

For “in-person” meetings, persons who are not on the agenda but wish to address the governing body must register to speak at least 15 minutes prior to the start of the meeting. For Zoom meetings, the Mayor will canvas attendees for those wishing to speak. Time limits will be imposed. Written comments and/or questions to be addressed at the meeting, must be submitted to [jimauxer@yahoo.com](mailto:jimauxer@yahoo.com) 24 hours before the meeting. Requests for copies of documents related to agenda items must be made in writing at least 24 hours in advance of the meeting, not during the meeting. NOTE: Council members are elected to represent citizens of the Corporation of Shepherdstown, please contact them regarding any questions or comments you may have about the agenda items. This Council follows Robert’s Rules of Order (Revised).

THE MEETING IS STREAMED ON THE TOWN’S FACEBOOK PAGE  
“SHEPHERDSTOWN, WEST VIRGINIA”

### TOWN COUNCIL MEETING AGENDA

Tuesday, April 12, 2022

6:30 p.m.

LOCATION: TOWN HALL

104 NORTH KING STREET

MASK WEARING IS OPTIONAL

1. Call to order
2. Approval of Town Council Meeting Minutes of March 8, 2022
3. **Public Comment Period**
  - a. Persons who have registered to address Town Council.
4. **Visitors**
  - a. Steve Stolipher – Jefferson County Commission – EMS services
  - b. Hali Taylor – Shepherdstown Public Library Update and Funding Request

**5. Public Hearings**

- a. Second Reading of An Ordinance Re-enacting Section 7-120 of Chapter 1, Title 7 of the Code of Shepherdstown, West Virginia, to Revise the Gender Identification and to Conform to the Corresponding State Statute, West Virginia Code §61-8-16
- b. First Reading Of An Ordinance To Enact Chapter 5, Title 3 of the Code of Shepherdstown As The Public Sidewalk Dining Ordinance

**6. Unfinished Business**

- a. Dog Fest - update
- b. Street Fest - update

**7. Old Business**

- a. Reminder - Tuesday, June 7, 2022 is the Municipal Election for Mayor, Recorder and Council

**8. New Business**

- a. Event Request – 4<sup>th</sup> of July Parade
- b. Congressionally Directed Spending

**9. Mayor's Report**

**10. Reports of Committees**

**A. Finance Committee**

- 1. Meeting minutes of March 2022
- 2. Recommendations: NONE

**B. Parking Committee**

- 1. No meeting in March 2022
- 2. Recommendations: NONE

**C. Police Committee**

- 1. No meeting in March 2022
- 2. Recommendations: NONE

**D. Public Works Committee**

1. Meeting minutes of March 2022
2. Recommendations: NONE

**E. Parks and Recreation Committee**

1. Meeting minutes of March 2022- not available
2. Recommendations: NONE

**F. Grants Committee**

1. No meeting in March 2022
2. Recommendations: NONE

**11. Report of Commissions and Boards**

**A. Tree Commission**

1. No meeting in March 2022
2. Recommendations: NONE

**B. Water and Sanitary Board**

1. Meeting minutes of March 2022
2. Recommendations: NONE

**C. Historic Landmarks Commission**

1. Meeting minutes of March 2022 – not available
2. Recommendations: NONE

**D. Planning Commission**

1. Meeting minutes of March 2022 – not available
2. Recommendations: NONE

**E. Board of Appeals**

**Shepherdstown Town Council Meeting Minutes**  
**Tuesday, March 8, 2022**  
**Town Hall**  
**104 North German Street**  
**6:30 p.m.**  
**Mask Wearing is Required**  
**Also being streamed on the town's Facebook page "Shepherdstown,**  
**West Virginia"**  
**DRAFT**

**Present:** Jim Auxer (Mayor), Lori Robertson (Recorder), Marty Amerikaner, Jenny Haynes, Jim Ford, Cheryl Roberts, with Chris Stroeck calling in.

**Absent:** None

**Staff:** Town Clerk Amy Boyd, Public Works Director Frank Welch, Accounting Clerk Beverly Bennett, and Sargeant Jake Jefferies.

**Visitors:** Susan Benzinger, Connie Heyer, Janet Hughes, Marshall DeMeritt, Jennifer Krouse, John Meeker, Jen Wabnitz, Steve Pearson, Laura First, James Cook, Chandla Cook, Chief Morgan, Mary Fortuna, and Rachael Meads

**Agenda Items 1 and 2-Call to order/approval of Town Council Minutes (vote required):**

Call to order by Mayor Auxer at 6:31 pm.

Approval of the Town Council Meeting Minutes of February 8, 2022

**J. Haynes - move to approve Town Council Draft Minutes of February 8, 2022. Second by C. Roberts with the correction under Agenda Item 8 – New Business, b, pg. 3, line 10 from the bottom to add to - the public hearings are all done and the bond money is procured (add-from the Board). No objections noted.**

### **Agenda Item 3 – Public Comment Period:**

- a. Persons who have registered to address Town Council.
- b. The Mayor noted that no one emailed him regarding the meeting prior to the meeting with questions or comments.

### **Agenda Item 4 - Visitors:**

Visitor's comments, if any, are logged in under the specific agenda items.

- a. Marshall DeMeritt – SVFD – EMS services

M. DeMeritt – spoke to the Fitch Report.

The data used in the report is flawed. The annual rate of 2.25% inflation is not realistic. The county wants to take our ambulances as a revenue grab. Based on medical health data, the recommended on the scene response time is 8.59 minutes. No option the county has proposed meets this standard. The county currently has 13 ambulances and wants to go down to 4. The Fitch data does not take into account multiple ambulances being called out for a multi-vehicle accident at one location or multiple accidents/fires over the county.

There are 200 Certified EMS paramedics in Jefferson County – that will go to 8 paid staffers. Fitch is proposing going to 4 ambulances- 2 in Shepherdstown and 2 at the Citizens Fire Department. With the reduction in ambulances it will increase the response time for the EMS personnel to reach those in need. The past response time average from 2020 was 10.1 minutes. The past response time average from 2021 was 8.4 minutes. Fitch is proposing an increase in response time to 16.5 minutes.

If this is implemented it will increase response time and reduce service.

What we have now works. It is responsible and efficient. The Fitch proposals are dangerous for Shepherdstown.

Social media and newspapers are being used to get the word out. An online petition is possible.

Chief Morgan – these proposals will also impact the fire protection as volunteers are cross-trained. A couple of firehouses will shut their doors if happens. Please call the County Commissioners and let them know how you feel. The report is misleading – please read it for yourself. It is on the county's website.

Mayor – the mayors from the county meet tomorrow with the County Commission, Fire Chiefs, and EMS personnel. This is an important issue. Shepherdstown has a large older population and the fast response time is imperative.

M. Amerikaner – would a resolution be helpful?

M. DeMeritt – yes

M. Fortuna – was there any discussion about population growth or industrial accidents?

M. DeMeritt – No

C. Roberts – when her dad needed EMS, they were there in 5 minutes. If he had had to wait for 16 minutes, he would have died.

Mayor – thanked M. DeMeritt for coming and speaking to us.

J. Krouse introduced herself as a candidate running for the Jefferson County Commission.

Susan Benzinger introduced herself as a candidate running for the House of Delegates.

