

THE CHARTER
OF THE
CITY OF FOLLANSBEE, WEST VIRGINIA

EDITOR'S NOTE: This Part contains the Charter of the City of Follansbee, as amended. Dates appearing in parentheses following section headings indicate sections which have been amended, added or repealed on the date given.

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THE CHARTER
OF THE
CITY OF FOLLANSBEE, WEST VIRGINIA

SECTION 1. CITY AS CORPORATE BODY; POWERS.

The inhabitants of so much of the County of Brooke, as are within the bounds prescribed by Section 2 of this Act, and their successors, shall be and remain, and they are hereby made a body politic and corporate, and by the name of "The City of Follansbee," and as such shall have perpetual succession and a common seal, and by that name may sue and be sued, plead and be impleaded, purchase, lease and hold real estate and personal property, necessary to the purpose of said corporation.

SECTION 2. CORPORATE LIMITS.

The corporate limits of the City shall be as prescribed by Council, according to law and as amended from time to time.

SECTION 3. WARD BOUNDARIES.

The City of Follansbee shall be divided into wards of such number and having such boundaries as Council shall establish from time to time.

SECTION 4. MUNICIPAL OFFICERS.

The Municipal Officers of the City shall consist of a Mayor and six Councilmembers, who together shall form a Common Council, and a City Attorney, City Clerk, Chief of Police and City Manager all of whom shall serve in office until their successor has been duly appointed or elected. With the exception of the City Manager no compensation of any officer shall be increased or diminished during his term of office. Council shall from time to time determine the compensation of all City officers.

SECTION 5. COUNCIL TO EXERCISE CORPORATE POWERS.

All the corporate powers of said corporation shall be exercised by said Council, or under its authority, except when otherwise provided.

SECTION 6. CERTAIN OFFICERS TO BE QUALIFIED VOTERS.

The Mayor, Councilmembers, City Attorney, Chief of Police and City Clerk shall, at the time of their election and at all times thereafter while holding office, be a qualified voter of the City.

SECTION 7. ELECTION OF OFFICERS; TERMS OF OFFICE; ELECTION PRECINCTS.

A. The Mayor, City Attorney, Chief of Police, City Clerk and Councilmembers shall be elected to hold their respective offices for a term of two years, beginning July 1, of the year of their election, or until their successors have been duly elected and qualified, and all other officers shall be appointed by the Common Council.

- B. (1) One member of the Council shall be elected in each Ward of said City, who shall reside in the Ward in which said member is elected; the two candidates in each Ward receiving the highest number of votes in the primary election shall be nominated for the general election, and from the general election the person receiving the highest number of votes in each Ward shall be elected as Ward Councilmember.
- (2) One member of the Council shall be elected at large from the entire population of the City of Follansbee and shall be a resident of the City of Follansbee. The two (2) candidates receiving the highest number of votes in the primary election shall be nominated for election in the general election. In the general election, the person receiving the highest number of votes shall be elected councilmember at large in the City of Follansbee. (Ord. 90/91-11. Passed 7-8-91.)
- (3) No person who files for the office of Councilmember to represent any ward shall be eligible to file for nomination or election as a Councilmember at large, or vice versa, and any person who does so, shall elect which office he desires to run for before the deadline for filing or otherwise shall be disqualified from running for both offices.
- (4) The term of each Councilmember at large and of each Ward Councilmember shall be for a period of two years and shall run concurrently.
- (5) The Councilmember occupying the office of Ward Councilmember at the time of amendment of this section, whose terms expire on July 1, 1979, shall remain a Councilmember until said time and shall represent the wards in which they are now residents until July 1, 1979. Thereafter, the Councilmembers from those wards shall be elected as hereinbefore provided for.
- C. (1) Each ward shall have as many elections precincts and voting places as the Common Council shall establish by ordinance prior to the primary and general elections to be held. No voter shall be entitled to vote in any City election, except in the ward and place in which he resides.
- (2) The official ballot for candidates for nomination shall include the offices above stated in conformity with the Charter amendment, and that the construction of any section of the Charter shall be considered and interpreted in light of the above amendments with regard to there being four wards and two councilmembers at large, and as well, the change in ward boundaries. (Passed 2-14-77.)

SECTION 8. QUALIFICATIONS OF VOTERS.

All citizens of the State who have been bona fide residents of the City for not less than sixty days next preceding an election, and who are qualified voters under the Constitution and laws of this State shall be entitled to vote at such elections held in the City.

SECTION 9. MODE OF VOTING.

In all Municipal elections the mode of voting shall be as provided by the laws of this State.

SECTION 10. PRIMARY ELECTIONS.

