly make any false statement in any application for a City license provided for in this article, or in any report or other statement relating to any activity licensed by the City and which is required to be made to any City officer or agency.

741.42 PROSECUTION; INJUNCTIONS.

If any person engages in or prosecutes any business, activity, trade or employment contrary to any of the provisions of this Code, whether without first obtaining a license therefor or by continuing the same after the termination of the effective period of such license, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution in the municipal court and, in addition, the City attorney may, in the name of the City, seek such injunctive relief as may be appropriate in any court of competent jurisdiction.

741.43 EFFECTIVE DATE.

Until July 1, 1986, no license fee provided for in this article shall be required in order lawfully to perform any activity for which this article requires a license nor shall any license fee be imposed for activities prior to July 1, 1986; however, all other provisions of this article shall be in full force and effect from the date of passage of this section.

741.44 REGISTRATION OF NONLICENSED BUSINESSES.

Any person undertaking any other business activity not licensed under this article shall be required annually to make application to and to register with, the City Clerk on such forms as he shall prescribe.

741.99 PENALTY.

(a) Whoever engages in any activity contrary to the provisions of this article, whether without obtaining a license required therefor before commencing the same or by continuing the same after the termination of the effective period of any such license, may, in addition to paying the license tax, be liable for a penalty of fifty dollars (\$50.00) for each month or fraction thereof during which he has been in default of the license tax. It shall be the duty of the City Clerk to collect the full amount of the license tax and penalty imposed and he shall not issue any license until the license tax and the penalty have been paid in full.

(b) In addition to the foregoing and except as may herein be otherwise expressly provided, whoever violates any provision under this article shall be fined not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both fined and imprisoned, and each day or part thereof that any violation continues shall be deemed to constitute a distinct and separate offense and be punishable accordingly.

(c) Whoever knowingly makes a false statement in any license tax application shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or imprisoned not more than thirty days, or both fined and imprisoned. Each false statement, whether made with or without other false statements on any one application shall constitute a separate offense.

ARTICLE 745
Business and Occupation Tax

745.01	Definitions.	745.14	Assessment.
745.02	Object and purpose.	745.15	Notice of assessment; petition for reassessment or payment of assessment.
745.03	Imposition of tax.	745.16	Appeals.
745.04	Exemptions.	745.17	Collection of tax.
745.05	Persons subject to tax.	745.18	Liens, release; subordi- nation; foreclosure.
745.06	Rates.	745.19	Levy and distraint.
745.07	Manner of payment.	745.20	Property exempt from levy.
745.08	Filing return; remittance.	745.21	Additions to tax.
745.09	General powers; regulations. and forms.	745.22	Additions to tax for failure to pay estimated tax.
745.10	Subpoena and subpoena duces tecum.	745.23	Administrative provisions.
745.11	Returns to City.	745.99	Penalty.
745.12	Timely filing and paying.		
745.13	Enforcement proceedings.		

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-5

Business and occupation tax - see W. Va. Code Art. 11-13

Collection of taxes - see W. Va. Code 8-13-15 et seq.

745.01 DEFINITIONS.

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

- (a) "Business" means all activities engaged in with the object of gain or economic benefit, either direct or indirect. The production of raw materials or manufactured products, which are used or consumed in the main business, shall be deemed business engaged in and shall be taxable in the class in which it falls.
- (b) "Gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property, real or personal, or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever.

- (c) "Gross proceeds of sales" means the value actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind. The words "gross income" and "gross proceeds of sales" shall not be construed to include cash discounts allowed and taken on sales; the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article, accepted as part payment on any new article sold, if the full sale price of the new article is included in the "gross income" or "gross proceeds of sales".
- (d) "Sale" means the exchange of properties as well as the sale thereof for money; every closed transaction constituting a sale.
- (e) "Service business or calling" means all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the production or sale of tangible property, but shall not include the services rendered by an employee to his employer.
- (f) "Taxpayer" means any person, corporation, association or entity liable for the tax imposed by this article.
- (g) "Tax year" means either the calendar year or the taxpayer's fiscal year when the taxpayer has secured permission from the State Tax Commissioner to use the same as his tax period in lieu of the calendar year.
- (h) "Wholesaler" means a person conducting a regularly organized jobbing or wholesale business, known to the trade as such and selling to retailers or to other wholesalers, in wholesale quantities and at wholesale prices.

745.02 OBJECT AND PURPOSE.

It is the object and purpose of this article to exercise the privileges granted by West Virginia Code 8-13-5 and pursuant to its provisions to levy and collect an annual privilege tax upon any business or occupation carried on within the City taxable under West Virginia Code 11-13-1 et seq.

745.03 IMPOSITION OF TAX.

There is levied and shall be collected an annual privilege tax upon every person who is engaged in or who is carrying on within the City any business, service business or calling or other activity taxable under West Virginia Code 11-13-1 et seq.

745.04 EXEMPTIONS.

This article shall not apply to any activity which is exempt from the State business and occupation taxation under West Virginia Code 11-13-3 as amended, prior to July 1, 1987, and determined without regard to any annual or monthly monetary exemption as justified therein, including the following activities:

- (a) Insurance companies which pay the State a tax upon premiums; provided, that such exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office in this State, whether such income is in the form of rentals or royalties.

- (b) Persons engaged in the business of banking; provided, that such exemption shall not extend to that part of the gross income of such persons which is received for the use of real property owned, other than the banking house or building in which the business of the bank is transacted, whether such income is in the form of rentals or royalties.
- (c) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members.
- (d) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit.
- (e) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes; provided, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code 19-4-1 et seq.
- (f) Building and loan associations and federal savings and loan associations.
- (g) Persons engaged in conducting the business of industrial loans under authority granted them by West Virginia Code 31-7-1 et seq., provided, that such exemption shall not extend to that part of the gross income of such persons which is received from the use of real property owned, other than the business house or building in which the business of the industrial loan company is transacted, whether such income is in the form of rentals or royalties.