#### **Agenda Item 5 – Public Hearings:**

- a. First Reading of An Ordinance Re-enacting Section 7-120 of Chapter 1, Title 7 of the Code of Shepherdstown, West Virginia, to Revise the Gender Identification and to Confirm to the Corresponding State Statute, West Virginia Code 61-8-16  
Mayor – this is to bring our code to state code.
- b. **J. Haynes – move to approve the First Reading of An Ordinance Re-enacting Section 7-120 of Chapter 1, Title 7 of the Code of Shepherdstown, West Virginia, to Revise the Gender Identification and to Confirm to the Corresponding State Statute, West Virginia Code 61-8-16. No objections noted.**
- c. Second Reading of An Ordinance to Enact Chapter 5, Title 3 of the Code of Shepherdstown as the Outdoor Dining Act.  
Mayor – ABC states that we have to have an ordinance to allow outdoor dining with alcohol. We have seen where 48” is required from the curb to the dining seating to allow for

wheelchairs to pass by. However, L. Robertson noted the ADA website itself states you only need 36”.

**L. Robertson – made a motion to move forward and send the proposed ordinance to Chazz for review, specifically paragraph 3-504(f) to reflect the 36”, not 48” requirement. Second by C. Roberts. No objections noted.**

**Agenda Item 6 – Unfinished Business:**

- a. None

**Agenda Item 7 – Old Business:**

- a. ITA WVDOH Grants – High Street Project not selected for funding.  
C. Stroeck – we were turned down.

**Agenda Item 8 – New Business:**

- a. Event Request –
  - Back Alley Garden Tour – May 21-22  
J. Wabnitz – the Tour and Tea are back after a two-year absence due to Covid. People can do just the Tea for \$10 or the Tea and Tour for \$20. There will be some vintage cars at the JSB parking lot.  
**L. Robertson – move to approve the Back Alley Garden Tour. Second by J. Ford. No objections noted.**

**\* May Day Parade – May 1**

R. Meads – there will be no parade and the Set Up Time is changed from 10 a.m. to 9 a.m. They need 3 parking spaces on King Street in front of Reynolds Hall held for the May Pole unloading either the night before or by 6 a.m. the day of. All other street parking will remain open.

**L. Robertson – move to approve May Day with changes reflecting no parade and the set up time at 9:00 a.m. Second by M. Amerikaner. No objections noted.**

- Street Fest – June 24

J. Meeker – Excited to bring the festival back after Covid.

L. Robertson – asked for some clarifications. The event date should be changed from 6/24 to 6/25. The set up time should be changed from 10 a.m. to 6 a.m. on the 6/25, and allow for set up of the stages/port-a potties 6/24. The fencing and posts are stored in the water tanks and need to be checked for integrity. TIPS training is required for at least 2 members of the board and one or two bartenders. The town doesn't supply electric and vendors on German St. cannot run extension cords across the sidewalks or have generators.

Food vendors need to be approved by the Health Dept. Port-a-potties will be needed. You'll need to get permission from the state to close German and show the alternate route.

Liability insurance is required. Please bring a detailed map of the street closures during the April Council meeting. A reminder that the Public Works guys are paid for their time.

J. Meeker – understood

**L. Robertson – move to approve Shepherdstown Street Fest – June 25<sup>th</sup> with changes, and waive the open container and noise ordinances. Second by C. Roberts. No objections noted.**

- Dog Fest – June 4

C. Heyer – would like to have a short parade of dogs from Church St. to King St. then turn onto N. King St. The parade is from 11:00 a.m. to 11:30 a.m. If the pavement is hot, booties will be available to protect the paws. German would need to be closed for 3-45 minutes for the parade. Port-a – potties needed. There will additional events at the Midway on SU's campus. Thinking about food trucks on King – maybe have the Shep. Fire Dept. sell food. Would like to have a beer garden to serve beer. Music on the porch at Town Hall. Requesting to close N. King St from 7:00 a.m. to 9:00 p.m.

L. Robertson – Any food vendors need to go through the Health Dept. If a beer garden – you have to fence the whole thing in and have entrances that are manned so no outside alcohol comes in, and no event alcohol goes out. Bartenders need to be TIPS trained. You'll need to work with Public

Works for recycling and trash and pay them. The alleys must remain open.

**C. Roberts – move to approve Dog Fest June 4 and waive the open container and noise ordinances, Second by M. Amerikaner. No objections noted.**

Mayor – please come to the April council meetings for a planning update.

b. Tuesday, June 7, 2022 is the Municipal Election for Mayor, Recorder and Council. The candidate filing period is February 28 – March 11.

### **Agenda Item 9 – Mayor’s Report:**

- The regular Farmer’s Market starts, along with the Ribbon Cutting, March 20 from 9 a.m. – 1 p.m.
- Rose Hill – the survey has been completed.
- The Shepherdstown Museum opens April 23. They need docents and if interested, call Theresa at 304-876-0910.

\* Visitor’s Center – May 15 at 2 p.m. there is an African American exhibit.

- Tobacco Warehouse – the design team visited-no update since the visit.
- The train had a recent stoppage – the railroad was called and reported.
- Alley Clean Up Day – April 1 for SU. Need adults to help oversee the students cleaning up.
- J. Ford – regarding the 340 closures – it won’t happen until after Labor Day 2023.

- J. Ford – the CVB is doing a marketing blast in DC for Jefferson County. They are doing a great job of promoting Shepherdstown.
- The LED lighting study is tabled for now.

**Agenda Item 10 – Reports of Committees:**

**A. Finance Committee:**

1. No meeting in February 2022
2. Finance Reporting:
  3. Recommendations
    - a. None

**B. Parking Committee:**

1. No February 2022 meeting
2. Recommendations: None

**C. Police Committee:**

1. No February 2022 meeting
2. Recommendations: None

**D. Parks and Recreation Committee:**

1. Meeting minutes of February 2022 - not available
2. Recommendations:
  - a. None

**E. Public Works Committee:**

1. Meeting minutes of March 2022
2. Recommendations:  
None

**F. Path Advisory Committee**

1. No meeting in February 2022
2. Recommendations:

- a. None

#### **G. Grants Committee**

1. Meeting minutes of February 2022
2. Recommendations:
  - a. None
  - 3. State of the Committee – volunteers are needed to help.  
There are lots of grants out there available, but project managers are needed to follow up. Workshops can be done to help the volunteers.

#### **Agenda item 11 – Report of Commissions, Authority and Boards:**

##### **1. Historic Landmarks Commission:**

1. Meeting minutes of February 2022 – not available
2. Recommendations:
  - a. None

##### **2. Planning Commission:**

1. Meeting minutes of February 2022 – not available
2. Recommendations:
  - a. None

##### **3. Tree Commission**

1. Special minutes of February 2022 - not available
2. Recommendations: None

##### **4. Water and Sanitary Board:**

- 1 –Meeting minutes of February 2022 – not available
- 2 – Recommendations:
  - a. Approval of Master Service Agreement with 120 Water Audit, Inc. for inspection of all water lines for lead fittings.  
**J. Ford – move to approve the Master Services Agreement with 120 Water Audit, Inc. for inspection of**

**all water lines for lead fittings. Second by C. Roberts.  
No objections noted.**

**5. Board of Appeals**

1. No meeting scheduled

**12. Work session update** – M. Amerikaner – was going to have a session in March, but now looking at April.

**L. Robertson – move to adjourn at 8:34 p.m. Second by J. Haynes. No objections noted.**

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.