A. Candidates to be voted for at all general municipal elections at which a Mayor, City Attorney, City Clerk, Chief of Police and Councilmembers are to be elected under the provisions of this act, shall be nominated by a primary election (the Mayor, City Attorney, City Clerk, Chief of Police and two Councilmembers shall be nominated and elected at large and four Councilmembers shall be nominated and elected from their respective wards), and no other names shall be printed on the general ballot, except those selected in the manner hereinafter prescribed.

B. The primary election for such nomination shall be held on the second Tuesday in May preceding the general municipal election. The judges of election shall be appointed by Council for the general municipal election, who shall be the judges of the primary election, but said election officers shall have first been recommended by a majority vote of all candidates at least ten days preceding the said primary election and all primary and general elections shall be held at the same place, so far as possible, and the polls shall be opened and closed at the same hours.

Any person desiring to become a candidate for Mayor, City Attorney, City Clerk, Chief of Police or Councilmembers, shall, at least ten days prior to said primary election, file with the City Clerk a statement of such candidacy, in substantially the following form:

STATE OF WEST VIRGINIA, BROOKE COUNTY, ss:

I, being first duly sworn say that I reside at Street, City of Follansbee, county of Brooke, state of West Virginia; that I am a qualified voter therein; that I am a candidate for nomination to the office of (Mayor, City Attorney, City Clerk, Chief of Police or Councilmember from first, second, third or fourth ward or at large) to be voted upon at the primary election to be held on the Tuesday of, 19..., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

Signed

Subscribed and sworn to (or affirmed) before me by

..... on this day of, 19...

Signed.....

OFFICIAL PRIMARY BALLOT

Candidates for nomination for Mayor, City Attorney, City Clerk, Chief of Police and Councilmember for theward of the City of Follansbee, at the primary election.

For Mayor

Names of candidates

(Vote for one)

For City Attorney

Names of candidates

(Vote for one)

For City Clerk

Names of Candidates

(Vote for one)

For Chief of Police

Names of candidates

(Vote for one)

For Councilmember

Names of candidates

(Vote for one or two as the case may be)

Official ballot attest:

SignedCity Clerk

Judges of election shall, immediately upon the closing of the polls, count the ballots, and ascertain the number of votes cast in such precinct for each candidate, and make return thereof to the City Clerk before nine o'clock a.m. of the following day. On the day following said primary election the Council shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers of said City at least once, the result thereof. Said canvass shall be publicly made.

The two candidates receiving the highest number of votes for Mayor, City Attorney, City Clerk, Chief of Police, shall be the candidates and the only candidates whose names shall be placed upon the ballot for the said offices at the next succeeding general election, and at the first election to be held under this Charter, the four candidates receiving the highest number of votes for Councilperson in each ward, shall be the candidates and the only candidates whose names shall be placed upon the ballot for Councilperson at said first election, and at all other general elections at which said officers shall be elected, the two candidates receiving the highest number of votes for councilperson in each ward, shall be the candidates and the only candidates whose names shall be placed upon the ballot for councilperson at such Municipal election, unless there should be two members of Council to elect from any of said wards, then the four candidates receiving the highest number of votes shall be placed upon the ballot for councilperson at such election. In the event of the death or resignation of a nominee before the election, the candidate receiving the next highest number of votes at the primary shall be placed on the ticket in his stead.

The ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and all elections in said City, of whatsoever kind, held under this Charter, shall be conducted, returned and the results thereof ascertained and declared in the manner prescribed by the laws of the State relating to elections.

The general municipal elections for such offices in the year 1973 and every two years thereafter shall be held on the second Tuesday in June. All officers elected in said general election shall hold office beginning July 1, in the year of their election.

Beginning in the year 1973 and every two years thereafter, candidates for special election or for the nomination of any primary election shall file their announcement of candidacy in compliance with the provisions of this Charter by 5:00 p.m. on the thirtieth day next preceeding the day of said election.

The ballot at such general municipal election shall be in the same general form as for such primary election, so far as applicable, and all elections in said City, of whatsoever kind, held under this act, shall be conducted, returned and the result thereof ascertained and declared in the manner prescribed by the laws of the State relating to elections, in so far as they are not in conflict or inconsistent with the provisions of this act.

SECTION 11. REMOVAL FROM OFFICE.

The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty percent

(20%) of the entire vote for all candidates for the office of Mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed shall be filed with the City Clerk, which petition shall contain a general statement of the grounds for which removal is sought. The signatures to the petition need not all be appended to one paper but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make an oath before an officer competent to administer oaths, that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition, the City Clerk shall examine and from the voter's register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the Council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the Clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The Clerk shall, within ten days after such amendment, make like examination of the amended petition and if his certificate shall show the same to be insufficient it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be deemed to be sufficient, the Clerk shall submit the same to the Council without delay. If the petition shall be found to be sufficient, the Council shall order and fix a date for holding said election, not less than twenty days nor more than thirty days from the date of the Clerk's certificate to the Council that a sufficient petition is filed.

