

TITLE 7 OFFENSES -

MISCELLANEOUS

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AN ORDINANCE ENACTING TITLE 7A OF
THE SHEPHERDSTOWN CODE, CHAPTER 1,
SECTIONS 7A-101 TO 7A-108 INCLUSIVE,
RELATING TO PUBLIC NUISANCES

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

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There is enacted Title 7A to read as follows:

TITLE 7A - PUBLIC NUISANCES

Chapter 1 - General Provisions

Section 7A-101: Definition of "public nuisance."

For the purpose of this chapter, a public nuisance shall be taken to mean a thing or act, committed or permitted, failure to act, occupation or use of property which:

(a) Shall annoy, injure or endanger the safety, health, ;comfort or repose of any number of persons;

(b) Shall offend the public decency;

(c) Shall unlawfully interfere with, obstruct or tend to obstruct or render dangerous for passage, any public park, public playground, street, alley or highway; or,

(d) Shall in any way render any number of persons insecure in life or in the use and enjoyment of their property.

Section 7A -102: Enumeration of public nuisances affecting health.

The following are hereby declared to be public nuisances affecting health:

(a) All decayed or unwholesome food offered for sale to the public, or kept or maintained so as to be obnoxious.

(b) All diseased animals running at large.

(c) All ponds, pools of water, or vessels holding stagnant water in which mosquitos can bread.

(d) Carcasses of animals not buried or otherwise disposed of in

a sanitary manner within eighteen (18) hours after death.

(e) Accumulation of manure or rubbish which are breeding places for flies/ mosquitoes or vermin.

(f) Privy vaults and garbage cans which are not flytight.

(g) All noxious weeds and other rank growth of vegetation upon public or private property.

(h) All public exposure of persons having contagious disease.

(i) All other acts, omission of acts, occupations and use of property which are in fact a menace or detriment to the public health.

Section 7A - 103; Enumeration of public nuisances affecting morals and decency.

The following are hereby declared to be public nuisances affecting public morals and decency:

(a) All gambling devices, slot machines and punchboards, not permitted by state statute.

(b) All houses, apartments, tenements, or any part or parts thereof, kept for the purpose of prostitution or promiscuous sexual intercourse and houses of ill fame and bawdy houses.

(c) All places where intoxicating liquors are manufactured, sold, bartered or given away in violation of law, or where persons are permitted to resort for the purpose of drinking intoxicating liquors kept for sale, barter or distribution in violation of law, and all liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place.

(d) Any vehicle used for any immoral or illegal purpose, (e)

Any indecent or obscene pictures, books, pamphlets, magazines and newspapers.

(f) Betting, bookmaking, selling baseball pools, race horse pools, and all apparatus used in such connection.

(g) Gambling houses and all poolrooms where minors under the age of eighteen (18) years are permitted to enter and are permitted to loaf and loiter therein; where punchboards, slot machines, race horse pools, baseball pools or any other scheme, devise or apparatus is kept, and promoted which constitutes a game of chance, gambling devise or any other scheme by whatsoever name known which is classed as and is defined by state statute as a game of chance.

Section 7A - 104; Enumeration of public nuisances affecting peace and safety.

The following are declared to be public nuisances affecting peace and safety:

(a) All snow and ice not removed from public sidewalks in accordance with rules and regulations promulgated and approved by the town council.

(b) All limbs of trees which project over a sidewalk or street and which are less than-eight (8) feet above the surface of such public sidewalk or ten (10) feet above the surface of such street.

(c) All buildings, walks or other structures which have been damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.

(d) All explosives, flammable liquids and other dangerous substances stored in any manner or in any amount other than that provided by this Code or other ordinances of the town.

(e) All use or display of fireworks, except as provided by this Code or other ordinances of the town.

(f) All loud or unusual noises, either made or permitted to be

made or condoned, and annoying vibrations, which offend the peace and quiet of persons of ordinary sensibilities.

(g) Obstructions and excavations affecting the ordinary use of the public, of streets, alleys and sidewalks, or public grounds, except under such conditions as are provided by this Code or other ordinances of the town.

(h) All hanging signs, awnings and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.

(i) The allowing of rainwater, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.

(j) All barbed-wire fences which are located within three (3) feet of any public sidewalk or thoroughfare.

(k) The distribution of handbills, except as provided by this Code and other ordinances of the town.

Section 7A - 105; Complaints; notice of hearing before council.

The police chief, any police officer, or any bona fide citizen residing in the town may file under oath a complaint against any person maintaining or harboring any nuisance.

If such complaint is filed by a citizen other than by some one of the town officials above designated, such complaint may be laid before the council at its next regular or special session or meeting, and if the council directs, the town recorder shall issue notice to be served upon the person charged with maintaining or harboring such nuisance, requiring him to appear before the town council, at a designated time and place, and to show cause, if any he can, why such nuisance should not be abated. Such notice shall

be served, as other legal notices are served, on the owner, lessee, agent, manager in charge, or any servant or employee in charge or control of the premises where the nuisance in question is alleged to exist, at least ten (10) days prior to the time and place set therein for the hearing before the council, and said notice shall contain a statement or specification of the charge's, grounds or reasons, for such proposed contemplated action.

If the complaint is filed by any town official above named, the town recorder may forthwith issue such notice without the necessity of referring the complaint to the council.

Section 7A - 106; Hearing before council; disposition of complaint.