Special Town Council Meeting

Wednesday, March 23, 2022

6:00 p.m.<sup>[1]</sup><sub>SEP</sub>

Town Hall

104 North King Street

Also being streamed on the town's Facebook page "Shepherdstown,  
West Virginia"

DRAFT

**Present:** Mayor Jim Auxer, Lori Robertson (Recorder), Jim Ford, Chris Stroeck, Cheryl Roberts, Jenny Haynes, and Marty Amerikaner.

**Absent:** None

**Staff:** Amy Boyd – Town Clerk, Frank Welch – Director of Public Works, and Sergeant Jake Jefferies.

**Visitors:** – Carolyn Litwack and Connie Heller

**Agenda:**

1. Call meeting to order<sup>[1]</sup><sub>SEP</sub>

**Call the meeting to order by Mayor Auxer at 6:00 p.m.**

2. General Fund Levy Estimate 2022-2023 –

**L. Robertson – move to approve the General Fund Levy Estimate 2022-2023. Second by J. Ford.**

Discussion –

C. Stroeck – what was used? Projections VS. Actuals?

J. Ford – we did have actuals from last year up to December 2021. Bumped everything up by 5% and made specific changes and other changes to make it balance. An example is a police vehicle was removed. There will also be some overlap in police salaries for a short period of time.

C. Stroeck – was some of the same data used?

J. Ford – worked with the same data until more time to work

through it.

Mayor – we can also do budget revisions as needed.

Marty Amerikaner – are grants factored in?

J. Ford – we generally don't count on grant money. Video

Lottery was more than expected and the 1% helped a lot. We need to make budget adjustments every 3-4 months.

C. Stroeck – likes the idea of quarterly reports and should be the norm, if not sooner.

**No objections noted. Motion passed.**

3. Second Reading of An Ordinance to Enact Chapter 5, Title 3 of Code of the Shepherdstown as Outdoor Dining Act.

**L. Robertson – moved to table the Second Reading of An Ordinance to Enact Chapter 5, Title 3 of Code of Shepherdstown as Outdoor Dining Act to obtain more information and to verify the information. Second by J. Ford. No objections noted.**

C. Stroeck – we have no feedback from ABC and doesn't want to start the process over after an approved Second Reading. We need some confirmation from ABC. He, Andy, and Mayor Auxer could work on a new ordinance to be able to move forward.

M. Amerikaner – the ABC website is not clear or who it applies to. To speed this up we could have a short ordinance that states restaurants can have outdoor dining based on ABC regulations.

C. Heller – ABC doesn't care what our ordinance says.

Mayor – we need one ordinance to send to Chazz (we can wait on what kind of furniture is stipulated).

C. Stroeck – feedback from ABC protects us, and the restaurants. Should get it in writing from Mr. Shawn Smith.

**M. Amerikaner – made a motion to move forward to prepare a new Outdoor Dining Ordinance based on the discussions tonight. Second by C. Roberts. No objections noted.**

C. Litwack – The Devonshire's issue with outdoor dining is with the trees located there.

L. Robertson – the ADA requirement is actually 36", not 42".

#### 4. Mayor's Report –

\* April 1<sup>st</sup> is the clean up the alleys project with the volunteers from SU. There is a meeting at Town Hall 3/28 at 2 p.m. to chat about the logistics.

\* The Museum opening is April 23<sup>rd</sup>. The need docents.

\* April 9<sup>th</sup> at 11 a.m. at Christ Reform Church is the marking of Philip Sheetz grave. There will be a rifle shot during the ceremony.

\* The mayors, fire chiefs, police, and city commissioners will meet at the Bavarian Inn regarding the reduction of ambulance services April 6. We can possible create a letter of concern regarding the Fitz Report. Mayor will invite Jefferson County Commission President S. Stolipher to our next council meeting April 12<sup>th</sup>. M. Amerikaner shared his discussion with S. Stolipher regarding the methods used to reach their decision.

\* C. Stroeck – The Covid Relief Grant assistance is now available to low-to-moderate-income households who live within the Corporation of Shepherdstown and experienced or are experiencing economic hardship due to Covid may be eligible for immediate financial assistance with mortgage, rent and/or utilities. Contact Siobhan Bertone with Catholic Charities at 304-267-8837 ext. 10.

#### 5. Adjournment.

**L. Robertson – move to adjourn at 6:52 p.m. Second by C. Stroeck. No objections noted.**

Draft Minutes respectfully submitted by L. Robertson, Recorder for the Corporation of Shepherdstown.

## Amy Boyd

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**From:** Hali Taylor <hali@sheplibrary.org>  
**Sent:** Thursday, February 24, 2022 6:41 PM  
**To:** Amy Boyd; Jim Auxer  
**Cc:** Sally Brasher  
**Subject:** Town Council Appearance

Dear Amy: The Library requests to be on the agenda for the Town Council meeting in April – I believe it's the 12<sup>th</sup>?

Thank you very much,

Hali

Hali Taylor, Director  
Shepherdstown Public Library  
100 East German Street  
P.O. Box 278  
Shepherdstown, WV 25443  
(304) 876-2783 (T)  
(617) 710-7757 (C)

## Amy Boyd

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**From:** Arthur Auxer III <jimauxer@yahoo.com>  
**Sent:** Friday, January 14, 2022 3:11 PM  
**To:** Amy Boyd; Hali Taylor  
**Cc:** Bob Keller Library; Jack Eggleston; Rosemary Nickerson; Sally Brasher; Terry Kramer  
**Subject:** Re: Request to appear

Hali you will be on the agenda for February 8ths TC meeting. The meeting date i Mayor

On Thursday, January 13, 2022, 01:56:07 PM EST, Hali Taylor <hali@sheplibrary.org> wrote:

Dear Amy and Mayor Auxer:

I am requesting to appear before the Town Council to 1) introduce our newest board member, Dr. Sally Brasher, 2) bring you up to date on the new library facility, and 3) make a request for in-kind support of the new facility. Is it possible to be placed on the February 8th agenda? I understand that we will also need to make our request to the finance committee - would you let me know how to proceed with that?

Thank you,

Hali

Hali Taylor, Director  
Shepherdstown Public Library  
100 East German Street  
P.O. Box 278  
Shepherdstown, WV 25443  
(304) 876-2783 (T)  
(617) 710-7757 (C)

## **WEST VIRGINIA CODE, CHAPTER 10**

### **ARTICLE 1. PUBLIC LIBRARIES.**

#### **§10-1-1. "Public library" and "governing authority" defined.**

The term "public library" as used in this article shall be construed to mean a library maintained wholly or in part by any governing authority from funds derived by taxation and the services of which are free to the public, except for those charges for which provision may be made elsewhere in this article. The term shall not, however, include special libraries, such as law, medical or other professional libraries, or school libraries which are maintained primarily for school purposes. The term "governing authority" shall be construed to mean county court, county board of education or the governing body of any municipality.

#### **§10-1-2. Power of governing authority to establish and maintain libraries; financing.**

A governing authority either by itself or in cooperation with one or more other such governing authorities, shall have the power to establish, equip and maintain a public library, or to take over, maintain or support any public library already established. Any library established, maintained or supported by a governing authority may be financed either (1) by the appropriation from the General Funds of the governing authority of a sum sufficient for the purpose, or (2) by the imposition of an excess levy for library purposes, in accordance with the provisions of section sixteen, article eight, chapter eleven of this code.