The Council shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared in all respects as are other City elections. So far as applicable, except as otherwise herein provided, nominations hereunder shall be made without the intervention of a primary election by filing with the Clerk at least ten days prior to said special election, a statement of candidacy, accompanied by a petition signed by electors entitled to vote at said special election equal in number to at least ten percent (10%) of the entire vote for all candidates for the office of Mayor at the last preceding general municipal election, which said statement of candidacy and petition shall be substantially in the form set out in Section 12 of this Charter, so far as the same is applicable, substituting the word "special" for the word "primary", in such statement and petition and stating therein that such person is a candidate for election instead of nomination.

The ballot for such special election shall be in substantially the following form:

Official Ballot

Special election for the balance of the unexpired term
 of _____ as _____
 For _____

(Vote for one only)

Names of candidate

.....

Name of present incumbent

Official ballot - attest:

Signature _____
 City Clerk

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the Clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person that the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who received the highest number of votes shall fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant.

If the incumbent receives the highest number of votes, he shall continue in office. The said method of removal shall be cumulative and additional to the methods provided by general law, and statutes of West Virginia.

SECTION 12. DECIDING TIE VOTE.

When two or more persons shall receive an equal number votes for Council, or any other City office, such tie shall be decided by the flip of a coin.

SECTION 13. ELECTION PROCEDURES.

The provisions of general law with respect to permanent registration of voters, the method and time for filing of certificate of candidacy, nominating candidates, conducting primary regular municipal election, and determining and certifying the results of such election, so far as reasonably applicable shall parallel West Virginia law, except as modified by ordinance.

SECTION 14. VACANCIES IN OFFICE.

Whenever a vacancy shall occur from any cause in the office of Mayor, Councilmember, City Attorney, City Clerk, Chief of Police, or any other elective office, Council shall immediately fill such office by a majority vote of the Council, and such appointment shall hold until the next election.

SECTION 15. APPOINTMENT OF OFFICERS; TERMS OF OFFICE.

The Council shall also have authority to provide by ordinance for the appointment of such other officers as shall be necessary and proper to carry into full force and authority, power or jurisdiction which is or shall be vested in the City, or in the Council or Mayor, or in any office or body of officers thereof, and to grant such officers so appointed the power necessary or proper to collect all taxes levied and assessed by the Council of said City, and all other assessments and money due the said City; and for the purpose shall have the power to distrain and sell property for the enforcement of such payment. And the said Council shall, by ordinance, define the duties of all officers so elected or appointed as aforesaid, and allow them a reasonable compensation, which compensation shall not be increased or diminished during their term in office, and shall require and take from all such officers of said City whose duty it is to receive funds, assets or property, or to have charge of the same, any such bonds, obligations and other writings as they shall deem necessary or proper to insure the faithful performance of their said duties. All officers so elected or appointed by the Council shall hold their said office or appointment during the will and pleasure of said Council, but no appointee shall hold said office beyond the current or fiscal year for which he shall have been appointed, unless he shall have again been appointed by said Council. All officers so appointed or elected may be removed from office by a majority vote of the Council, for malfeasance, nonfeasance or misfeasance in office.

SECTION 16. BOND; OATH OF OFFICE.

All officers elected and appointed under this Charter shall each, before entering upon the duties of his office, and within ten days from the time of his election or appointment, give bond as required by Council, take and subscribe an oath faithfully and impartially to discharge the duties of his office, and the oath to support the Constitution of the United States, and the Constitution of the State of West Virginia. The Mayor having taken such an oath, may administer the same to the other Councilmembers and other officers, and certificates of said oaths shall be recorded in the journal kept by the Council.

SECTION 17. FAILURE TO QUALIFY.

If any one who shall have been duly elected Mayor, Councilmember, or to any other office herein provided for, shall not have been eligible as herein prescribed, or shall refuse or fail to take the oath required under Section 16, within the time prescribed, the Council for the time being shall declare his office vacant and proceed to fill said vacancy by appointment as herein provided.

SECTION 18. TAKING OFFICE.

The elective officers shall enter upon the duties of their office on July 1, of the year of their election after they shall have been elected and shall continue therein until their successors are duly elected or appointed and qualified.

SECTION 19. DUTIES OF MAYOR.