Pursuant to notice, the council shall conduct a hearing pursuant to this chapter, at which hearing both the complainant and the person so charged with maintaining such nuisance, together with such witnesses as they may produce shall be fully heard. Upon such hearing a continuance for proper cause shown may be granted at the instance of either party. If upon the hearing of the matter the council by majority vote of the members present constituting a quorum thereof shall determine that such nuisance exists as charged in the complaint, it shall provide by resolution for its abatement as follows:

(a) If such nuisance be in a place of business or other establishment for the conduct of which the city has issued a license, including the sale of nonintoxicating beer under Section 3-301 of this Code, then such license may be revoked or suspended.

(b) If the nuisance found to exist be that of conducting a house of ill fame, bawdy house, house of prostitution, gambling house, or place for the handling, sale or other disposition of

intoxicating liquors contrary to the statutes of the state or the provisions of this Code or other ordinances of the town, the resolution of council may authorize and direct the town attorney to institute on behalf of the city a suit in equity in the proper form for the abatement of such nuisance and the closing of such premises as provided by statute.

(c) If any nuisance be found to exist other than those specially enumerated in subsections (a) and (b) of this section, and the provisions of this Code and other ordinances of the town do not provide for its abatement, the council may authorize the issuance of a warrant before the mayor or, upon the complaint of any official of the town, or any bona fide resident, filed before the mayor, prosecution shall immediately be had of any person shown to be maintaining or harboring such nuisance.

Section 7A - 107: Responsibility of owner, lessee, tenant; procedure to be cumulative.

Any person having control over any premises upon or in which a nuisance is maintained or harbored in violation of this chapter whether he be the owner, lessee, sublessee, tenant, occupant or the agent or manager in charge for any such owner, lessee, sublessee, tenant or occupant thereof, shall be subject to the provisions of this article and may be proceeded against in all respects as fully as is provided in the foregoing provisions of this chapter with reference to the occupant of such premises.

Prosecutions under this chapter shall not be deemed to be exclusive, but shall in addition to all other penalties provided by any other provision of this Code or other ordinance of the town authorizing the prosecution and conviction for any violation of the

provisions of this Code or other ordinances of the town even though the result of the offense charged would be the setting up, maintaining or harboring of a nuisance and within the purview of this chapter.

Section 7A - 108: Penalty for failure to comply with chapter.

Any person who shall knowingly cause or create any public nuisance or permit any public nuisance to be created or to be placed upon or to remain upon any premises owned or occupied by him, shall be guilty of a misdemeanor, and shall, in addition to all other penalties provided for in this chapter or any other provisions of this Code or ordinance of the town, be punished by imposition of a fine of not more than one hundred dollars (\$100.00) for each separate offense, and each day a nuisance is maintained or harbored shall constitute a separate offense and may be proceeded against by separate prosecution until such nuisance is abated.

Adopted March 12, 1985

**AN ORDINANCE ENACTING SECTION
7A-109 OF CHAPTER 1 OF TITLE 7A OF THE
CODE OF SHEPHERDSTOWN, WEST VIRGINIA,
RELATING TO NOISE ABATEMENT AND PUBLIC NUISANCE**

WHEREAS, excessive noise may constitute a hazard to the public health, welfare, safety and quality of life of the inhabitants of, workers in, and visitors to the Town of Shepherdstown; and

WHEREAS, in some circumstances such excessive noise may also constitute a public nuisance; and

WHEREAS, there exist objective mechanisms and procedures to monitor and identify excessive noise; and

WHEREAS, § 8-12-5(23) of the West Virginia Code provides municipalities with the authority to eliminate 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.

NOW, WHEREFORE, THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 1 of Title 7 A of the Town Code is hereby amended by adding Section 7A-109, entitled "Noise Abatement" to enact penalties and abatement procedures for excessive noise; accordingly, there is enacted Section 7A-109 of Chapter 1 of Title 7A to read as follows:

Section 7-109: Noise Abatement

A. The Corporation of Shepherdstown does hereby declare noise levels in excess of 65 decibels (dbA), which levels are either intermittent or continuous for
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duration of at least thirty minutes, to be a hazard to the public health and safety within the limits of the Town of Shepherdstown and the same are subject to abatement by the procedures set forth herein. Noise levels in excess of 65 dbA, which levels are either intermittent or continuous for a duration of a least thirty minutes, between the hours of 11 pm and 7 am are deemed to prevent the quiet use and enjoyment of adjacent property by its owners or occupants, and are also subject to abatement as set forth herein. Noise levels in excess of 65 dbA emanating from sound amplifiers mounted in motor vehicles are deemed to be a hazard to the public health, safety and quality of life to the inhabitants of, workers in, and visitors to the Town of Shepherdstown and the same are subject to abatement as set forth herein.

B. For purposes of this ordinance only the following terms are defined:

1. "Complaint" shall mean a written statement of the essential facts constituting the offense charged. It shall be made upon the oath of a law enforcement officer. The complaint shall set forth the facts of the allegation of excessive noise; name the complainant or complainants with complete address and telephone number; name the alleged perpetrator or perpetrators of the excessive noise and his/her complete address and telephone number; set forth the names, addresses, and telephone numbers of all persons who are impacted by the alleged excessive noise and the approximate area of impact of excessive noise.