745.05 PERSONS SUBJECT TO TAX.

The following persons shall be subject to the tax imposed by Section

745.03:

- (a) Persons engaged or continuing in the business of producing any natural resource products.
- (b) Persons engaging or continuing in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or in part any article, substance or commodity.
- (c) Persons engaging in the business of selling any tangible property whatsoever, real or personal, including the sale of food and the service incident thereto in hotels, restaurants, cafeterias, confectioneries and other business eating places, except sales by any person engaging in the business of horticulture, agriculture or grazing or of selling stocks, bonds or other evidence of indebtedness.
- (d) Persons engaged in the business of public service or as a public utility except railroad, railroad car, express, pipe line, telephone and telegraph, water carrier by steamboat or steamship companies, motor vehicle carriers, municipally owned water plants and municipally owned electric plants producing or purchasing electricity and distributing the same; provided, that any such person so subject to this tax who also pays, or is required by City ordinance to pay, to the City a rental or a charge in the nature of rental for the use or occupancy of the streets, alleys, public

places, and similar areas of the City, shall be allowed as a credit, upon the privilege tax hereby levied and imposed by this article, such annual rental or charge in the nature of rental which such person has paid the City, for the use or occupancy of the streets, alleys, public places, and similar areas, such credit to be allowed upon presenting receipt for payment of such rental or charge in the nature of rental.

- (e) Persons engaged in the business of contracting.
- (f) Persons engaging in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, race track, radio broadcasting station or any other place at which amusements are offered to the public.
- (g) Persons engaging in any service or any other business or calling not otherwise specifically taxed hereunder and not exempted hereunder or by the law of the State.
- (h) Persons engaging in the business of collecting incomes from the use of real or personal property or of any interest therein, whether by lease, conveyance or otherwise and whether the return is in the form of rentals, royalties, fees, interest or otherwise.
- (i) Persons engaging in the business of selling at wholesale.

745.06 RATES.

(a) Persons subject to the tax under this article shall be those persons, firms, corporations and entities, which are subject to the business and occupation tax as set forth in West Virginia Code Article 13 et seq., and such persons, firms, corporations and entities, shall be taxed at the following rates:

- (1) Production of coal - 1.00%;
- (2) Sand, gravel or other mineral products not quarried or mined - 1.606%;
- (3) Oil, blast furnace slag - 1.606%;
- (4) Natural gas in excess of the value of \$5,000 - 3.193%;
- (5) Limestone or sandstone quarried or mined - 0.814%;
- (6) Timber - 0.925%;
- (7) Other natural resource products - 1.058%;
- (8) Manufacturing, compounding or preparing products; processing food - 0.176%;
- (9) Retailers in business of selling tangible property - 0.204%;
- (10) Wholesalers in business of selling tangible property - 0.100%;
- (11) Public utilities and natural gas companies - 1.587%;
- (12) Public utilities - electric power (as sales and demand charges for domestic and commercial lighting) - 1.480%;
- (13) Public utilities - electric power (as sales for all other purposes) - 1.480%;
- (14) Water companies - 1.628%;
- (15) Toll bridges - 1.587%;
- (16) All other public utility businesses - 1.058%;
- (17) Business of contracting - 0.814%;
- (18) Amusement business - 0.263%;
- (19) Service business - 0.426%;
- (20) Rentals, royalties and fees - 0.426%;
- (21) Banking - 0.489%;
- (22) Electric railways - 0.518%.

745.07 MANNER OF PAYMENT.

(a) The tax imposed by this article shall be paid in quarterly installments on or before thirty days after the end of the calendar quarter in which it accrues. The taxpayer, within such thirty day period after the end of each such quarter, shall make out an estimate of the tax for which he is liable for such quarter, verify the same by oath, and make return thereof together with a remittance of the tax due thereon to the City Manager.

(b) The City Manager, if he deems it necessary to insure payment of the tax, may require return and payment under this section for other than quarter year periods. The return and payment due under this section for the fourth calendar quarter may be consolidated with the return and payment required under Section 745.08. The City Manager, subject to the approval of Council, shall prescribe the forms and estimates required by this section. (A.O.)

(c) The return and payment of any and all taxes due in regard to any improvement, repair, construction, demolition, remodeling, erection, or any such other work to be performed on new or existing structures within the City of Follansbee shall be made at the time of application for a building permit concerning such work.
(Ord. 95-8. Passed 8-14-95.)

745.08 FILING RETURN; REMITTANCE.

On or before thirty days after the end of a tax year, each person subject to tax under this article shall make a return showing activities of such taxpayer carried on within the City, and shall compute thereon the amount of tax for which he is liable under this article and shall transmit with such return to the City Manager a remittance payable to the City. Such return shall be verified by oath of the taxpayer, if made by an individual, or by the oath of an officer of a corporation, if made on behalf of an association, firm, trust or any other group or combination acting as a unit, any individual delegated by such partnership, joint adventure, association, firm, trust or any other group or combination acting as a unit, shall make the oath on behalf of the taxpayer.

745.09 GENERAL POWERS; REGULATIONS AND FORMS.

(a) The City Manager shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms.

(b) For the purpose of ascertaining the correctness of any tax return or assessment and for the purpose of making an estimate of any taxpayer's liability for tax administered under this article, and for the further purpose of conducting the hearings, the City Manager shall have the power to examine or cause to be examined, by any agent or representative designated by the City Manager, any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

745.10 SUBPOENA AND SUBPOENA DUCES TECUM.

(a) Power to Issue. For the efficient administration of the powers vested in Council by the preceding section and to facilitate determination or collection of any tax under this article, Council shall have the power to issue subpoenas and subpoenas duces tecum, in the name of the City, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified.