The Mayor shall be the chief executive officer of the said City, and shall take care that the orders, by-laws, ordinances, acts and resolutions of the Council thereof are faithfully executed. Any warrant or other process issued by him may be executed at any place in the County. He shall have control of the police of the City, and may appoint special police officers whenever he deems it necessary, and may suspend any policeman for cause; and it shall be his duty to see that the peace and good order of the City are preserved; and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly persons in said City before issuing his warrant therefor. He shall have the power to issue executions for all fines, penalties and costs imposed by him or he may require the immediate payment thereof, and on default of such payment thereof, may commit the offending party to the jail or other place of imprisonment in such corporation, until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days. In all cases where a person is sentenced to imprisonment, or to the payment of a fine of ten dollars (\$10.00) or more, (and in no case shall a judgment for a fine of less than ten dollars (\$10.00) be ordered or given by the Mayor, if the defendant, his agent or attorney, object thereto,) such person shall be allowed an appeal from such decision to the Circuit Court of Brooke County, upon the execution of an appeal bond, with surety deemed sufficient by the Mayor, in a penalty double the amount of the fine and costs imposed by the Mayor, with condition that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the Circuit Court of said County upon such appeal. If such appeal be taken, the warrant of arrest, (if there be any) the transcript of the judgment, the appeal bond and other papers of the case, shall be forthwith delivered by the Mayor to the Clerk of said Circuit Court; and the said Court shall proceed to try such case in its order, and render such judgment, including that of costs, as the law and evidence may require, but no judgment shall be rendered against said City for costs on such appeal.

The Mayor from time to time shall recommend to the Council such measures as he may deem needful for the welfare of the City. The expense of maintaining any person committed to the jail of the County, or to any place of imprisonment in said City, by him, except it be to answer an indictment, or be under provisions of the law of West Virginia, shall be paid by said City. Said Mayor shall pay all moneys received by him for fines or by virtue of his office, belonging to the City Manager within one week after he receives the same. He shall receive a compensation for his services, to be fixed by the Council, exclusive of fees, and which shall not be increased or diminished during his term in office.

SECTION 20. DUTIES OF THE CITY CLERK.

The City Clerk shall keep a journal of the proceedings of the Council, and have charge of and preserve the records of the City, in the building safe or vault, if there be one. In the absence from the City of, or in the case of sickness or inability of the Mayor, or during any vacancy in the office of the Mayor, the City Clerk shall perform the duties of the Mayor which pertain to him as the chief executive of said City, and, be vested with all powers necessary for the performance of such duties. He shall be conservator of the peace within the City.

The City Clerk shall be the chief election officer of the City and shall see to it that all City elections are conducted according to law.

SECTION 21. CITY ATTORNEY.

It shall be the duty of the City Attorney to act as legal advisor for all City Officials; to prepare when directed by Council all ordinances and legal documents for the City; to represent the City in all matters and proceedings in any court in which the City is interested; and he shall receive such compensation as Council may fix for his services.

SECTION 22. CHIEF OF POLICE.

It shall be the duty of the Chief of the Police to preserve order and quiet in said City and to see that all subordinate police officers faithfully perform their official duties, and he may for good cause appearing to him for neglect of duty or insubordination, suspend any such officer from duty, and report his actions and his reasons therefor, to the next regular meeting of Council for action thereon; a police officer designated by him shall be present in the Municipal Court whenever the same shall be in session, and see that all its orders and requirements are properly executed; he shall, with the consent of the Council entered of record but not otherwise, appoint one or more policemen as the Council may determine; he shall, before entering upon the discharge of his duties, execute a bond conditioned for the faithful performance by him of the duties of his office, and for the accounting for and paying over, as required by law, of all money which may come into his hand by virtue of his office with sureties to be approved by Council, said bond to be in such amount as Council shall determine; he shall receive such compensation as may be fixed by Council, which cannot be increased or deminished during his term in office.

In case a violation of any ordinance of said City is committed in the presence, or within view of the Chief of Police or other officer, the offender may be forthwith apprehended and taken before the Mayor, and a complaint under oath, stating such violation, there lodged and filed; and thereupon such offender may be tried and dealt with according to law, without summons. The Chief of Police shall execute within the County of Brooke, when directed to him, any process properly issued by the Mayor in proceedings for the enforcement of ordinances; and shall collect by levy of execution or otherwise, and duly account for all fines assessed and costs imposed in such proceedings. He shall also have the right and powers, within said City, in regard to the arrest of persons, the collection of claims and executions and the return of process, that are or may be lawfully exercised by a constable of a district within the same, and shall be entitled to the compensation therefor; and he and his sureties upon his official bond shall be liable to all fines, penalties and forfeitures for which a constable is liable, for any dereliction of duty in office, to be recovered in the same manner and in the same courts that such fines, penalties and forfeitures are recovered against constables. He shall pay over all fines or sums collected by him to the City Manager forthwith.

SECTION 23. CITY MANAGER.