2. "Excessive Noise" shall mean:
- i. Radios, television sets, musical instruments and amplifiers, phonographs, compact disc players, and similar devices. It shall be unlawful to operate or permit the use of any radios, television sets, musical instruments and amplifiers, phonographs, compact disc players and similar devices as to be audible at or above the level of 65 dbA through the walls of apartment units within the range of the same building, from the property line of the property where the noise originates, or from any street between the hours of 11:00 p.m. to 7:00 a.m.
 - ii. Parties and other social events. It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce noise in a manner such that the noise is audible at or above the level of 65 dbA through the walls of apartment units within the range of the same building, from the property line of the property where the noise originates, or from any street between the hours of 11:00 p.m. to 7:00 a.m. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at that event and resides on the premises involved or is a person who owns.

leases, or otherwise controls the use of the premises involved and has authorized the use of the premises for such event. For parties or social events on public property with no permit and no clearly identified person in charge, all attendees shall be issued a violation.

- iii. Domestic use of power tools and equipment. It shall be unlawful to operate or permit use of non-commercial or non-industrial power tools and landscaping and yard maintenance equipment that produces an audible sound at or above the level of 65 dbA through the walls of apartment units within the range of the same building, from the property line of the property from which the noise originates, or from any street, between the hours of 11:00 p.m. to 7:00 a.m. Further, it shall be unlawful to operate or permit use of non-commercial or non-industrial power tools and landscaping and yard maintenance equipment that produces an audible sound at or above 65 dbA through the walls of apartment units within the range of the same building, from the property line of the property from which the noise originates, or from any street, between the hours of 7:00 p.m. to 11:00 p.m. Any mechanical noise which registers 65 dbA at the nearest

complainant's property line will be probable cause for a violation.

iv. Stationary sound sources. It shall be unlawful to operate stationary sources of sound, including but not limited to, air conditioners, heat pumps, or exhaust fans that produce an audible sound at or above the level of 65 dbA at a neighboring property line.

v. Sound amplifiers mounted in motor vehicles. It shall be unlawful to operate radios, musical amplifiers, cassette players, compact disc players and similar devices as to be audible outside the motor vehicle at or above the level of 65 dbA.

vi. For the purpose of determining dbA's, the noise shall be measured on the A-weighting scale on a sound level meter, properly calibrated, of standard design and quality having characteristics established by the American National Standards Institute.

3. "Household" shall mean any apartment, town house, unit, or freestanding home which serves as a residence of persons who live in that same dwelling, sharing its furnishings, facilities, accommodations and expenses. A building with multiple apartments, townhouses, or units may, accordingly, contain multiple households.

C. Procedures.

1. Any person complaining of excessive noise, as defined herein, may contact local law enforcement officers who may then investigate the complainant's report and, if appropriate, such officers may obtain a summons for the alleged perpetrator or perpetrators to appear before a the municipal court at a stated time and place.
2. A hearing shall be conducted in accordance with the West Virginia Rules of Criminal Procedures for Magistrate Courts.

D. Noise Abatement and Penalties

1. The municipal court, having found that a perpetrator or perpetrators during any twelve month period has caused or allowed the production of excessive noise, may order the perpetrator or perpetrators to abate the excessive noise and order the perpetrator or perpetrators to pay the Corporation of Shepherdstown a civil penalty of not less than \$100 nor more than \$500.
2. The municipal court, having found that a perpetrator has committed a second or subsequent knowing and willful violation of this ordinance during a twelve month period, may order the perpetrator to pay to the Corporation of Shepherdstown a civil penalty of not less than \$300 nor more than \$1,000.
3. Repeated similar violations of this ordinance which occur on separate subsequent days shall be separate offenses under this ordinance.

E. Exempted Activities.

1. Emergency or public safety vehicles;
2. Emergency repair activities directed at vital services;
3. Any public or private emergency or alarm device.
4. Sounds emanating from any place of worship.
5. Construction tools or equipment operated between the hours of 7:00a.m. and 6:00p.m., operated by the employees of the Corporation of Shepherdstown in the performance of their duties, or pursuant to a Building Permit issued by the Corporation of Shepherdstown.
6. Noise incident to the operation of properly equipped motor vehicles on public streets, alleys, or private roadways, except as provided in subsection B.2.iv., above.
7. Sounds caused by organized athletic or other group activities, when those activities are conducted on property generally used for those purposes, including stadiums, parks, schools, churches and athletic fields. These exceptions do not prohibit the Town Council from declaring a specific event or activity in violation of this ordinance, or other laws, rules and regulations.

F. Severability. The several sections and subsections of this ordinance are severable, and if any section or subsection hereof is held unconstitutional, all remaining section or subsections shall remain valid.

G. Purpose. It is the purpose of this ordinance to promote the public health and safety of the community and, as such, should be liberally construed to give effect to the purposes hereof.

H. Appeals. Appeals to the Jefferson County Circuit Court shall be made pursuant to the West Virginia Rule of Criminal Procedure for Magistrate Courts.

I. Civil Cause of Action not Precluded. Nothing contained in this ordinance shall be construed to limit or preclude the right of any individual or entity from pursuing any civil cause of action otherwise authorized by law for either injury or damage arising from any excessive noise under law.

Adopted July 11, 2006

CHAPTER 1 Enumerated

Section 7-101 Assault; Battery

(a) Assault It shall be unlawful for any person to attempt to commit a violent injury to the person of another or to commit an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery It shall be unlawful for any person to make physical contact of an insulting or provoking nature with the person of another or intentionally cause physical harm to another person.

Section 7-102 Disturbing the peace

It shall be unlawful for any person to disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him under his control. No person shall threaten, traduce, quarrel, challenge to fight or fight, or use obscene, offensive, profane, or unseemly language .to annoy, disturb, or vex another.

Section 7-103 Indecent exposure; Public indecency

(a) Indecent exposure It shall be unlawful for any person intentionally to expose his sex organs or anus under circumstances in which he knows his conduct is likely to cause affront or alarm.