(b) Service. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or certified mail, but a return receipt signed by the person to whom subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. Any party requesting a subpoena or subpoena duces tecum is responsible for service thereof and payment of any fee for such service. Service of other subpoenas and subpoenas duces tecum shall be the responsibility of the Chief of Police or his delegate.

(c) Enforcement of Compliance. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the Circuit Court of Brooke County in which the hearing is being held, or the judge thereof on vacation, upon application by the City shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court for a refusal to testify therein.

(d) Testimony Under Oath. Witnesses subpoenaed under this section shall testify under oath or affirmation.

745.11 RETURNS TO CITY.

If any person fails to file any return required by this article or any article administered by this article, at the time required by law or by regulation made under authority of law, or makes and files willfully or otherwise, a false or fraudulent return, the City Manager may proceed to make such return from any information available to him, whether obtained through testimony or otherwise.

745.12 TIMELY FILING AND PAYING.

If any return, claim, statement or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date, during normal business hours of the City, it shall be timely filed.

745.13 ENFORCEMENT PROCEEDINGS.

The enforcement of any of the collection provisions of this article in any of the courts of this State shall be under the exclusive jurisdiction of the City Manager. The City Manager may, at his request, be represented in any such collection civil action by the City Attorney.

745.14 ASSESSMENT.

(a) General. If the City Manager believes that any tax administered under this article has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability and make an assessment therefor.

(b) Jeopardy Assessments. If the City Manager believes that the collection of any tax administered under this article will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made posts the required security and petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such assessment shall become final; provided, that upon written request of the taxpayer made within such twenty-day period, showing reasonable cause therefor, the City Manager may grant an extension of time not to exceed thirty additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by remittance of the amount assessed or such security as the tax commissioner may deem necessary to ensure compliance with the applicable provisions of this article. If a petition for reassessment is timely filed, and the amount assessed has been remitted, or such other security posted, the provisions for hearing, determination and appeal set forth herein.

(c) Amendment of Assessment. The City Manager may, at any time before the assessment becomes final, amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect.

(d) Supplemental Assessment. The City Manager may, at any time within the period prescribed for assessment, make a supplemental assessment whenever he ascertains that any assessment is imperfect or incomplete in any material respect.

(e) Address for Notice of Assessment. In the absence of notice to the City Manager of the existence of a fiduciary relationship, notice of assessment, if sent by certified mail or registered mail to the taxpayer at his last known address, shall be sufficient even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

745.15 NOTICE OF ASSESSMENT; PETITION FOR REASSESSMENT OR
PAYMENT OF ASSESSMENT.

(a) Notice of Assessment. The City Manager shall give the taxpayer written notice of any assessment or amended or supplemental assessment made pursuant to this article. The assessment or amended or supplemental assessment, as the case may be, shall become final and conclusive of the liability of the taxpayer and not subject to either administrative or judicial review unless the taxpayer to whom a notice of assessment or amended or supplemental assessment, is given, shall within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section seven) either:

- (1) Petition for reassessment. Personally or by certified mail, files with the City Manager a petition in writing, verified under oath by the taxpayer or his duly authorized agent having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for such objections; or
- (2) Payment of assessment. Personally or by certified mail, remits to the City Manager the total amount of the assessment or amended or supplemental assessment, including such additions to tax and penalties as may have been assessed and the amount of interest due.

(b) Finality of Assessment. The amount of an assessment or amended or supplemental assessment shall be due and payable on the day following the date upon which the assessment or amended or supplemental assessment becomes final. Payment of the amount of the assessment, or amended or supplemental assessment, as provided in subsection (a)(2) hereof, within sixty days after service of notice of such assessment shall not prohibit or otherwise bar the taxpayer from filing a claim for refund or credit within the time prescribed therein for the filing of a claim for refund or credit.

(c) Payment of Assessment after Petition Filed. A taxpayer who has timely filed a petition for reassessment may, at any time prior to issuance of the City Manager's administrative decision, pay under protest the amount of the assessment. Upon such payment, the contested case shall thereafter be treated for all purposes as a petition for refund; provided, that if payment is made after the administrative hearing has commenced or concluded, a new hearing shall not be held, but the record thereof shall be properly amended by the City Manager to show that the amount assessed has been paid under protest by the taxpayer and that the petition for reassessment previously filed under this section is now to be treated as a petition for refund.

745.16 APPEALS.

Appeals shall be governed by the appellates procedure set forth in West Virginia Code 11-10-10 by petition of the Circuit Court of Brooke County, West Virginia.

745.17 COLLECTION OF TAX.

(a) The City Manager shall collect the taxes, additions to tax, penalties and interest imposed by this article. In addition to all other remedies available for the collection of debts due this State, the City Manger may proceed by foreclosure of the lien provided.

(b) Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.

- (1) Any person contracting with a nonresident contractor subject to the taxes imposed by this article shall withhold payment, in the final settlement of such contract, of such sufficient amount, not exceeding six percent (6%) of the contract price, as will in such person's opinion be sufficient to cover such

taxes, until the receipt of a certificate from the tax commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

- (2) If any person shall fail to withhold as provided herein, such person shall be personally liable for the payment of all such taxes attributable to the contract, not to exceed six percent (6%) of the contract price. The same shall be recoverable by appropriate legal proceedings, which may include issuance of an assessment.

745.18 LIENS, RELEASE; SUBORDINATION; FORECLOSURE.

(a) General. Any tax, additions to tax, penalties or interest due and payable under this article or any of the other articles of this chapter to which the article is applicable shall be a debt due this City. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer.

(b) Duration of Lien. The lien created by this section shall continue until the liability for the tax, additions to tax, penalties and interest is satisfied or becomes unenforceable by reason of lapse of time.

(c) Recordation. The lien created by this section shall be subject to the restrictions and conditions embodied in West Virginia Code 38-10C-1 et seq., any amendments made or which may hereafter be made thereto.