The City Manager shall have general supervision over the streets, alleys, sidewalks, drains and sewers of said City and of the construction of any streets, alleys, sidewalks, drains and sewers, and of making changes in the ones existing; and shall see that the streets are properly lighted, pursuant to contract. It shall be his duty to investigate all applications for new streets, alleys, sidewalks, drains and sewers, and report the same to the Council with his recommendation in regard thereto. He shall have general

supervision of the construction of all streets, alleys, sidewalks, drains and sewers and the planting of trees and other improvements which may from time to time be made in any public street or alley, and to this end, may by and with the consent of the Council, appoint such assistants as are necessary in the faithful performance of his duties herein conferred.

It shall likewise be his duty to report to the Council every obstruction found in any of the streets, alleys, sidewalks, drains, or sewers, in said City, and on such report the Mayor shall instruct the Chief of Police to summons the offender to show cause why the same should not be removed at the expense of the offender and why a fine should not be imposed upon such an offender for violation of such ordinance of said City in regard thereto.

It shall likewise be the duty of said City Manager to supervise and protect all the buildings and other properties belonging to said City and provide for the public heating, cleaning and lighting of said City Building and look after the same, and he shall have supervision of all the tangible property of said City and all the appliances used by the Fire Department of said City, and he shall see to it that the same are properly taken care of and kept in proper condition for use.

He shall also supervise the granting of building permits, and see that all buildings erected in said City of Follansbee are erected and constructed in accordance with the ordinances of said City.

He shall also employ such unskilled labor as may be necessary, fix their wages, with the consent of Council of said City, and have authority to terminate their employment at any time.

He shall also perform such other duties as may properly devolve upon him under this Charter or be required of him by ordinances or resolutions of Council of said City.

It shall be the duty of the City Manager to collect all City taxes, licenses, levies, assessments, and such other claims as are properly placed in his hands for collection by the Council, and he may distrain and sell for such taxes and assessments, and have in all other respects the same power as a sheriff of a county to enforce the payment and collection thereof. The City Manager shall within six months from the time of his appointment establish and maintain residency unless otherwise provided by council.

All moneys belonging to the City shall be paid over to the City Manager; and no money shall be paid out by him, except as the same shall have been appropriated by the Council.

The City Manager shall cooperate with the County Assessor and Sheriff to see that all properties are properly assessed and all taxes are collected and received as provided by law.

Upon leaving his position, the City Manager shall turn over to the Council all moneys, books and other property in his possession belonging to the City; and shall, before entering upon the duties of his office, execute a bond with good security, payable to the City of Follansbee, in the amount set by Council, conditioned for the faithful performance of the duties of his office and for the accounting for and paying as required by law of all money which may come into his hands by virtue of his office, and the City Manager shall be chargeable with all the City taxes, levies and assessments, and all money of the City that may come into his hands, and shall account therefor.

- (1) The City Manager shall prepare and submit to the Council the proposed annual budget, and prepare and make recommendation, by a monthly budget report, to the Mayor and City Council with respect to financial fiscal policies.
- (2) The City Manager shall be the Purchasing Officer for all departments of the City.
- (3) The City Manager shall perform such other duties as may be prescribed by this Charter or required of him by the Council not inconsistent with the Charter.

SECTION 24. RECORDS OF COUNCIL.

The Council shall cause to be kept by the City Clerk, in a well-bound book, to be called the journal, an accurate record of all the proceedings, ordinances, acts, orders and resolutions, and in another book, to be called the book of ordinances, accurate copies of all general ordinances adopted by the Council, both of which books shall be completely indexed and be open to the inspection of any citizen of the City of Follansbee, or any one required to pay taxes therein, or who may otherwise be interested. All oaths of office and bonds of the officers of said City, and all papers of the Council shall be endorsed, filed and securely kept by the said City Clerk. The bonds of officers shall be recorded in a well-bound book to be called the record of bonds. Said City Clerk shall perform all such duties as may by ordinance of the Council be prescribed. Said Council may bind and print in pamphlet form all the general ordinances of said City, and transcripts of such ordinances, acts, orders and resolutions, certified by the City Clerk under the seal of the City, shall be deemed prima facie correct when sought to be used before any court or before any justice.

SECTION 25. VOTE OF MAYOR.

The Mayor shall have a vote on all questions and shall decide all ties unless he has previously voted.

SECTION 26. MEETINGS OF COUNCIL; QUORUM.

The meetings of the Council shall be held at such place in said City and at such time as they shall from time to time ordain and appoint, but it shall be lawful for the Council by ordinance, to vest in any officer of said City, or in any member or number of members of their own body, the authority to call special meetings; and it shall prescribe by ordinance the mode in which notice of such meetings shall be given, and no business shall be transacted at such special meeting unless a majority of all members of the Council shall be present, except that a less number may compel the attendance of absent members under such reasonable penalties as they may think proper to impose.