(b) Public indecency It shall be unlawful, for any person to engage in any overt act of sexual gratification or expose the private or intimate parts of his body or the body of another person to public view.

(c) Invasion of privacy by looking. It shall be unlawful for any person to enter upon the property of another and secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary. (adopted January 11, 2000)

Section 7-104 Willful disruption of governmental processes

It shall be unlawful for any person to willfully interrupt or molest the orderly and peaceful process of any department, division, agency or branch of the municipal government.

Section 7-105 Impersonating a government officer or employee

It shall be unlawful for any person not a, member of the official police force

of the Town to wear, use, copy or imitate in any respect or manner the uniform, or the badge or other insignia prescribed for members of the official police force, and it shall be unlawful for any person to falsely represent himself to be an officer or any other government employee.

Section 7-106 Weapons and firearms

(a) Carrying dangerous or deadly weapons without license or other authorization It shall be unlawful for any person, without a state license therefore or except as provided in the West Virginia Code of 1931, as amended, to carry about his person any revolver or pistol, dirk, bowie knife, sling shot, razor, billy, metallic or other false knuckles, or other dangerous or deadly weapon of like kind or character,

(b) Brandishing or exposing weapons It shall be unlawful for any person armed with a pistol, gun or other dangerous or deadly weapon, whether licensed to carry the same or not, to carry, expose, brandish, or use such weapon in a way or manner to cause, or threaten, a breach of the peace.

Section 7-107 Weapons, firearms, etc., discharge of

It shall be unlawful for any person to discharge, within this Town, any firearm, air rifle, B.B. gun, slingshot or other weapon or instrument which discharges a projectile capable of inflicting bodily injury, except in the lawful defense of person or property and except in the performance of a lawful duty.

Section 7-108 Noise pollution

(a) It shall be unlawful for any person within the Town to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet, and comfort of neighboring residents or any reasonable person of normal sensitiveness residing in the area. The operation of any such set, instrument, television, phonograph, machine or. device at any time in such a manner as to be plainly audible at either the property line from which the sound emanates or 25 feet from a vehicle on public rights-of-ways is a violation of this section.

(b) The above section shall not apply to any person who is participating in a school band or in a parade for which the Town has given permission.

(c) It shall be, unlawful for any person, other than personnel of law enforcement, fire department, or governmental agencies to install, use, or operate within the Town a loudspeaker or sound-amplifying equipment for the purposes of giving instruction, directions, talks, addresses, lectures, or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park, place, or public property, without first filing a registration statement and obtaining approval thereof as set forth in a form to be determined by the mayor.

(d) It shall be unlawful for any person to discharge into the open air the exhaust of any power device or motor vehicle which is not equipped

with an adequate muffler in constant operation and properly maintained to prevent any excessive unusual, or unnecessary noise, and no such muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device.

Section 7-109 False alarm of fire

It shall be unlawful for any person to turn in or telephone, or by use of any means or methods of communication aid or abet in making or turning in of, any alarm of fire which he knows to be false at the time of making or turning in the alarm.

Section 7-110 Riots and unlawful assemblages

(a) It shall be unlawful for any person to engage in a riot, rout, or unlawful assembly.

(b) It shall be the duty of the official police force of the Town to go among, or as near as may be with safety, to persons riotously, tumultuously, or unlawfully assembled, and in the name of the law command them to disperse; and if they, shall not thereupon immediately and peaceably disperse, such member of the official police force of the Town shall command the assistance of all persons present, and all or any part of other law enforcement personnel available to him, as need be, in arresting and securing those so assembled.

Section 7-111 Malicious, mischief

(a) It shall be unlawful for any person to take and carry away, or destroy, injure or deface any property, real or personal, not his own.

(b) It shall be unlawful for any person willfully or maliciously to destroy or injure any of the wires, poles, insulators, or other property belonging to any telephone, telegraph or railroad company, or any public utility company.

Section 7-112 Drinking of alcoholic beverages in public

It shall be unlawful for any person to drink alcoholic beverages on the streets or sidewalks of the town.

Section 7-113 Houses of ill fame; Prostitution

(a) Houses of ill fame It shall be unlawful for any person knowingly to keep, set up, maintain, operate, own, let, sublet, or rent a house, place, building, hotel, tourist camp or other structure for the purpose of prostitution.

(h) Prostitution It shall be unlawful for any person to engage in, solicit, induce, entice, or procure another to commit or participate in an act of prostitution.

Section 7-114 Weeds

No owner or tenant of property shall permit grass or other vegetation, commonly recognized as weeds, on such property, to exceed a height of one (1) foot.

Section 7-115 Nuisances on private property

(a) For the purposes of this section, the term "nuisance" is defined to mean any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located. This includes, but is not limited to, the keeping or the depositing on, or the scattering over, the premises of any of the following:

- (1) Lumber, junk, trash, or debris;
- (2) Abandoned, discarded or unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers.

(b) No person owning, leasing, occupying or having charge of any premises shall maintain or keep any nuisance thereon, nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

(c) Exterior storage of nonoperating vehicles is prohibited. No person in charge of or in control of premises, whether as owner, lessee, tenant, occupant or otherwise shall allow any partially dismantled, wrecked, junked, discarded or otherwise nonoperating motor vehicle to remain on such property within the town for a longer time than ten days; except that this section shall not apply with regard to any vehicle in an enclosed building or so located upon the premises as not to be readily visible from any public place or from any surrounding private property. This section shall further not apply with regard to any vehicle on the premises of a business enterprise operated in a lawful place, other than in a residential district, and operated in a lawful manner, when the keeping or maintenance of such vehicle is necessary to the operation of such business enterprise; or with regard to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town or any other public agency or entity

(d) The municipal police department may employ its own personnel, equipment and facilities for the purpose of removing, preserving, or storing abandoned vehicles.