(d) Release or Subordination. The City Manager, pursuant to rules and regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien. The tax commissioner may issue his certificate of release of any such lien as to all or any part of the property subject to the lien, or may subordinate such lien to any other lien or interest, but only if there is paid to the state an amount not less than the value of the interest of the state in such property, or if the interest of the state in such property has no value.

(e) Foreclosure. The City Manager may enforce any lien created and recorded under this section, against any property subject to such lien by civil action in the circuit court of the county wherein such property is located, in order to subject such property to the payment of the tax secured by such lien. All persons having liens upon or having any interest in the property shall be made parties to such action. The court may appoint a receiver or commissioner who shall ascertain and report all liens, claims and

interests in and upon the property, the validity, amount and priority of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved therein, shall determine the validity, amount and priorities of all liens, claims and interests in and upon the property and shall decree a sale of such property by the sheriff or any commissioner to whom the action is referred and shall decree distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties.

(f) Discharge of Lien. A sale of property against which the State has a lien under this section, made pursuant to an instrument creating a lien on such property, or made pursuant to a statutory lien on such property, or made pursuant to a judicial order to enforce any judgment in any civil action, shall be made subject to and without disturbing the State tax lien if the State tax lien was recorded more than thirty days before such sale, unless:

- (1) The City Manager is made a party to such civil action, or
- (2) The City Manager is given notice of such sale in writing not less than fifteen days prior to sale, or
- (3) The City Manager consents to such sale. Such notice shall contain the name of the owner of the property and the social security number or federal employer identification number of the owner.

745.19 LEVY AND DISTRIANT.

(a) Authority of City Manager. If any tax administered under this article is shown to be due on a return, it is required to be paid at the time the return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the City Manager and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, then, if any person liable to pay any tax administered under this article neglects or refuses to pay the same within fifteen days after notice and demand, it shall be lawful for the City Manager to collect such tax (and such further sum as is sufficient to cover the expenses of the levy) by levy upon all property and rights to property belonging to such person or on which there is a lien provided in this article, or any article administered under this article for payment of the tax. If the City Manager makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be given by the City Manager and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the fifteen day period provided in this section.

(b) Levy Defined. "Levy", as used in this section, includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the City Manager, or his delegate, may levy upon property or rights to property, he may seize and sell such property or right to property, whether such property be real or personal, tangible or intangible.

(c) Distress Warrant. The City Manager may issue a distress warrant to any City police officer commanding him to levy upon and sell any such property or rights to property subject to levy. A distress warrant shall be executed within sixty days from the date the warrant was issued. The officer shall return the warrant and any money collected within sixty-five days from the date the warrant was issued.

745.20 PROPERTY EXEMPT FROM LEVY.

(a) Enumeration. There shall be exempt from levy:

- (1) Wearing apparel and school books. Items of wearing apparel and school books that are necessary for the taxpayer or for members of his or her family.
- (2) Fuel, provisions, furniture and personal effects. If the taxpayer is the head of a family, so much of the fuel, provisions, furniture and personal effects in his household and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed one thousand five hundred dollars (\$500.00) in value; if the taxpayer is an individual who is not the head of a household, this exemption shall not exceed one thousand dollars (\$1,000).
- (3) Books and tools of a trade, business or profession. So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate one thousand dollars (\$1,000) in value.
- (4) Unemployment benefits. Any amount payable to an individual with respect to his or her unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, or of this State, or any other state.
- (5) Undelivered mail. Mail, addressed to any person, which has not been delivered to the addressee.
- (6) Annuity and pension payments. Annuity or pension payment under any pension or retirement plan, including Social Security payments.
- (7) Workers' compensation. Any amount payable to an individual as workers' compensation (including any portion thereof payable with respect to dependents) under a workers' compensation law of the United States, or of this State or any other state.
- (8) Judgments for support of minor children. If the taxpayer is required by a judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his other minor children, so much of his or her salary, wages or other income as is necessary to comply with such judgment.
- (9) Public assistance. Any amount payable to any person from a public assistance or relief fund created under the law of the United States or of this State or of any other state.

- (10) Minimum exemption for wages, salary and other income. Any amount payable to or receivable by an individual as wages or salary for services provided by an employee to his or her employer or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him or her during such period does not exceed the applicable exempt amount determined under subsection (d) hereof.
- (11) Homestead. If the taxpayer owns a homestead located in this State, the first five thousand dollars (\$5,000) thereof shall be exempt from levy.

(b) Appraisal. The officer seizing property of the type described in subsection (a) hereof shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the office making the seizure, the tax commissioner shall summon three disinterested individuals who shall make the valuation.

(c) No other Property Exempt. Notwithstanding any other law of this State, no property or rights to property shall be exempt from levy other than property specifically made exempt by subsection (a) hereof.

(d) Exempt Amount of Wages, Salary or Other Income. In the case of an individual who is paid or receives all of his wages, salary and other income on a weekly basis, the amount of the wages, salary and other income payable to or receivable by the person during any week which is exempt from levy shall be:

- (1) Thirty times the state minimum wage per hour, plus
- (2) Twenty-five dollars (\$25.00) for each additional dependent of the taxpayer.

745.21 ADDITIONS TO TAX.

(a) Failure to File Tax Return or Pay Tax Due.

- (1) In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, then shall be added to the amount required to be shown as tax on such return five percent (5%) of the amount of such tax if the failure is for not more than one month with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate; provided, that this addition to tax shall be imposed only on the net amount of tax due.

- (2) In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent (0.5%) of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent (0.5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate; provided, that the addition to tax shall be imposed only on the net amount of tax due.
- (3) In the case of failure to pay any amount in respect to any tax required to be shown on a return specified in subsection (a)(1) which is not so shown within fifteen days of the date of notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand one half of one percent (0.5%) of the amount of each tax if the failure is for not more than one month, with an additional one half of one percent (0.5%) for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent (25%) in the aggregate; provided, that this addition to tax shall be imposed only on the net amount of tax due.