The presence of a majority of the Council shall be necessary to make a quorum for the transaction of business.

SECTION 27. APPROPRIATION OF CITY FUNDS.

No money shall be appropriated and no debt shall be contracted for any purpose whatever, except that the funds to meet the same shall have been first provided by levy, duly laid in accordance with applicable law; and no contract shall be entered into involving or anticipating future levies, unless all questions connected with the same shall have been first submitted to a vote of the people and have received three-fifths of all votes cast for and against the same.

SECTION 28. POWERS AND DUTIES OF COUNCIL.

In addition to the powers and authority granted by the Constitution of the State, other provisions of West Virginia law and any other Charter provisions, and to the extent not inconsistent or in conflict with any of the foregoing, Council shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

- (1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision (1); and, subject to such terms and conditions as the Council shall prescribe, to permit, without in any way limiting the power and authority granted by West Virginia law, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk, or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the Council after publication of a notice of the date, time, place and purpose of such public hearing has been published according to West Virginia law. Provided, that any such permit so granted, shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to such Municipality for its use and benefit;
- (2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the Municipality and regulate the conditions under which any such opening may be made;
- (3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter, or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;
- (4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the Municipality;
- (5) To regulate the width of streets, avenues and roads, and, subject to the provisions of West Virginia law to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;
- (6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

- (7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;
- (8) To provide for the construction, maintenance and covering over of watercourses;
- (9) To control and administer the waterfront and waterways of the Municipality, and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;
- (10) To prohibit the accumulation and require the disposal of garbage, refuse, wastes, ashes, trash and other similar matters;
- (11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;
- (12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such use or consumption, or which may be contaminated or otherwise unsanitary;
- (13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;
- (14) To regulate the keeping of gunpowder and other combustibles;
- (15) To make regulations guarding against danger or damage by fire;
- (16) To arrest, convict and punish any individual for carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character.
- (17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;
- (18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or under his control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;
- (19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;
- (20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;
- (21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;
- (22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C" or "E, O" table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

- (23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;
- (24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to State licenses for any such business and the provisions of West Virginia law and when the Municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such Municipality to grant such license unless it shall clearly appear that the refusal of the Municipality to grant such license is discriminatory or arbitrary; and in the event that the Municipality determines to license any such business, the Municipality shall have plenary power and authority, and it shall be the duty of Council, to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;
- (25) To protect places of divine worship and to preserve peace and order in and about the premises where held;
- (26) To regulate or prohibit the keeping of animals or fowls and to provide for impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;
- (27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing or overloading or overdriving, or willfully depriving of necessary sustenance, any domestic animal;
- (28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;
- (29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;
- (30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;
- (31) To regulate the location and placing of signs, billboards, posters, and similar advertising;
- (32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of West Virginia law and particularly to the limitations or qualifications on the right of eminent domain set forth in such law), within or without the corporate limits of the Municipality, except that the Municipality shall not erect any such system partly without the corporate limits of the Municipality to serve persons already obtaining service from an existing system of the character proposed, and where such system is by the Municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the Municipality, the Municipality shall have the right to lay and collect charges for service rendered to

those served within and those served without the corporate limits of the Municipality, and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the Municipality;

- (33) To acquire watersheds, water and riparian rights, plant sites, rights of way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of West Virginia law;
- (34) To establish, construct, acquire, maintain and operate and regulate markets, and prescribe the time of holding the same;
- (35) To regulate and provide for the weighing of articles sold or for sale;
- (36) To establish, construct, acquire, maintain and operate public buildings, Municipal buildings or City halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots, or any other public works;
- (37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use, and in this connection also to proceed in accordance with the provisions of West Virginia law;
- (38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;
- (39) To provide for the appointment and financial support of a Library Board in accordance with the provisions of West Virginia law;
- (40) To establish and maintain a public health unit in accordance with the provisions of West Virginia law which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Department of Health;
- (41) To establish, construct, acquire, maintain and operate hospitals, sanitarium and dispensaries;
- (42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the Municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by Council, and, in order to carry into effect such authority the Council may acquire any cemetery or cemeteries already established;
- (43) To exercise general police jurisdiction over any territory without the corporate limits owned by the Municipality or over which it has a right of way;
- (44) To protect and promote the public morals, safety, health, welfare and good order;
- (45) To adopt rules for the transaction of business and the government and regulation of Council;