TITLE 7 OFFENSES-MISCELLANEOUS, CHAPTER 1 ENUMERATED, SECTION
7-116 PENALTIES

Upon the final hearing of any proceeding to punish for an offense, if judgment is given against the accused such judgment shall include the costs incurred by the Town, or due to any officer in that behalf, in addition to court costs of forty (\$40.00) dollars and any fees required by law.

Adopted - October 10, 2000

Section 7-116 Penalties

A violation of any of the foregoing prohibitions set forth in this title shall be punishable by a fine not to exceed \$100.00. 'Any violation continuing from day to day shall constitute separate individual violations and may be prosecuted as such.

FIRE REGULATIONS

Chapter 1, Section 7-117: BURNING ORDINANCE

It shall be unlawful for any person to burn or to permit any other person to burn on his property, any fires or combustible material within the town limits of the Corporation of Shepherdstown, except as may be provided for and allowed by other provisions of the Code of the Corporation of Shepherdstown.

THEREFORE BE IT ORDAINED AND ENACTED by the Mayor and Town Council for the Corporation of Shepherdstown as follows:

A. OPEN FIRES

No persons shall cause, suffer, allow or permit an open fire except under the following conditions:

- 1) When such fire is set or permission for such fire is given by the Fire Chief of the Corporation of Shepherdstown with the concurrence of the Jefferson County Health officer:
 - (a) For the purpose of the elimination of a fire or health hazard which cannot be abated by any other means.
 - (b) For instruction in methods of fighting fires.
 - (c) For the purpose of removing any hazardous materials.
- 2) When oil or gas fired salamanders or other devices are used for heating by construction or other workers, provided no nuisance or air pollution is created.
- 3) When fires are used for outdoor cooking or other recreational purposes and no nuisance or air pollution is created.

This violation falls under the Section 7-116 Penalties of the Town Code.

Adopted October 11, 1983

**AN ORDINANCE ENACTING SECTION 7-118 OF
CHAPTER 1 OF TITLE 7 OF THE
CODE OF SHEPHERDSTOWN, WEST VIRGINIA,
RELATING TO OBTAINING MONEY, PROPERTY AND SERVICES BY FALSE
PRETENSES AND DISPOSING OF PROPERTY TO DEFRAUD CREDITORS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 1 of Title 7 of the Town Code is hereby amended by adding Section 7-118, entitled "Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties", to enact penalties for obtaining money, property and services by false pretenses and defrauding creditors; accordingly, there is enacted Section 7-118 of Chapter 1 of Title 7 to read as follows:

Section 7-118 Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

(a) (1) If a person obtains from another by any false pretense, token or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or

(2) If a person obtains on credit from another any money, goods or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and with the intent to defraud;

(3) Such person is guilty of larceny. If the value of the money, goods or other property is one thousand dollars or more, such person shall be charged with a violation of § 61-3-24(a) of the West Virginia Code, as amended. If the value of the money, goods or other property is less than one thousand dollars, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than 30 days or fined not more than two thousand five hundred dollars, or both.

(b) If a person obtains by any false pretense, token or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, the person shall be charged with a violation of § 61-3-24(b) of the West Virginia Code, as amended.

(c) (1) If a person removes any of his or her property out of the municipality with the intent to prevent the same from being levied upon by any execution; or

(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or

(3) If a person receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;

(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars and be confined in jail not more than 30 days.

(d) If a person, firm or corporation obtains labor, services or any other such thing of value from another by any false pretense, token or representation, with intent to defraud, the person, firm or corporation is guilty of theft of services. If the value of the labor, services or any other such thing of value is one thousand dollars or more, the person, firm or corporation shall be charged with a violation of § 61-3-24(d) of the West Virginia Code, as amended. If the value of the labor, services or any other such thing of value is less than one thousand dollars, the person, firm or corporation is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than 30 days or fined not more than two thousand five hundred dollars, or both, in the discretion of the court.

(e) Theft of services includes the obtaining of a stop payment order on a check, draft or order for payment of money owed for services performed in good faith and in substantial compliance with a written or oral contract for services, with the fraudulent intent to permanently deprive the provider of such labor, services or other such thing of value of the payment represented by such check, draft or order. Notwithstanding the penalties set forth elsewhere in this section, any person, firm or corporation violating the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two times the face value of the check, draft or order.

(f) Prosecution for an offense under this section does not bar or otherwise affect adversely any right or liability to damages, forfeiture or other civil remedy arising from any or all elements of the criminal offense.

Adopted: November 14, 2006

**AN ORDINANCE ENACTING SECTION 7-119 OF
CHAPTER 1 OF TITLE 7 OF THE
CODE OF SHEPHERDSTOWN, WEST VIRGINIA,
RELATING TO OBSTRUCTION OF FREE PASSAGE WITHIN 100 FEET OF AN
ESTABLISHMENT THAT SELLS ALCOHOLIC LIQUOR AND/OR
NON-INTOXICATING BEER**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 1 of Title 7 of the Town Code is hereby amended by adding Section 7-119 entitled "Unlawful activity (standing or sitting) within 100 feet of an establishment that sells alcoholic liquor and/or non-intoxicating beer; penalties", to prohibit individuals from obstructing free passage on or along the street or sidewalk within 100 feet of a establishment that sells alcoholic liquor and/or non-intoxicating beer by standing or sitting and to enact penalties for such obstruction; accordingly, there is enacted Section 7-119 of Chapter 1 of Title 7 to read as follows:

Section 7-119 Unlawful activity (standing or sitting) within 100 feet of an establishment that sells alcoholic liquor and/or non-intoxicating beer; penalties.