(b) Limitation and Special Rule.

- (1) Additions under more than one paragraph:
 - A. With respect to any return, the amount of the addition under subsection (a)(1) hereof shall be reduced by the amount of the addition under subsection (a)(2) for any month to which an addition to tax applies under both subsection (a)(1) and (2);
 - B. With respect to any return, the maximum amount of the addition permitted under subsection (a)(3) shall be reduced by the amount of the addition under subsection (a)(1) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.
- (2) Amount of tax shown more than amount required to be shown. If the correct amount of tax due is less than the amount shown on the return, subsection (a)(1) and (2) shall only apply to the lower amount.
- (3) Exception for estimated tax. Subsection (a) hereof shall not apply to any failure to pay any estimated tax.

(c) Negligence or Intentional Disregard of Rules and Regulations. If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax due five percent (5%) of the amount of such tax if the underpayment due to negligence or intentional disregard of rules and regulations is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof during which such underpayment continues, not exceeding twenty-five percent (25%) in the aggregate; provided, that these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided for in subsection (a) hereof, and the City Manager shall state in his notice of assessment the reason or reasons for imposing this addition to tax with sufficient particularity to put the taxpayer on notice regarding why it was assessed.

(d) False or Fraudulent Return. In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent (50%) thereof which shall be in lieu of the additions to tax provided for in subsection (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the City Manager. In the case of a joint personal income tax return under West Virginia Code Sec. 11-21-1 et seq. this subsection shall not apply with respect to the tax of the spouse unless some part of the underpayment is due to the fraud of such spouse.

(e) Additions to Tax Treated as Tax. Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.

745.22 ADDITIONS TO TAX FOR FAILURE TO PAY ESTIMATED TAX.

(a) Additions to Tax. Except as provided in subsections (d) and (e) hereof, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under any article administered by this article, an amount determined at the rate established under West Virginia Code Sec. 11-10-17 or Sec. 11-10-17a on the amount of the underpayment of estimated tax for the period of underpayment.

(b) Amount of Underpayment. For purposes of subsection (a) hereof, the amount of the underpayment shall be in excess of:

- (1) The amount of the installment which would be required to be paid if the estimated tax were an amount equal to ninety percent (90%) of the tax shown on the return for the taxable year, or if no return was filed, ninety percent (90%) of the tax for such year, over
- (2) The amount, if any, of the installments paid on or before the last date prescribed for payment.

(c) Period of Underpayment. The period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

- (1) The due date of the annual return following the close of the taxable year for which the installment was due;
- (2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b)(1) for such installment date.

(d) Exceptions. Notwithstanding the provisions of the preceding subsections, the additions to tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

- (1) Prior year's tax. The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;
- (2) Prior year's facts. An amount equal to the tax computed at the rates applicable to the current taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year;
- (3) Annualized tax.
 - A. An amount equal to ninety percent (90%) of the tax for the current taxable year computed by placing on an annualized basis the taxable income;
 1. For the first three months of the taxable year, in the case of the installment required to be paid in the third or fourth month;
 2. For the first three months of the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;
 3. For the first six months or the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month; and
 4. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year or the first month of the next succeeding taxable year.

- B. For purposes of this subsection (d)(3), the taxable income shall be placed on an annualized basis by:
1. Multiplying by twelve the taxable income referred to in subsection (d)(3)A.; and
 2. Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subsection (d)(3)A.

(e) Short Taxable Year. The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the City Manager.

745.23 ADMINISTRATIVE PROVISIONS.

All procedures for assessment and collection of the tax herein and for the waiver of penalties and additions to tax as provided in West Virginia Code 11-13-1 et seq. and 11-10-1 et seq. as in existence on June 30, 1987, shall fully be applicable to this article and enforceable by the correlative municipal officers except where inapplicable by the plain language of such statute.

745.99 PENALTY.

Any violation of this article shall be punishable under the general penalties clause of the Follansbee City Code.

ARTICLE 749
Nonintoxicating Beer

749.01	License required.	749.05	Unlawful acts.
749.02	Annual license tax.	749.06	Revocation of license.
749.03	License year; classes of dealers; amount of tax.	749.99	Penalty.
749.04	Application for license; display.		

CROSS REFERENCES

Nonintoxicating beer - see W. Va. Code Art. 11-16
Municipal license tax - see W. Va. Code 11-16-17
Liquor control - see GEN. OFF. Art. 521

749.01 LICENSE REQUIRED.

No person within the City shall manufacture for sale, sell or possess for sale, any nonintoxicating beer without a City license so to do as provided in this article; provided, that nothing contained in this article, and no license or payment under the provisions hereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violation.

749.02 ANNUAL LICENSE TAX.

Every person licensed by the State pursuant to the provisions of West Virginia Code Article 11-16, whether as a retailer, private club, wholesaler or brewer on nonintoxicating beer and who does business as such within this City shall pay to the City an annual license tax as provided in this article. Upon the payment of such annual license tax to the City the licensee shall be issued a City license corresponding to the State license, which shall be displayed at all times in a conspicuous place upon the premises thereby licensed. City licenses under this article shall not be transferable.