Such sums as are appropriated hereunder may be transferred to the public library board for deposit and disbursement as the public library board shall direct. By such transfer the governing authority designates the public library board as its disbursing agent.

#### **§10-1-3. Regional library defined; apportionment of regional library expenses.**

A regional library is a public library established and/or maintained by two or more counties, by action of their governing authorities, under the terms of a contract to which they all agree. The expenses of the regional library shall be apportioned between or among the counties concerned on such a basis as shall be agreed upon in the contract.

#### **§10-1-3a. Authority of regional library board to disburse funds.**

The governing authorities which maintain a regional library may contribute the apportioned sum to the regional library board, such contributions to be deposited as the regional library board shall direct and to be disbursed by the officer designated by that board. By such contribution the governing authority designates the regional library board as its disbursing agent.

#### **§10-1-4. Contract with existing public library.**

The governing authority may, in lieu of supporting and maintaining its own public library, enter into a contract with an existing public library and make annual payments of money to such library, whose library materials and services shall be available without charge to all persons living within the area represented by such governing authority. Any school board may contract for school library service from an existing public library which shall agree to furnish books to a school or schools under the terms of the contract.

All money paid to a library under such a contract shall be expended solely for the maintenance and support of the library.

**§10-1-5. Board of library directors -- Qualifications; term of office; vacancies; removal; no compensation.**

(a) Whenever a public library is established under this article, the governing authority or authorities shall appoint a board of directors with five members chosen with reference to their fitness for such office, from:

- (1) The citizens of the library's service area, as determined by the Library Commission; or
- (2) The county in which the library is located.

(b) The board of directors for a regional library shall consist of not less than five nor more than ten members, with a minimum of one member from each county in the region. The total number of directors and the apportionment of directors by county shall be determined by joint action of the governing authorities concerned.

(c) The term of office for a director is five years from July 1, following the appointment. Directors may serve until their successors are appointed and qualified.

(d) For a new board of directors under this article, the initial appointment of the directors shall be staggered. Thereafter all appointments shall be for terms of five years.

(e) Vacancies in the board shall be immediately reported by the board to the governing authority and filled by appointment. Vacancies for an unexpired term shall be immediately reported by the board to the governing authority and filled by appointment for the remainder of the term only.

(f) A director may be removed for just cause in the manner provided by the bylaws of the library board.

(g) No compensation shall be paid to any director.

**§10-1-6. Board of library directors -- Powers and duties.**

The board of directors of each public library established or maintained under this article shall:

(a) Immediately after appointment, meet and organize by electing one member as president and one as secretary, and such other officers as may be necessary. All officers shall hold office

for one year and shall be eligible for reelection. (b) Adopt such bylaws, rules and regulations as are necessary for its own guidance and for the administration, supervision and protection of the library and all property belonging thereto as may not be inconsistent with the provisions of this article. (c) Supervise the expenditure of all money credited to the library fund. All money appropriated or collected for public library purposes shall be deposited in the treasury of the governing authority to the credit of the library fund, to be paid out on the certified requisition of the library board, in the manner provided by law for the disbursement of other funds of such governing authority, or shall be deposited as the library's board of directors shall direct and be disbursed by the officer designated by that board, such officer before entering upon his duties to give bond payable to and in an amount fixed by the board of directors of the library, conditioned for the faithful discharge of his official fiscal duties. The cost of such bond shall be paid from the library fund. The books, records and accounts of the library board shall be subject to audit and examination by the office of the State Tax Commissioner of West Virginia. (d) Lease or purchase and occupy suitable quarters, or erect upon ground secured through gift or purchase, an appropriate building for the use of such library; and have supervision, care, and custody of the grounds, rooms or buildings constructed, leased, or set apart for library purposes. (e) Employ a head librarian, and upon his recommendation employ such other assistants as may be necessary for the efficient operation of the library.

#### **§10-1-7. Free use of libraries.**

Each library established or maintained by any governing authority shall be free for the use of all persons living within the area represented by such governing authority, except for those charges for which provision may be made elsewhere in this article. The use of the library is subject to reasonable rules and regulations adopted by the library board. The board may extend the privilege and use of the library to nonresidents upon such terms and conditions as it may prescribe.

The board may exclude from the use of the library under its charge any person who wilfully and persistently violates any rule or regulation prescribed for the use of the library or its facilities.

#### **§10-1-8. Annual report.**

The board of directors shall make an annual report for the fiscal year ending June thirtieth to the governing authority or authorities appointing it, stating the conditions of the library property, the various sums of money received from the library fund, and all other sources, and how such money was expended, the number of books and periodicals on hand, the number added and withdrawn during the year, the number of books lent, the number of registered users of such library, with such other statistics, information and suggestions as may be deemed of general interest. A copy of this report shall be sent to the West Virginia Library Commission.

#### **§10-1-9. Library board to be a corporation; vesting of title to bequests or donations.**

The board of directors of each public library shall be a corporation; and as such it may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have and use a common seal.

The title to all bequests or donations of cash or other personal property or real estate for the benefit of such library shall be vested in the board of directors to be held in trust and controlled by such board according to the terms and for the purposes set forth in the deed, gift, devise or bequest: Provided, however, That the person making the bequest or donation of cash or other personal property or real estate for the benefit of such library shall have the right and privilege to vest the title thereto in a trustee, or trustees, of his own selection, and to provide for the selection of successor trustees, and to designate the manner in which said fund or property shall be invested and used.

**§10-1-9a. Fees, service and rental charges; fines; sale of surplus or obsolete materials or equipment; deposit and disbursement of receipts.**

The board of directors of a library established or maintained under this article may fix, establish, and collect such reasonable fees, service and rental charges as may be appropriate; may assess fines, penalties, damages, or replacement costs for the loss of, injury to, or failure to return any library property or material; and may sell surplus, duplicated, obsolete, or other unwanted materials or equipment belonging to the library. All moneys received from these or other sources in the course of the administration and operation of the library shall be deposited in the library fund and shall be disbursed by the board of directors in the manner prescribed elsewhere in this article.

**§10-1-10. Injury to library property; penalty.**

**[Repealed.]**

**§10-1-11. Willful retention of library property.**

Any person who willfully retains a book, newspaper, plate, picture, photograph, engraving, painting, drawing, map, magazine, document, letter, public record, microfilm, sound recording, audio visual materials in any format, magnetic or other tapes, artifacts or other documentary (written or printed) materials, or all materials of any kind whatsoever belonging to any public library for thirty days after the mailing date of a written notice demanding the return of said material and giving notice of said violation, forwarded to that person's last known address, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$200: Provided, That a date or dates designating a grace period for the return of library materials to public libraries shall be established, said dates to be established by the state Library Commission pursuant to rules and regulations promulgated thereto.

A conviction or payment of any fine shall not be construed to constitute payment for library material, nor shall a person convicted under this section be thereby relieved of any obligation to return to the library such material. Further, a conviction or payment of any fine shall not be

construed as a waiver of any nominal daily fine which may be imposed by library rules, regulations or policies.

The parent or guardian of a minor who willfully commits any act prohibited by this section shall be liable for all damages so caused by the minor up to the amount of \$2,500, after the parent or guardian is served with proper written notice as aforementioned.