(a) It shall be unlawful for any person or persons who are standing or sitting within 100 feet of an establishment which sells alcoholic liquor and/or non-intoxicating beer to obstruct free passage, between the hours of 10:00 p.m. and 6:00 a.m., on or along the street or sidewalk, or to disobey a request by a police officer to move on when such person or persons are obstructing free passage on or along the street or sidewalk by standing or sitting within 100 feet of an establishment which sells alcoholic liquor and/or non-intoxicating beer.

(b) The 100 feet distance mentioned in this Section is to be measured in any direction from the center of the main entrance, or any other entrance used by the public, of the establishment.

(c) Nothing contained in this Section is intended to prevent property owners, their tenants, or the guests thereof, from sitting on the front steps or standing on the sidewalk in front of their property, regardless of whether or not the property is within the 100 feet distance.

(d) Any person who violates the provisions of this Section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars (\$100).

Adopted: _____ March 13, 2007

**AN ORDINANCE TO AMEND THE CORPORATION OF SHEPHERDSTOWN TOWN CODE
TO ESTABLISH CURFEW HOURS FOR MINORS AND ESTABLISHING
PARENTAL RESPONSIBILITY REGARDING CURFEW.**

BE IT ORDAINED BY THE COUNCIL OF THE CORPORATION OF SHEPHERDSTOWN that
the Shepherdstown Town Code be amended as follows:

7-301 Definitions

For the purpose of this chapter, the following terms, phrases, works and their derivations have the meaning given herein,

- (a) "Minor" means any person under the age of eighteen years.
- (b) "Parent" means any person having legal custody of a minor:
 - (1) As a natural or adoptive parent,
 - (2) As a legal guardian,
 - (3) As a person who stand in loco parentis, or
 - (4) As a person to whom legal custody has been given by order of the court.
- (c) "Public place" means any street, highway, alley or right of way, to include sidewalks; any park, playground, ground, place or building open the public; any private or publicly owned place of amusement, entertainment or public accommodation, to include" parking lots and other areas adjacent thereto; and any vacant lot or land or without the consent of the owner, any private property.
- (d) "Time of night" referred to herein, is based upon the prevailing standard of time, generally observed at that hour by the public in the Municipality, prima facie the time when observed in the Municipal Administrative Offices and Police Station.
- (e) "Year of age" continues from one birthday, such as the seventeenth to, but not including the day of the next, such as the eighteenth birthday, making it clear the seventeen or less years of age is herein treated as equivalent to the phrase "under eighteen years of age".

7-302 CURFEW HOURS

- (a) No person seventeen or less years of age shall be in or upon any public place during the period ending at 6:00 a.m. and beginning:

- (1) At 10:00 p.m. for minors twelve or less years of age;
 - (2) At 11:00 p.m. for minors thirteen through fifteen years of age; and
 - (3) At 12:00 midnight for minors sixteen or more years of age.
- (d) Any minor violating the provisions of this chapter shall be guilty of an act of unruliness and shall be cited to the County Juvenile Court.

7-303 EXCEPTIONS

In the following exceptional cases, a minor in or upon a public place during the nocturnal hours for which Section II is intended to provide the maximum limits of regulation shall not be considered in violation of this chapter:

- (a) When accompanied by a parent of such minor.
- (b) When accompanied by an adult authorized by a parent of such minor to take the parent's place in accompanying the minor for a designated period of time and purpose within a specified area.
- (c) When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. Such minor shall evidence the bona fides of such exercise by first delivering, the Police Department written communication signed by such minor and countersigned if practicable by a parent of such minor with their home address and telephone number, addressed to the Police Chief specifying when, where and in what matter the minor will be in a public place at night during the hours when this chapter is otherwise applicable to the minor, in the exercise of the First Amendment right specified in such communication.
- (d) In case of reasonable necessity, but only after such minor's parent has communicated to the Police Department personnel the facts establishing such reasonable necessity and designating the minor's proposed location, route, purpose, and the period of time the minor will be in or upon a public place.
- (e) When the minor is on the sidewalk of the place where such minor resides, or on the sidewalk of either next door neighbor not communicating an objection of the police officer.

- (f) When returning home by a direct route from, and, within thirty minutes of, the termination of a school activity, or an activity of a religious or other voluntary association, of which prior notice, indicating the place and probable time of termination, has been given in writing to, and duly filed for immediate reference by, the Chief of Police or the officer assigned by him on duty at the Police station.
- (g) When authorized by special permit from the Mayor, carried on the person of the minor, when necessary nighttime activities of a minor may be inadequately provided for by other provisions of this chapter. A written application shall be given to the Mayor, signed by a minor and by a parent of such minor, if feasible, stating:
- (1) The name, age and address of such minor;
 - (2) The name, address and telephone number of a parent thereof;
 - (3) The height, weight, sex, color of eyes and hair and other physical characteristics of such minor;
 - (4) The necessity which requires such minor be in or upon a public place during the curfew hours otherwise applicable; and
 - (5) The street or route and the beginning and ending of the period of time involved by date and hour;

The Mayor may grant a permit in writing for the use by the minor of those public places at such hours as in the Mayor's opinion may reasonably be necessary, in an emergency, this may be handled by telephone, or other effective communication, with a corresponding record being made contemporaneously, either to the Mayor, or if unavailable, to the Police Chief.