749.03 LICENSE YEAR; CLASSES OF DEALERS; AMOUNT OF TAX.

There is hereby levied and imposed by annual license tax upon all brewers and dealers in or of nonintoxicating beer within the City, which license period shall begin on July 1 of each year and end on June 30 of the following year, and if granted for a less period the same shall be completed quarterly in proportion to the remainder of the fiscal year as follows:

- (a) Retail dealers shall be divided into two classes, Class A and Class B. In the case of Class A retail dealer the license fee shall be one hundred dollars (\$100.00) for each place of business; the license fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for two years or more immediately preceding the date of application, shall be fifty dollars (\$50.00).
 - (1) Class A license issued for social, fraternal or private clubs as herein provided, shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.
 - (2) In the case of Class B retailer, there shall be two types of a Class B license. The fee for a Class B license authorizing the sale of unchilled beer only shall be fifteen dollars (\$15.00). The fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be one hundred dollars (\$100.00). A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this section the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.
- (b) In the case of a wholesaler the license fee shall be two hundred fifty dollars (\$250.00) for each place of business.
- (c) In the case of a brewer with its principal place of business located in this City, the license fee shall be five hundred dollars (\$500.00) for each place of manufacture.

749.04 APPLICATION FOR LICENSE; DISPLAY.

(a) All licenses under the provisions of this article shall be issued by the City Manager upon written application therefor verified by the applicant under oath. Application forms shall be furnished by the City, designed to elicit all information necessary for the City Manager to determine the eligibility of the applicant for the license applied for; the amount of the license fee; the location within the City of the premises to be licensed and whether or not such premises and structures comply with all applicable provisions of State law, the Codified Ordinances and other ordinances; and no person shall make any false statement in any application for license under this article.

(b) Before issuing any license hereunder, the City Manager may require the applicant to display his corresponding State license.

749.05 UNLAWFUL ACTS.

It shall be unlawful:

- (a) For any licensee, his servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or before 2:00 p.m. on any Sunday, except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours for dispensing of alcoholic liquors;
- (b) For any licensee, his servants, agents or employees to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of eighteen years.
- (c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this section. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the purchaser for credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;
- (d) For any brewer or distributor to transport or deliver nonintoxicating beer to any retail licensee on Sunday;
- (e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers; provided that nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;
- (f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appear the word or words "strong", "full strength", "prewar strength", "high test" or other similar expression bearing upon the alcoholic content of such products of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced except that such label shall contain a statement that the alcoholic content thereof does not exceed three and two-tenths percent by weight;
- (g) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practices;
- (h) For any licensee except the holder of license to operate a private club issued under the provisions of West Virginia Code Article 60-7, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks;

- (i) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times; provided, that provisions of this subsection shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of West Virginia Code Article 60-7;
- (j) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided, that the prohibitions contained in this subsection with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7;
- (k) For any licensee to print, paint or place upon a door, window, or in any other public place in or about the premises, the word "saloon" or similar words to be used in any advertisement by the licensee;
- (l) For any retail licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any thereof may disturb the peace and quietude of the community wherein such business is located; provided, that no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;
- (m) For any person whose state license has been revoked, as provided in West Virginia Code Article 11-16, to obtain employment with any retailer within the period of one year from the date of such renovation, or for any retailer to employ knowingly any such person within such time;
- (n) For any distributor to sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;
- (o) For any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;
- (p) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises;
- (q) For any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer to permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subsection shall not apply where such person under the age of eighteen years, is in, on or upon such premises in the immediate company of his parent, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of any actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

749.06 REVOCATION OF LICENSE.

Council shall revoke the license granted to any licensee under this article subject to an appeal of any licensee to a court of competent jurisdiction, whenever such licensee has his, her or its license revoked by the West Virginia Nonintoxicating Beer Commissioner pursuant to the provisions of West Virginia Code Article 11-16.

749.99 PENALTY.

Any person who violates any provision of this article shall, upon conviction, be fined not more than five hundred dollars (\$500.00), or imprisoned for not more than thirty days, or both.

ARTICLE 753
Intoxicating Liquor

753.01 Levy.

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-7; 60-7-7
Liquor control - see GEN. OFF. Art. 521

753.01 LEVY.

Pursuant to the provisions of West Virginia Code 8-13-7, there is hereby imposed a tax of five percent (5%) of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provision of West Virginia Code Article 60-7, within the corporate boundaries of the Municipality. Such tax shall be levied upon the purchaser of the intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of such intoxicating liquor or wine. Such tax shall be received by the Municipality from the State Treasury pursuant to the rules and regulations adopted by the Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected on intoxicating liquors, other than wine sold or purchased from holders of a license issued under the provisions of West Virginia Code Article 60-7. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of West Virginia Code Article 60-7 from a wine distributor licensed pursuant to the provisions of West Virginia Code Article 60-3. (Passed 10-10-83)

ARTICLE 757
Private Clubs

757.01 License; fees.	757.03 Records.
757.02 Display of license; prohibited sales.	757.04 Revocation.

CROSS REFERENCES

Authority to license - see W. Va. Code 8-13-7; 60-7-7
Private clubs - see W. Va. Code Art. 60-7
Liquor control - see GEN. OFF. Art. 521

757.01 LICENSE; FEES.

All private clubs, as defined in West Virginia Code 60-7-2, the premises of which are situated within the corporate limits of the City and which are operated for a profit incurring to the benefit of their owners, shall pay to the City an annual license fee for a license issued under the provisions of West Virginia Code Article 60-7, as follows:

0-99 members	\$125.00
100-299 members	187.50
300-599 members	250.00
600-more members	375.00

(Passed 7-13-87.)

757.02 DISPLAY OF LICENSE; PROHIBITED SALES.

(a) Each licensee holding a State license issued under the provisions of West Virginia Code Article 60-7 for a private club the premises of which are situate within the City, shall, upon first obtaining such license and at the time of each renewal thereof, report to the City Manager and display such State license to him and pay the City license fee which is imposed upon him by this article, and it shall be unlawful for any such licensee or any officer, member or employee of any private club so licensed, the premises of which being situate within the City limits of this City, to see intoxicating liquor upon such premises unless all fees due to the City, as provided in this article have been paid.