**§10-1-11a. Effect of article on existing laws.**

Nothing in this article shall be construed to abolish or abridge any power or duty conferred upon any public library already established by virtue of any city or town charter or other special act, or to affect any existing local laws allowing or providing municipal aid to libraries. Any library now operating under any city or town charter or other special act has, however, the privilege of reorganizing under the provisions of this article.

All powers granted herein shall be considered to be conferred upon public libraries existing at the time of the passage of this act.

Any provision concerning the disbursement of funds including the designation of the depository of the library funds or of the library board's disbursing officer contained in this article may be adopted by a library board organized under the provisions of this article, notwithstanding any other provisions of law.

**§10-1-12. State Library Commission.**

There shall be a state Library Commission, known as the West Virginia Library Commission, which shall consist of the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member and eight members who shall be appointed by the Governor, by and with the advice and consent of the Senate, each for a term of four years. No more than three members may reside in the same congressional district. At least four members of the commission shall be women and at least four members shall be men. No member of the commission shall receive compensation for services rendered, nor be engaged or interested in the publishing business.

The members of the commission in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed and have qualified. On or before the expiration of the terms for which the members are appointed, the Governor shall appoint their successors.

**§10-1-13. State Library Commission -- officers.**

(a) The officers of the commission are a chairman, elected from the members of the commission, for a term of one year, and a secretary, who shall be a person trained in modern library methods, not a member of the commission. The secretary shall be appointed by the commission and shall serve at the will of the commission. The commission may establish headquarters or maintain its office at any point in the state determines.

(b) The secretary shall keep a record of the proceedings of the commission, have charge of its work in organizing new libraries and improving those already established, supervise the work of the traveling libraries, and in general perform such duties as may from time to time be assigned to him or her by the commission.

**§10-1-14. Same. -- Powers and duties.**

The commission shall give assistance, advice and counsel to all school, state-institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management, and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

It may also receive gifts of money, books, or other property which may be used or held for the purpose or purposes given; and may purchase and operate traveling libraries under such conditions and rules as the commission deems necessary to protect the interests of the state and best increase the efficiency of the service it is expected to render the public.

It may purchase suitable books for traveling libraries and distribute them as needed to those persons and places in the state without adequate public library service. It may collect books and other suitable library matter and distribute the same among state institutions desiring the same.

The commission may issue and offer for sale printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state Library Commissions and libraries, in order to secure the more economical administration of the work for which it was formed. It may conduct courses of library instruction and hold librarians' institutes in various parts of the state.

The commission shall perform such other service in behalf of public libraries as it may consider for the best interests of the state.

**§10-1-15. State Library Commission -- Disposition of monetary gifts.**

If any sums of money are received by the commission as gifts, they shall be paid into the state Treasury and used exclusively for carrying out the provisions of this article, and paying expenses of the commissioners. The commission shall expend no sums unless they are available by gift, appropriation or otherwise.

**§10-1-16. Regional libraries and library areas -- Establishment and location.**

The West Virginia Library Commission is hereby authorized to develop a plan for the establishment and location of regional libraries, and library areas throughout the state, based on a detailed survey to be made by the commission of the needs of the various localities of the state. A region shall include two or more counties.

**§10-1-17. Regional libraries and library areas -- Referral of plan to county courts; action on; alteration of plan.**

On completion of the survey of any proposed region, the executive secretary of the commission shall refer the proposal to the county courts of all the counties included in such proposed region. The county courts shall act upon such proposal by resolution, and the votes of a majority of each of the county courts of the counties included in the proposed region shall be necessary for the adoption of such proposal. In case of the rejection of such proposal by the county courts of any of the counties included in such proposed region, the Library Commission is hereby authorized to alter its plan in accordance with such action in order to provide for a region in such section of the state. The vote of a majority of each county court in the counties in such altered region shall be necessary for the adoption of such proposal.

**§10-1-18. Regional libraries and library areas -- Powers of West Virginia Library Commission.**

The West Virginia Library Commission shall have the following powers for the establishment and maintenance of regional areas and regional libraries:

- (a) To establish, maintain, and operate a public library for the region;
- (b) To appoint a librarian and the necessary assistants, and to fix their compensation, such appointments to be based upon merit and efficiency as determined by the commission. The librarian shall hold a certificate from an approved school of library science and shall have had not less than three years of practical experience in library work. Said Library Commission shall also have the power to remove said librarian and other assistants;
- (c) To purchase books, periodicals, equipment and supplies;
- (d) To purchase sites and erect buildings, and/or to lease suitable quarters, and to have supervision and control of said property;
- (e) To borrow books from and lend books to other libraries;
- (f) To enter into contracts to receive service from or give service to libraries within or without the region and to give service to municipalities without the region which have no libraries, or to cooperate with and aid generally without such contracts, public school, institutional and other libraries;
- (g) To make such bylaws, rules and regulations not inconsistent with this article as may be expedient for the government of such regional library areas and the regional libraries therein, and for the purpose of carrying out the provisions of this article;
- (h) To accept for the State of West Virginia any appropriations of money that may hereafter be made out of the federal treasury by an act or acts of Congress and to disburse such funds for the purpose of carrying out the provisions of this article, in accordance with sections eleven and

twelve, article ten, chapter eighteen of the code of one thousand nine hundred thirty-one, as amended.

**§10-1-18a. Establishment of state publications clearinghouse; definitions; powers of West Virginia library commission; designations by state agencies.**

(a) There is hereby established the state depository library clearinghouse which shall be under the direction of the state Library Commission.

(b) As used in this section, the following terms have the following meanings:

(1) "Public document" means any document, report, directive, bibliography, rule, newsletter, pamphlet, brochure, periodical, request for proposal, or other publication, whether in print or an unprinted format, that is paid for, in whole or in part, by funds appropriated by the Legislature and may be subject to distribution to the public;

(2) "Depository library" means a library designated to collect, catalog, maintain and make available all or particular selected state publications to the general public; and

(3) "State agency" means any state office, whether legislative, executive or judicial, including, but not limited to, any Constitutional officer, department, division, bureau, board, commission or other agency which expends state appropriated funds.

(c) The state Library Commission shall establish a state depository library clearinghouse to receive and distribute all state public documents to the depository libraries around the state.

(d) The commission shall designate a state library staff member as director of the state publications clearinghouse for librarians. The director shall hold a graduate degree in library science from an accredited institution of higher learning. The clearinghouse shall establish requirements for eligibility to become and remain a depository library.

(e) In designating a library as a depository library the clearinghouse shall consider the geography of the state and the existing federal depository libraries. West Virginia University library, Marshall University library and the state department of archives shall be designated as complete depository libraries that shall receive two copies of all public documents. The clearinghouse shall also, pursuant to the requirements it establishes hereunder, designate other libraries around the state as depository libraries, upon request from a library.

(f) Each state agency shall designate one person as its documents officer while notifying the clearinghouse of his or her identity. The documents officer shall, prior to the public release of any state public document, deposit with the clearinghouse a minimum of fifteen copies as required to meet the needs of the depository library system. If fewer than forty copies of a public document are produced, no more than two such copies are required to be deposited with the clearinghouse.