- (h) When authorized, by resolution issued by the Mayor, in other similar cases of reasonable necessity, similarly handled but adapted to necessary night-time activities of more minors than can readily be dealt with on an individual special permit basis. Normally such regulation by the Mayor permitting use of public places should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of public places permitted, and the period of time involved not to extend more than thirty minutes beyond the time for termination of such activity.
- (i) When the minor carrying a certified card of employment, briefly identifying the minor, the

addresses of his home and place of employment and his hours of employment.

7-304 PARENTAL RESPONSIBILITY,

(a) No parent having legal custody of a minor shall knowingly permit or by inefficient control allow such minor to be in or upon any public place under circumstances not constituting an exception to, or otherwise beyond the scope of this section. "Knowingly" includes knowledge which a parent should reasonable be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard to parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such a minor.

(b) A parent who violates this section is guilty of a minor misdemeanor for the first offense and misdemeanor of the fourth degree for each subsequent offense.

This ordinance shall be in full force and effect at the time of passage.

INTRODUCED:

ADOPTED:

MAYOR

**AN ORDINANCE ENACTING CHAPTER 4 OF TITLE 7
OF THE CODE OF SHEPHERD STOWN, WEST VIRGINIA,
AND SECTION 7-401: "DEFINITIONS", SECTION 7-402: "TRESPASS IN
STRUCTURE AND CONVEYANCE", SECTION 7-403: "TRESPASS ON PROPERTY
OTHER THAN STRUCTURE OR CONVEYANCE", SECTION 7-404: "TRESPASS ON
STUDENT RESIDENCE PREMISES OR STUDENT FACILITY PREMISES OF AN
INSTITUTION OF HIGHER EDUCATION", AND SECTION 7-405: "TRESPASS ON
STATE GOVERNMENT PROPERTY; AIDING AND ABETTING; PENALTIES",
RELATING TO CRIMINAL OFFENSES FOR TRESPASS**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 4 of Title 7 of the Shepherdstown Code containing Section 7-401 "Definitions", Section 7-40*2 "Trespass in Structure and Conveyance", Section 4-703 "Trespass on Property other than Structure or Conveyance", Section 7-404 "Trespass on Student Residence Premises or Student Facility Premises of an Institution of Higher Education", and Section 7-405 "Trespass on State Governmental Property; Aiding and Abetting; Penalties", relating to criminal offenses for trespass, is hereby enacted; accordingly, there is enacted Chapter 4 of Title 7 containing Sections 7-401, 7-402, 7-403, 7-404, and 7-405 to read as follows:

§ Section 7-401: Definitions.

As used in this article:

- (1) "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.
- (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
- (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
- (4) "Posted land" is that land upon which reasonably maintained signs are placed not more than five hundred feet apart along and at each corner of the boundaries of the land, upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed land.

(5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

(7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) "Trespass" under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(a) Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(b) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

(c) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

(d) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

(e) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

§ Section 7-402: Trespass in structure or conveyance.

Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provision of section one [§ 61-7-11], article seven, chapter

sixty-one of the West Virginia Code, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or be confined in the county or regional jail for a period of time not to exceed twelve months, or both such fine and imprisonment.

§ Section 7-403. Trespass on property other than structure or conveyance.

(a) Any person who knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

(b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county or regional jail for a period not to exceed six months, or both such fine and imprisonment.

(c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of section one [§ 61-7-1], article seven, chapter sixty-one of the West Virginia Code, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county or regional jail for a term not to exceed six months, or fined not more than one hundred dollars, or both such fine and imprisonment.

(d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, That the provisions of this chapter shall not apply in a labor dispute.

§ Section 7-404. Trespass on student residence premises or student facility premises of an institution of higher education.

(a) For the purposes of this section:

(1) "Residence hall" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education.

(2) "Student facility" means a facility owned, operated or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold or served to students enrolled at such institution, but does not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(c) "Institution of higher education" means Shepherd University or any state university, state college or state community college under the control, supervision and management of the West Virginia Board of Trustees or West Virginia Board of Directors, or any other university, college or institution of higher education in the state subject to rules for accreditation under the provisions of section seven [§ 18B-4-7], article four, chapter eighteen-b of the West Virginia Code.

(4) "Person authorized to have access to a residence hall or student facility" means:

(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by such employment by such institution to be in the residence hall or student facility and who is acting within the scope of his or her employment; or

(E) A delivery person, repair person or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who is acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by such presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility, such person may be asked to leave such residence hall or student facility. If a person not authorized to have access to a residence hall or student facility enters such a residence hall or student facility, that person may be asked to leave such residence hall or student facility notwithstanding the fact that he or she has not interfered with the peaceful or orderly operation of such residence hall or student facility or otherwise committed a breach of the peace or violated any statute or ordinance. Such request to leave may be made by the president or other administrative head of the institution of higher education, an employee designated by the president to maintain order in the residence hall or student facility, a campus police officer appointed pursuant to the provisions of section five [§ 18B-4-5], article four, chapter eighteen-b of the West Virginia Code, or a Shepherdstown or municipal police officer, a sheriff or deputy sheriff, or a member of the state police.

(c) It shall be unlawful for a person to remain in a residence hall or student facility after being asked to leave as provided for in subsection (b) of this section.