(b) All such fees shall be paid in the City Manager's office at the City Hall on or before June 30, for the ensuing fiscal year, whereupon a license shall be issued by the City Manager, which shall be on such form or forms as prescribed by him. (Passed 7-13-87.)

757.03 RECORDS.

The City Manager, upon display to him of a State private club license, shall make a record thereof and preserve such record in his office, and, upon payment to him of the City license fee as prescribed in this article, he shall issue to the licensee a receipt for such payment, which shall indicate the amount paid, the type of private club and its address within the City, and expiration date of the license for which such City license fee has been paid. It shall be the duty of each such licensee to maintain such City receipt on display in a conspicuous place on the premises of the private club to which it relates. (Passed 7-13-87.)

757.04 REVOCATION.

In the event that any private club license issued by the State, or any agency thereof, is revoked, then, in such event, any license issued under this article shall be likewise revoked and shall be null and void, without the necessity of further proceedings hereunder, and the City Manager shall note the fact in his records. (Passed 7-13-87.)

ARTICLE 761
Public Utility Service Tax

761.01	Definitions.	761.05	Exemptions.
761.02	Imposition and levying of tax; amount.	761.06	Nonliability of utility; refunds, rules and regulations.
761.03	Collection; payment; accounting; effective date; proration.	761.07	Notice to utilities.
761.04	Records.	761.99	Penalty.

CROSS REFERENCES

Public utilities tax - see W. Va. Code 8-13-5a

761.01 DEFINITIONS.

The following words and phrases, when used in this article, shall for the purpose of this article, have the following respective meanings:

- (a) "Person" includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character;
- (b) "Public Utility Service" means all services and tangible personal property purchased within this Municipality from a seller, as hereinafter defined in this section, namely, telephone service; electric service; gas service, including bottles or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia; water service and sanitary sewer service, if purchased, used or consumed within the corporate limits of this Municipality;
- (c) "Purchaser" includes every person who purchases, uses or consumes a public utility service.
- (d) "Seller" includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service; and
- (e) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes, and every combination thereof, of every kind or description.

761.02 IMPOSITION AND LEVYING OF TAX; AMOUNT.

There is hereby imposed and levied upon each and every purchaser of a public utility service, an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of this municipality, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge, exclusive of any Federal or State tax thereon imposed upon the purchaser, made by the seller against the purchaser, with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller, and shall be paid by the purchaser to the seller at the time of the purchase or such charge shall become due and payable under the agreement between the purchaser and the seller.

761.03 COLLECTION; PAYMENT; ACCOUNTING; EFFECTIVE DATE; PRORATION.

It shall be the duty of every seller in acting as the tax collecting medium or agent for this Municipality, to collect from each purchaser for the use of this Municipality, the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this Municipality, and each seller shall remit the amount of tax shown by such report to have been collected, to this Municipality on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after July 1, 1986, for public utility service rendered subsequent to July 1, 1986, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be such portion of the total charge as the number of days after June 30, 1986, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this Municipality charged with the responsibility of collecting taxes due this Municipality.

761.04 RECORDS.

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

761.05 EXEMPTIONS.

The tax hereby imposed and levied shall not apply to the following transactions:

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

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

761.06 NONLIABILITY OF UTILITY; REFUNDS, RULES AND REGULATIONS.

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

(b) The official of this Municipality charged with the responsibility of collecting taxes due this Municipality, shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.

761.07 NOTICE TO UTILITIES.

The tax hereby imposed and levied shall not be effective until this Municipality gives sixty days notice in writing, by certified mail, of the effective date of the section, to any public utility doing business within this Municipality, which is required to collect the tax imposed and levied hereby.

761.99 PENALTY.

(a) Any amount of tax due and unpaid under this article shall be a debt due this Municipality. It shall be a personal obligation of the purchaser which shall be enforceable as provided in West Virginia Code 8-13-15 or in any other manner now or hereafter provided by law for compelling the payment of taxes due Municipalities.

(b) Any purchaser failing or refusing to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder, shall be fined not more than one hundred dollars (\$100.00). The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods, shall constitute a separate and distinct offense.

ARTICLE 763
Wine Distributors and Retailers

763.01	Definitions.	763.09	When distribution to retailers prohibited.
763.02	City license.	763.10	Acquisition from licensed distributors only.
763.03	Licenses; general restrictions.	763.11	Sale of wine in sealed packages.
763.04	License fees.	763.12	Conduct on premises.
763.05	Transfer of license.	763.13	Report of violations.
763.06	When retail sales prohibited.	763.99	Penalty.
763.07	Persons to whom sales prohibited.		
763.08	Sales on credit prohibited; exception.		

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-4
Liquor control - see GEN. OFF. Art. 521

763.01 DEFINITIONS.

For the purposes of this article, the words "distributor", "retailer", "licensee", "grocery store", "wine specialty shop", and "wine" shall have the meaning as defined by State statutes. (Passed 9-14-81)

763.02 CITY LICENSE.

The City Manager shall issue a City license under this article upon the issuance of a State license and the payment of the City license fee. (Passed 9-14-81)

763.03 LICENSES; GENERAL RESTRICTIONS.

(a) No person may engage in business in the capacity of a wine distributor or retailer within the City without first obtaining a license from the City Manager, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

(b) No retailer may be licensed as a private club or as a class A retail dealer in non-intoxicating beer. A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop and shall only be valid for the retail sale of wine at the specified grocery store or wine specialty shop. (Passed 9-14-81)

763.04 LICENSE FEES.

The City Manager shall collect an annual fee for licenses issued under this article as follows:

- (a) Distributor. In the case of a distributor, the license fee shall be one thousand dollars (\$1,000) per year.
- (b) Retailer. In the case of a retailer, the license fee shall be one hundred fifty dollars (\$150.00) per year.