**§10-1-19. Regional libraries and library areas -- Transfer of certain libraries to Library Commission.**

After the establishment of a regional library area or regional library, as provided for in this article, the county court, legislative body of any city or town, the board of Education of any county, or any other governing body of any political subdivision of this state, already maintaining a public, school or county library, may notify the West Virginia Library Commission and such county, city or town, or other subdivision library may be transferred to, leased to, or used by said Library Commission for regional library purposes under such terms as may be mutually agreed upon between the said Library Commission and the respective county courts, legislative bodies of cities or towns, boards of education, or governing bodies of other political subdivisions.

**§10-1-20. Aid to libraries by Library Commission.**

The West Virginia Library Commission is hereby authorized and empowered to render such aid and assistance, financial, advisory and/or otherwise, to public, school, county, or regional libraries, whether established or maintained by said Library Commission or not, under such conditions and rules and regulations as the said commission deems necessary to further the interests of the state and best increase the efficiency of the service it is expected to render the public.

Having determined that the development and support of such libraries will further the education of the people of the state as a whole and will thereby aid in the discharge of the responsibility of the state to encourage and foster education, the West Virginia Library Commission is authorized and empowered to pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this article or any special act of the Legislature such sum or sums of money as may be available from funds included in appropriations made for the West Virginia Library Commission for such purpose. The amount of any such payment or contribution by the commission to any such local library board of directors shall be determined in accordance with rules and regulations promulgated by the commission. The Library Commission shall have authority to promulgate rules and regulations governing the manner in which such amount or amounts of money shall be accounted for and expended.

**§10-1-21. Collection and preservation of library data; surveys; employment of personnel; use of data.**

The West Virginia Library Commission is hereby authorized and empowered to collect and preserve statistics and other data, concerning libraries of any sort located within this state; to make surveys relating to the needs or conditions of such libraries or the library conditions of any city, town, county, regional library area, or other subdivision of this state; and to publish the results and findings thereof in accordance with the provisions of section fourteen of this article. The commission may employ all necessary personnel for any of these purposes, such appointments to be based on merit and efficiency as determined by the commission. Such data,

surveys and findings of the Library Commission shall be available to all school, public, institutional, regional and/or other libraries within this state, whether proposed or established.

**§10-1-22. Confidential nature of certain library records.**

(a) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(1) To members of the library staff in the ordinary course of business, including paid employees and unpaid volunteers upon completing a written confidentiality agreement which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection and obtaining written permission from the library director of the library system wherein he or she will be working;

(2) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(3) Upon appropriate court order or subpoena.

(b) Any disclosure authorized by subsection (a) of this section or any unauthorized disclosure of materials made confidential by that subsection (a) does not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subsection (a) of this section is not liable therefor.

**§10-1-23. Library Survey; status report; and ten-year plan.**

(a) The Library Commission shall survey the libraries of the state, in consultation with each library, and other interested parties, in order for the Library Commission to develop a status report on the conditions and needs of the libraries in this state, and to prepare a ten-year plan for construction and maintenance needs of public libraries: Provided, That the Library Commission may use information that it has already compiled that it would otherwise be required to survey pursuant to this subsection. On or before November 30, 2017, the Library Commission shall conduct a survey of state libraries which shall include, at a minimum:

(1) The annual maintenance and utility expenses of each library and satellite location for the past three years;

(2) A status report regarding the condition of all plumbing, electrical, heating, air-conditioning and ventilation systems of each library and satellite location;

(3) Estimated costs for maintenance upgrades or replacement of any plumbing, electrical, heating, air-conditioning and ventilation systems of each library and satellite location over the next ten years;

(4) A report regarding compliance of the structure of each library and satellite location with the Americans with Disabilities Act, and any needs for improved access thereof;

(5) A report on the technology capabilities of each library and satellite location, including, but not limited to, telephone and computer systems, telecommunication capabilities, availability of equipment to facilitate teleconferences or simulcasts, electronic media viewing capabilities, and any other technology-related information as the Library Commission deems appropriate, along with a breakdown stating whether such technology is available for public or library staff use;

(6) A report on the available public meeting space at each library and satellite location, and the process by which the public may request the use of the meeting space, and the frequency of use of such meeting space; and

(7) A report on all materials available to the public at each library and satellite location, including, but not limited to, books and electronic media available for loan, reference materials on site, access to any online accounts provided by the library that enable research of scholarly or reference materials, and any other information as the Library Commission deems appropriate.

(b) On or before January 31, 2018, the Library Commission shall prepare a report on the status of the libraries in this state, to be submitted to the Governor and to the Joint Committee on Government and Finance. The Library Commission report shall include the conditions of the libraries in this state and a proposed ten-year maintenance and construction plan for the public libraries, which shall include at a minimum:

(1) The name and location of each library and satellite location in this state;

(2) The condition of the physical structure of each library and satellite location;

(3) A report on the three-year average cost of utilities and maintenance of each library and satellite location;

(4) A cost estimate for structural repairs at each library and satellite location, including improvements for access for people with disabilities;

(5) A cost estimate for upgrades or replacement of any plumbing, electrical, heating, air-conditioning and ventilation systems of each library and satellite location;

(6) A cost estimate for improvements to the technology capabilities and a description of those needs for each library and satellite location, including, but not limited to, improvements for telecommunication services, additional computer work stations for public access, technology needs for library staff, and other technology assessments as the Library Commission deems appropriate;

(7) A report regarding the meeting space available for public use at each library and satellite location, and the process by which the public may request the use of the meeting room; and

(8) Any other information the Library Commission deems appropriate to propose for the improvement of library facilities, lending materials and needs of the library system over the next ten years.

(c) The Library Commission shall post a digital copy of the report, as required by this section, on the Library Commission website to be made available to the public.

**§10-1-14a. West Virginia Program for Open Education Resources; material description.**

(a)(1) The State Library Commission shall establish the West Virginia Program for Open Education Resources to encourage and facilitate the use of open education resource materials in both higher education and kindergarten through 12th grade in West Virginia schools.

(2) "Open education resource materials" means teaching, learning and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low cost access, use, adaptation and redistribution by others with no or limited restrictions.

(b) The Library Commission, in consultation with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education and the State Superintendent of Schools, or his or her designee, shall:

(1) Ascertain what institutions or faculty are currently using OER material.

(2) Identify material currently associated with core general education courses and readily available for use by faculty and institutions;

(3) Identify any statutory or other impediments which interfere with selection and use of OER material by administrators or teachers at all levels of instruction in West Virginia schools;

(4) Identify sources of potential grants for funding for teachers and institutions to use open education resources for classes and courses, and propose a competitive application system to award grant funding for those faculty and institutions seeking to use the materials;

(5) Establish a digital clearing house that will function as a publicly-accessible database for material;

(6) Develop strategies to leverage further open resource material to benefit higher education institutions and school systems, as well as private and foundation support for the project; and

(7) Report no later than July 1st of each year the program's findings, progress and recommendations to the Legislative Manager, the Governor, and the chairs of the Legislature's House and Senate Committees on Education.

**§10-1-24. Library Facilities Improvement Fund.**

(a) There is created in the State Treasury a special fund known as the "Library Facilities Fund". Expenditures from the fund shall be for the purposes set forth in this section. The fund shall be administered by the West Virginia Library Commission.

(b) The fund shall consist of moneys received from the following sources:

- (1) All appropriations made by the Legislature to the fund;
- (2) Any moneys available from sources outside the West Virginia Library Commission;
- (3) Repayment of loans made by the West Virginia Library Commission pursuant to this section; and
- (4) All interest and other income earned from investment of moneys in the fund.