- (46) Except as otherwise provided, to require and take such bonds from such officers, when deemed necessary, payable to the Municipality, in its corporate name, with such sureties and in such penalty as Council may see fit, conditioned upon the faithful discharge of their duties;
- (47) To require and take from such employees and contractors such bonds in such penalty, with such sureties and with such conditions, as Council may see fit;
- (48) To investigate and inquire into all matters of concern to the Municipality or its inhabitants;
- (49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the Municipality's inhabitants as Council may deem necessary or appropriate for the public interest;
- (50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the Municipality and visitors thereto, or such classes thereof as may be deemed advisable;
- (51) To appropriate and expend not exceeding twenty-five cents (25¢) per capita per annum for advertising the Municipality and the entertainment of visitors;
- (52) To conduct programs to improve community relations and public relations generally and to expend Municipal revenue for such purposes;
- (53) To reimburse applicants for employment by the Municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such Municipality to be interviewed;
- (54) To provide revenue for the Municipality and appropriate the same to its expenses;
- (55) To create and maintain an employee benefits fund, which shall not exceed one tenth of one percent (.1%) of the annual payroll budget for general employee benefits and which shall be set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs, and to expend moneys from such fund for such purposes;
- (56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for such purpose; and
- (57) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of West Virginia law, and such penalties shall not exceed any penalties provided in the West Virginia law for like offenses and violations.

- (58) Council shall have authority to pass all ordinances, not repugnant to the Constitution of the United States or to the Constitution and laws of the State of West Virginia, or to this Charter, which shall be necessary or proper to carry into full force and effect the authority and jurisdiction which is or shall be granted to or vested in said City, or in the Council thereof, or in any officer or body of officers of said City. The jurisdiction of said City for police and criminal purposes shall extend one mile beyond the corporate limits of said City in all directions.
- (59) In addition to the powers already enumerated, the City Council shall have power to order elections for bonding the City as provided by law, purchase, build, construct and maintain plants and erect buildings, or other necessary structures, with equipment for furnishing the City or its inhabitants, for public or private consumption, at a reasonable cost to the latter, with gas or other material, for both fuel and illuminating purposes, and electric or other lights for the lighting of its streets and alleys, and public and private buildings, to construct, improve, extend and expand water works for said City, and to construct or contract for and to own an adequate supply of pure, healthful water for said City, and its inhabitants, for public and private consumption, and do all things necessary to secure to said City, and its inhabitants, an adequate supply of pure and wholesome water, and to provide, contract for and construct an adequate sewerage system for said City.

SECTION 29. LICENSES.

Whenever anything, for which a State license is required, is to be done within the corporate limits of the Municipality, Council shall have plenary power and authority, unless prohibited by general law, to require a Municipal license therefor and for the use of the Municipality to impose a reasonable tax thereon which may not exceed the amount of the State license tax. Upon proper application for such Municipal license and payment of the prescribed reasonable tax by any person who has a valid and subsisting State license, such Municipal license shall be issued.

SECTION 30. FRANCHISES.

Franchises shall be granted by the Council, allowing to persons or corporations, for a limited time such occupancy of portions of the street as may be necessary for works of public utility and service, such as steam railway tracks, street railway tracks, poles and trolley wires, telephone and telegraph poles and subways, electric light and other electric poles, wires, television, radio and communication lines, subways and gas and steam pipe lines. But no such franchise shall hereinafter be granted except under the following restrictions:

FIRST. No ordinance granting any franchise for the use of the streets, alleys or public grounds for the City for any of the purposes of public utility above named, or for any other purpose of like nature, shall be passed unless it shall have been first proposed in the Council and notice of the object, nature and extent of such franchise shall have been published at least thirty days, by the applicant, in some newspaper published in the City of Follansbee, Brooke County, before being acted upon, and shall have received a vote of the majority of the members of the Council at a regular meeting after said publication. The votes thereon shall be taken by ayes and noes, and the same entered upon the journal. No such ordinance shall take effect until the expiration of twenty days after its passage, and if within the said twenty days a petition be filed with the City Clerk signed by one-fifth of the qualified voters of the said City, based upon the number of votes cast at the last election, requesting it, the Council shall submit such ordinance to the qualified voters of the City for ratification or rejection, at a special election to be held for that purpose within forty-five days after such petition is presented, and the votes for ratification and for rejection cast at such election shall be entered upon the journal. If a majority of the votes cast at such election shall be in favor of ratification, then such ordinance shall take effect from the time the vote is entered upon the journal.

SECOND. Every grant of any such franchise shall be for a limited period of time. If no limit be expressly provided in the grant, the franchise shall be valid for one year only. In no case shall the franchise extend for a period exceeding thirty years.

THIRD. No grant of any such franchise shall be made without, at the time of making it, provided that the grantee shall indemnify the City against all damages caused by the construction of such work. All reasonable additional provisions and conditions may be made for the protection of the public from unnecessary damage or inconvenience by reason of such works and the operation thereof.