The license period shall begin on the first day of July each year and end on June 30, of the following year. If the initial license is granted for less than a year, the fee shall be prorated according to the number of quarters remaining in the fiscal year, including the quarter in which application is made. (Passed 9-14-81)

763.05 TRANSFER OF LICENSE.

No license issued under this article may be transferred to another person, but the location of the premises to which the license applies may be changed when the following requirements are met:

- (a) Advance notice of the intention to transfer or change the location shall have been made in writing to the City Manager; and
- (b) The written consent of the State Alcohol Beverage Control Commissioner for the proposed change has been exhibited to the City Manager. (Passed 9-14-81)

763.06 WHEN RETAIL SALES PROHIBITED.

No retailer, his servants, agents or employees shall sell or deliver wine on any general or primary election day, or prior to 1:00 p.m. or after 9:00 p.m. on Sundays, or between the hours of 9:00 p.m. and 10:00 a.m. on weekdays and Saturdays. (Passed 9-14-81)

763.07 PERSONS TO WHOM SALES PROHIBITED.

No licensee, his servants, agents or employees shall sell, furnish or give wine to any minor, mental incompetent, or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. (Passed 9-14-81)

763.08 SALES ON CREDIT PROHIBITED; EXCEPTION.

No distributor shall sell or offer to sell, nor shall any retailer purchase or receive, any wine except on a cash basis. No right of action shall exist to collect any claims for credit extended contrary to the provisions of this section. Provided, however, that nothing herein contained shall prohibit, as a credit on any subsequent sale, the crediting of the purchase price charged for wine returned by the purchaser because of damage, spoilage, erroneous shipment or orders, and other such reasons customary in the trade. (Passed 9-14-81)

763.09 WHEN DISTRIBUTION TO RETAILERS PROHIBITED.

No distributor, his agents, servants or employees shall transport or deliver wine to any licensee on Sunday or any general election day. (Passed 9-14-81)

763.10 ACQUISITION FROM LICENSED DISTRIBUTORS ONLY.

No retail licensee shall sell, furnish or dispense any wine purchased or acquired from any source other than a distributor who has obtained a license from both the State and the City. (Passed 9-14-81)

763.11 SALE OF WINE IN SEALED PACKAGES.

All wines sold pursuant to this article shall be sold only in their original sealed packages. (Passed 9-14-81)

763.12 CONDUCT ON PREMISES.

No person while on the premises of any retailer licensed under this article shall perform, nor shall any such retailer, his servants, agents or employees permit any of the following activities:

- (a) Breaking of the seal on any package or bottle of wine.
- (b) Consumption of any alcoholic liquor, wine or beer.
- (c) Loitering.

(Passed 9-14-81)

763.13 REPORT OF VIOLATIONS.

Every violation of any of the provisions of this article shall be reported to the State Alcohol Beverage Control Commissioner. (Passed 9-14-81)

763.99 PENALTY.

Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts herein declared to be unlawful, is guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not more than five hundred dollars (\$500.00), or imprisoned not more than thirty days or both so fined and imprisoned. (Passed 9-14-81)

ARTICLE 765
Exchange of Tax Information

765.01	Exchange of information with State.	765.04	Disclosure of information.
765.02	Scope of agreement.	765.05	Persons privy to the information.
765.03	Information subject to the agreement.	765.99	Penalty.

765.01 EXCHANGE OF INFORMATION WITH STATE.

The City, by and through its Mayor, is hereby authorized to enter into a reciprocal exchange of tax information agreement between the City and the State, and to execute any and all necessary documents incidental thereto. (Passed 11-21-83)

765.02 SCOPE OF AGREEMENT.

The City agrees that it shall, in accordance with the terms and conditions contained in such agreement, exchange, disclose and permit the State reciprocally, to inspect the tax information in its possession, but only to the extent necessary in the administration and enforcement of tax laws and for the assessment and collection of taxes. (Passed 11-21-83)

765.03 INFORMATION SUBJECT TO THE AGREEMENT.

Tax information subject to the agreement, shall include reports, declarations and returns, or copies thereof, filed with the Tax Commissioner of the State or the appropriate Municipal authorities, provided:

- (a) That this information is limited to Business and Occupation Tax and income tax on certain carriers; and
- (b) That this information shall be furnished only to the extent necessary for the administration of the requesting party's tax laws; and
- (c) Under no circumstances shall the tax information exchanged include any information or data secured from the Federal government, or another state or the District of Columbia, or from any other municipality or local government unit.

(Passed 11-21-83)

765.04 DISCLOSURE OF INFORMATION.

Neither party shall disclose any tax information obtained by virtue of this agreement to the Federal government, to another state, to other agencies or departments of the receiving party, or to any other local governmental unit or municipality without the consent of the party from which the information is obtained. (Passed 11-21-83)

765.05 PERSONS PRIVY TO THE INFORMATION.

The only persons who shall be entitled to be privy to the information obtained under the agreement, are the following persons: The Mayor, the City Manager, the City Attorney, the City Clerk, members of Council, and such employees of such officials who are working under the officials and only to the extent necessary to enforce the agreement. (Passed 11-21-83)

765.99 PENALTY.

No officer or employee of the City shall make any unauthorized disclosure of any tax information obtained under this article and agreement with the State except when required in an official investigation into the amount of tax due or in any proceeding before a court of competent jurisdiction to collect or ascertain the amount of any tax due, and no officer or employee of the City shall divulge or make known in any manner the tax return, or any part thereof, of any individual, firm, or corporation, or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed. Any officer or employee of the City who is guilty of the same, shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than one year, or both, together with the costs of prosecution. For the purposes of this article, the words "authorized disclosure" means the release to any person of any tax information obtained by virtue of this agreement, unless the person receiving the information is the authorized counsel of the State or City and shall be using the information only for the purpose of administering business and occupation taxes or carrier income taxes, or the person who filed the return has authorized, in writing, its release, thereby waiving his right to secrecy. (Passed 11-21-83)