(c) The West Virginia Library Commission shall utilize moneys in the fund to support public library facilities construction, renovation, maintenance and improvement projects. The West Virginia Library Commission shall evaluate potential recipient projects of funds from the fund on a competitive basis.

(1) The West Virginia Library Commission may provide loans to public libraries to support energy savings and critical maintenance projects with moneys in the fund.

(2) With the exception of loans made under this section, the West Virginia Library Commission may not expend any money from the fund toward a particular project unless the proposed expenditure is matched on a dollar-for-dollar basis by other sources.

(d) The West Virginia Library Commission shall propose a rule for legislative approval in accordance with §29A-3-1 et seq. of this code to implement the provisions of this section. The rule shall contain at least the following:

- (1) A process for submitting and reviewing proposals;
  - (2) The content of proposals;
  - (3) Criteria for evaluating proposals; and
  - (4) Other provisions the West Virginia Library Commission considers necessary to administer the program in accordance with this section.
- (e) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year will not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(f) In a given year, the West Virginia Library Commission may not allocate an amount in excess of four percent of the balance of the fund on December 31st of the immediately preceding calendar year for administrative expenses.

(g) The West Virginia Library Commission may invest any or all of the balance of the fund with the state's Consolidated Investment Fund.

**AN ORDINANCE RE-ENACTING  
SECTION 7-120 OF CHAPTER 1, TITLE 7  
OF THE CODE OF SHEPHERDSTOWN, WEST VIRGINIA, TO REVISE THE  
GENDER IDENTIFICATION AND TO CONFORM TO THE CORRESPONDING  
STATE STATUTE, WEST VIRGINIA CODE § 61-8-16.**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 1 of Title 7 of the Shepherdstown Code is hereby amended by amending and re-enacting Section 7-120, entitled "Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty," to revise the gender identification and to conform to the corresponding state statute, West Virginia Code §61-8-16. Accordingly, there is re-enacted Section 7-120 of Chapter 1 of Title 7 to read as follows:

**Section 7-120: Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.**

(a) It shall be unlawful for any person with intent to harass or abuse another by means of telephone to:

- (1) Make any comment, request, suggestion, or proposal which is obscene; or
- (2) Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or
- (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
- (4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or
- (5) Threaten to commit a crime against any person or property.

(b) It shall be unlawful for any person to knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(d) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars.

Authority:                      W. Va. Code § 61-8-16

FW: "Public Sidewalk Dining Ordinance"

Yahoo/Inbox

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**Chazz Printz** <cprintz@bowlesrice.com>

**To:** Andy Beall (abeall@shepherdstown.us), jimauxer@yahoo.com

**Cc:** cstroeck@arnoldandbailey.com

Thu, Apr 7 at 9:14 AM

Mayor, Andy-

I have taken the current edits and changes to the now labeled Public Sidewalk Dining Ordinance and have made further revisions to make the application of the ordinance universal to all dining establishments, whether alcohol is sold or not. While the ABCA has certain requirements for those businesses that seek a license to purvey alcoholic beverages on the sidewalk, the ordinance as proposed has broad application and includes regulations ensuring the proper use of space, safety, and ADA compliance. These regulations should not apply only to restaurants that wish to serve alcohol on the sidewalk.

I have attached the draft version of the revised ordinance with track changes and comments. I have also enclosed a "clean" version. Both should be sent on to Council as part of the meeting packet. Please note the following changes I have made:

- To have the ordinance apply universally, please see my changes at Sections 3-501(b), 3-504(a), and 3-506(c).
- Agreeing with Chris, I have modified Section 3-505(a) so that the permit runs for a year from issue date. While issuing permits on a calendar year basis has an advantage with a hard stop every year on Dec. 31, permits would likely be issued throughout the year and in all fairness would be prorated. It seems easier to calendar the expiration dates for each permit whenever it is issued than doing the math for prorating the cost.

- Also noted by Chris, there is duplication and redundancy regarding the denial and revocation of permits. Accordingly, I deleted Section 3-505(e) and added some of that language to Section 3-507.
  - I have deleted Section 3-504(k) which would have prohibited outside smoking.
- 

Obviously, this is only a recommendation. Council may elect to apply the ordinance only to restaurants that intend to serve alcoholic beverages on the sidewalk or make other changes. However, this would mean that eateries that will not serve beer, wine, etc. outside are basically unregulated.

Let me know please if you have questions and other proposed edits to the proposed ordinance.

Chazz

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**Chazz Printz**

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AN ORDINANCE TO ENACT  
CHAPTER 5, TITLE 3 OF THE CODE OF SHEPHERDSTOWN  
AS THE **OUTDOOR PUBLIC SIDEWALK DINING AND ALCOHOL SERVICE  
ORDINANCE**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Title 3 of the Code of Shepherdstown is hereby amended by adding Chapter 5, entitled the ~~"Outdoor Dining and Alcohol Service Act,"~~ "Public Sidewalk Dining Ordinance" to establish the requirements of serving alcohol within ~~an outdoor~~ public sidewalk dining area. Accordingly, Chapter 5, Title 3 of the Code of Shepherdstown shall read as follows:

TITLE 3

Chapter 5 – ~~Outdoor Dining and Alcohol Service Act~~ Public Sidewalk Dining Ordinance

Section 3-501 – Definitions:

As used in this Chapter, the following terms have the following meanings:

- (a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, which possesses a valid State of West Virginia food vendor's permit, *a valid Town Business License* and has been issued ~~an Outdoor Dining and Alcohol Service Area~~ a Public Sidewalk Dining permit by the Corporation of Shepherdstown's Planning and Zoning Department;
- (b) ~~"Outdoor Dining Area"~~ "Public Sidewalk Dining Area" shall mean a ~~confined~~ legally demarcated area of the public sidewalk designated by a site plan approved by the Corporation through the Planning and Zoning Department and located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, and which area is adjacent ~~and contiguous~~ to the Operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which ~~may~~shall include non- intoxicating beer, wine or liquor contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

**Commented [CP1]:** CHANGED "SHALL" TO "MAY" SO THAT THE ORDINANCE APPLIES TO ALL BUSINESSES THAT WISH TO SERVE ON THE SIDEWALKS WHETHER THEY SERVE ALCOHOL OR NOT.

Section 3-502 - Findings; Purposes:

**Commented [CS2]:** Can Operators serve beer, wine and liquor outside?

The Shepherdstown Town Council hereby finds as follows:

- (a) The purpose of these regulations is to facilitate outdoor dining with or without alcohol service within the Corporation of Shepherdstown's *R/C (Residential Commercial) or C (Commercial) Zoning Districts* (as defined in Chapter 6 of the Planning & Zoning Ordinance) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the Corporation of Shepherdstown (also referred to herein as "Corporation" and "Town") by providing safe opportunities for outdoor dining as a use of the public right-of-way.

Section 3-503 – Powers, Rules, and Regulations:

- (a) The Corporation of Shepherdstown's Planning and Zoning Administrator is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Outdoor Dining and Alcohol Service Public Sidewalk Dining Area permit applications on such forms and subject to such procedures as the Planning and Zoning Department may establish to either grant or deny such permits under this article;
- (b) Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning and Zoning Department, and shall be available to interested parties at all reasonable times, including via the Town's website.