FOURTH. No grant of any franchise shall be made without, at the time of making it, providing that the City shall receive in consideration thereof a compensation, to be paid annually during the whole life of said franchise; provided, however, that the principal of competition shall be employed by the Council, where it is offered, so that the franchise, with prescribed terms and conditions as to its extent, and as to the rates to be charged to the public by it for its service, will be given to the person or corporation bidding or agreeing to pay therefor to the City the highest compensation, or so that the franchise, with prescribed conditions as to its extent, and the compensation that must be paid therefor, will be given to the person or corporation that will agree to render services to the public at the lowest rates.

FIFTH. No grant of a franchise or the extension of, or an addition to, any line such work, over any additional street or territory of the City, shall be made for a period extending beyond the time limited for the expiration of the franchise of the principal work of which it is an extension; and if the franchise of the principal company or work is one which was granted before this act goes into effect, and is not limited as to time, the franchise granted for the extension or addition shall never the less be made subject to the conditions hereof, including a time limit of not exceeding thirty years.

If a franchise be secured from the City by an individual or by an independent or new company, and the work constructed thereunder afterwards becomes a part of it, or be operated as a part of a larger work of the same kind whose franchise was previously obtained and is limited to expire earlier, such later franchise shall, by reason of such annexation, merger, or single operation, expire simultaneously with such earlier franchise.

SIXTH. The Council shall, in suitable, practicable terms, make it an express condition of the grant of any such franchise where it is for a work that is useful chiefly to the local public, that at the expiration of such franchise, the grantee shall, if required by Council, sell to the City the physical plant, at what it is then worth, independent of any value based upon the earning power thereof, and may also provide a means by arbitration or otherwise for determining what such value of that plant may be.

SECTION 31. ANNEXATIONS.

Annexations to the Municipality may be made pursuant to West Virginia law.

SECTION 32. MUNICIPAL COURT JUDGE; RECORDS.

Council may provide by ordinance for the creation and maintenance of a Municipal Court, for the appointment of an officer to be known as the Municipal Court Judge, and for his compensation, and authorize the exercise by such court or judge of such of the jurisdiction and the judicial powers, authority and duties set forth in West Virginia law, this Charter or ordinance of the City.

A book, well bound and indexed, to be denominated the "docket", shall be kept in the Municipal Court, in which shall be noted each case brought before or tried in the Municipal Court, together with the proceedings therein, including a statement of the complaint, the summons, the return, the fact of appearance or non-appearance, the defense, the hearing, the judgment, the costs, and in case the judgment be one of conviction, the action taken to enforce the same. The record of each case shall be signed by the Municipal Court Judge, and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office; and the Municipal Court Judge shall deliver to his successor the docket and all books and papers pertaining to his office.

SECTION 33. LIENS UPON REAL ESTATE FOR CITY TAXES.

There shall be a lien upon real estate within said City for City taxes assessed thereon and for all fines and penalties assessed to or imposed upon the owners thereof by the authorities of said City from the time the same is so assessed or imposed which shall have priority over all other liens, except the lien for taxes due the State and County, and which may be enforced by the Council in same manner provided by law for the enforcement of the lien for County taxes. If any real estate within said City be returned delinquent for the nonpayment of the taxes thereon, a copy of such delinquent list may be certified by the Council to the Auditor, and the same may be sold for City taxes, interest and commission thereon, in the same manner, at the same time, and by the same officers as real estate is sold for State taxes.

SECTION 34. EMINENT DOMAIN.

The City shall have such powers of Eminent Domain as are granted under the laws of the State.

SECTION 35. REPEALER.

All previous Charter sections or ordinances of the City of Follansbee, as they exist at the time of the passage of this section of the City Charter which are not set forth in this Charter or which are inconsistent therewith, are hereby abrogated, and all former Charter sections or ordinances or part of Charter sections or ordinances inconsistent with any provisions of this Charter are hereby repealed.

SECTION 36. UDAG FUND.

All funds received by the City of Follansbee from an \$8.75 million dollar Urban Development Action Grant from a loan to Wheeling-Nisshin Steel Company shall be used for such purposes permitted under the terms of the Grant and shall be expended only by the following mandatory methods:

I.

Fifty percent (50%) of the principal and accumulated interest may be expended by ordinance or resolution of Council.

II.

Fifty percent (50%) of the principal plus such additions thereto as Council shall appropriate shall be expended only by designation through Charter Amendment voted upon by the registered voters of the City of Follansbee and not by Amendment through an alternate plan of an ordinance without protest as provided in West Virginia Code Chapter 8, Article 4, Section 8. Provided further, however, that the interest accumulated on the principal may be expended by Council by ordinance or resolution without a designation through Charter Amendment by a vote of the registered voters of the City of Follansbee.

(Passed 4-10-89)