(d) Any person who violates the provisions of subsection (c) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined fifteen dollars. For any second or subsequent conviction for a violation occurring within one year after a previous violation for similar conduct, such person shall be fined an amount not to exceed one hundred dollars.

(e) This section shall not be construed to be in derogation of the common law, nor shall the provisions of this section contravene or infringe upon existing statutes related to the same subject.

§ Section 7-405. Trespass on state government property; aiding and abetting; penalties.

(a) Notwithstanding any provisions of this code to the contrary, any person who knowingly and willfully violates an administrative order of a court, a rule or emergency rule promulgated by the Secretary of Administration, a joint rule of the Senate and House of Delegates or a rule of the Senate or House of Delegates relating to access to government buildings or facilities or portions thereof under their control or who knowingly and willfully aids or abets another to violate such an order, rule or joint rule is guilty of a misdemeanor and, upon conviction, shall be confined for not more than thirty days or fined not more than five hundred dollars, or both.

(b) Any person who violates the provisions of subsection (a) of this section with the intent to commit a crime which constitutes a misdemeanor is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than one thousand dollars, or both.

First Reading: _____ February 14, 2006

Second Reading: _____ March 14, 2006

Adopted: _____ March 14, 2006

**AN ORDINANCE ENACTING
CHAPTER 2 OF TITLE 7 OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA,
AND SECTION 7-201: "PROHIBITED ACTS A; PENALTIES", SECTION 7-202:
"PROHIBITED ACTS B; PENALTIES", SECTION 7-203: "PENALTIES UNDER
OTHER LAWS", SECTION 7-204: "BAR TO PROSECUTION", SECTION 7-205:
"CONDITIONAL DISCHARGE FOR FIRST OFFENSE OF POSSESSION", SECTION
7-206: "SECOND OR SUBSEQUENT OFFENSES", SECTION 7-207: "PROHIBITED
ACTS - TRANSPORTATION OF CONTROLLED SUBSTANCES INTO
MUNICIPALITY; PENALTIES", AND SECTION 7-208: "PROHIBITED ACTS -
WITHHOLDING INFORMATION FROM PRACTITIONER; ADDITIONAL
CONTROLLED SUBSTANCES; PENALTIES," RELATING TO CRIMINAL
OFFENSES INVOLVING CONTROLLED SUBSTANCES**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 2 of Title 7 of the Shepherdstown Code containing Section 7-201 "Prohibited Acts A; Penalties", Section 7-202 "Prohibited Acts B; Penalties", Section 7-203 "Penalties Under Other Laws", Section 7-204 "Bar to Prosecution", Section 7-205 "Conditional Discharge for First Offense of Possession", Section 7-206 "Second or Subsequent Offenses", Section 7-207 "Prohibited Acts - Transportation of Controlled Substances into Municipality", and Section 7-208 "Prohibited Acts — Withholding Information From the Practitioner; Additional Controlled Substances; Penalties", relating to criminal offenses involving controlled substances, is hereby enacted; accordingly, there is enacted Chapter 2 of Title 7 containing Sections 7-201, 7-202, 7-203, 7-204, 7-205, 7-206, 7-207, and 7-208 to read as follows:

§ Section 7-201: Prohibited acts A; penalties.

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance. A controlled substance is classified in Schedule V (defined in West Virginia Code § 60A-2-212) is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to a counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under Section 7-205 of this chapter, subject to the limitations specified in said section, or upon conviction, such person may be confined to jail not

less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this chapter to the contrary, any first offense for possession of less than 15 grams of marijuana shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

§ Section 7-202. Prohibited acts B; penalties.

(a) It is unlawful for any person;

(1) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(2) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(3) To refuse any entry into any premises for any inspection authorized by this chapter; or

(4) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a misdemeanor and upon conviction may be confined in the county jail for not less than six months nor more than one year, or fined not more than twenty-five thousand dollars, or both.

(c) Notwithstanding any other provision of this chapter to the contrary, any first offense for distributing less than 15 grams of marihuana without any remuneration shall be disposed of under Section 7-205.

§ Section 7-203. Penalties under other laws.

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

§ Section 7-204. Bar to prosecution.

If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this municipality. (1971, c. 54.)

§ Section 7-205. Conditional discharge for first offense of possession.

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or controlled substance under Section 7-201(c) of this chapter, the court, without entering a judgment of guilty and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under Section 7-206 of this chapter. The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected, shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose. There may be only one discharge and dismissal under this section with respect to any person.

(b) After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of

any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(c) Notwithstanding any provision of this chapter to the contrary, any person prosecuted pursuant to the provisions of this chapter whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable against a person convicted of a violation of Section 7-201 (c) of this chapter. Payment of such costs may be made a condition of probation.

§ Section 7-206. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States, the State of West Virginia, or of any state relating to narcotic drugs, marihuana, depressants, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under Section 7-201(c).

§ Section 7-207. Prohibited acts - Transportation of controlled substances into municipality; penalties.

(a) Except as otherwise authorized by the provisions of this chapter, it shall be unlawful for any person to transport into this municipality a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to a substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.

(c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this chapter.

§ Section 7-208. Prohibited acts - Withholding information from practitioner; additional controlled substances; penalties.

(a) It is unlawful for a patient, with the intent to deceive and obtain a prescription for a controlled substance, to withhold information from a practitioner that the patient has obtained a prescription for a controlled substance of a similar therapeutic use in a concurrent time period from another practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in the county jail or regional jail for not more than six months, or fined not more than one thousand dollars, or both fined and imprisoned.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this chapter.

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Adopted:

Mayor

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