Section 3-504 – General Provisions:

- (a) An Operator who serves non-intoxicating beer, wine, and/or liquor must comply with all guidelines, rules and regulations as related to Outdoor Dining and Alcohol Service Public Sidewalk Dining Areas promulgated by the West Virginia Alcohol Beverage Control Administration.
- (b) The Outdoor Dining and Alcohol Service Public Sidewalk Dining Area shall be located adjacent to the property of a permitted Operator and shall be under the responsible direction and control of that Operator;
- (c) The Outdoor Dining and Alcohol Service Public Sidewalk Dining Area may be open to patrons during hours of operation, but not before 7am or after 11pm;
- (d) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of

public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited;

- (e) As authorized by state law, including, but not limited to, W. Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the ~~delineation~~ demarcation, designation, or enclosure of the outdoor dining area on Town right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the ~~Corporation~~ Town;
- (f) The ~~Corporation~~ Town shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way;
- (g) No ~~Outdoor Dining and Alcohol Service Public Sidewalk Dining Area~~ shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than thirty-six (36) inches. Forty-eight (48) inches of unobstructed corridor space must be maintained between the outer dimension of the ~~Outside Dining Area Public Sidewalk Dining Area~~ (barrier) and the face of the curb in legal parking spaces. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the ~~Outdoor Dining Area Public Sidewalk Dining Area~~;
- (h) ~~An Outdoor Dining and Alcohol Service A Public Sidewalk Dining Area~~ permit shall not be issued for an area that would obstruct access within ten (10) feet of a fire hydrant, Fire Department standpipe connection, and fire escape, loading zone, bus stops or traffic signal stanchions;
- (i) Operation and maintenance of the ~~Outdoor Dining and Alcohol Service Public Sidewalk Dining Area~~ must comply in accordance with Section 3-102 Drinking in public places; illegal possession. It shall be unlawful for any person to: (a) Appear in a public place in an intoxicated condition. (b) Drink alcoholic liquor in a public place unless within the perimeters of a permitted outdoor dining area. (c) Drink alcoholic liquor in a motor vehicle on any street or in a public place;
- (j) In order to serve alcohol in an ~~Outdoor Dining and Alcohol Service Area~~ A Public Sidewalk Dining Area, the ~~designated~~ legally demarcated area must be included in the floor plan for the licensed premises as approved by the West Virginia

Alcohol Beverage Control Administration. Non-intoxicating beer, wine, and liquor shall be served and consumed only on the enclosed or bounded within the legally demarcated portion of the public sidewalk designated and permitted by the Town as an Outdoor Dining a Public Sidewalk Dining Area. Patrons are not permitted to carry non-intoxicating beer, wine or liquor in or out of the Outdoor Dining Public Sidewalk Dining Area;

**Commented [CS3]:** If wine and liquor can be consumed in the Outside Dining Area, we must make all provisions consistent.

~~(k) Smoking is prohibited within any Outdoor Dining Area;~~

**Commented [CS4]:** Are we sure we want to delete this provision? Should Council deliberate on this?

**Commented [AB5R4]:** Yes

#### Section 3-505 – Application and Permit Process:

The Planning and Zoning Administrator is authorized to issue an Outdoor Dining and Alcohol Service a Public Sidewalk Dining Permit, subject to the following conditions:

- (a) An Outdoor Dining and Alcohol Service A Public Sidewalk Dining Area Permit shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk. Permits issued hereunder shall be valid for one year from issue date, from January 1 through December 31 of said calendar year, unless revoked prior to expiration. An application for an Outdoor Dining and Alcohol Service a Public Sidewalk Dining Area Permit shall be accompanied by a \$95.00 administrative fee. An approved permit is valid for that one that calendar year only. Operators must reapply for each calendar year and pay the administrative fee;

**Commented [CS6]:** What if an Operator applies on December 1? Permit only valid for one month? Perhaps we modify and state that permits are valid for one year?

**Commented [CS7]:** See previous comment.

- (b) A completed Outdoor Dining and Alcohol Service Public Sidewalk Dining Area Permit application shall include: a site plan, drawn to scale showing the layout for the Outdoor Dining and Alcohol Service Public Sidewalk Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb, a picture and/or description of the barrier/landscape demarcation materials to be used, as well as any outdoor furniture and any such additional requirements of the Planning and Zoning Department with respect to type, style, or specifications of the Outdoor Dining and Alcohol Service Public Sidewalk Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol

Beverage Control Administration. The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. **Outdoor Dining and Alcohol Service Public Sidewalk Dining** Areas shall not be allowed within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business);

- (c) The Planning and Zoning Administrator may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Planning and Zoning Department;

- (d) ~~If serving non-intoxicating beer, a conditional permit will be granted for the outdoor dining area until the operator submits documentation from the West Virginia Alcohol Beverage Control Administration giving the operator approval for serving non-intoxicating beer within the Outdoor dining area. At that time, a final permit will be issued;~~

Commented [CS8]: No clue what this means?

- (e) ~~The issuance of an Outdoor Dining and Alcohol Service a Public Sidewalk Dining Area Permit does not grant or imply vested rights to use the area by the Operator but instead is a privilege granted to the Operator. The Corporation Town retains the right to deny the issuance of a permit or the renewal of a permit for any lawful reason. The Town shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The Town shall also have the right and power to prohibit the operation of an Outdoor Dining and Service a Public Sidewalk Dining Area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Planning and Zoning Administrator may suspend or revoke the Outdoor Dining and Alcohol Service Public Sidewalk Dining Area permit after providing at least three days' prior written notice, except in an emergency, to the Operator.~~

#### Section 3-506 – Additional Requirements:

(a) Prior to the issuance of a permit, if the applicant is serving non-intoxicating beer, wine or liquor, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the WV Alcohol Beverage Control Administration, the Corporation of Shepherdstown and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgments, costs and expenses, consequential or otherwise, including attorneys' fees and expenses, of any or all types arising out of, or related in any way to, the permitted Outdoor Dining and Alcohol Service Public Sidewalk Dining Area;

(b) The applicant of an Outdoor Dining a Public Sidewalk Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner:

**Commented [CS9]:** Does the ABC require insurance? Is this provision duplicative with any other ordinances requiring insurance?

(1) Worker's Compensation insurance in at least the required statutory limits;

(2) The applicant shall maintain comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars (\$1,000,000) coverage per each occurrence, and one million dollars (\$1,000,000) for any single injury; and shall name as additional insured the Corporation of Shepherdstown, its agents, officers, elected officials and employees;

(3) A copy of the certificates of insurance for the required policies for each type of insurance shall be furnished to the Corporation of Shepherdstown prior to the issuance of an Outdoor Dining a Public Sidewalk Dining Area permit. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the Outdoor Dining Public Sidewalk Dining Area permit until thirty days after written notice of such change has been delivered to the Town. Operators shall submit proof of General Liability Insurance when filing their renewal fee with the Corporation of Shepherdstown on an annual basis.

#### Section 3-507 – Denial or Revocation of Permit:

**Commented [CS10]:** This Section seems duplicative?

(a) An Outdoor Dining and Alcohol Service A Public Sidewalk Dining Area permit is a privilege granted to the Operator that may be revoked by the Corporation Town upon finding that the Operator has violated the Town's rules and regulations concerning outdoor sidewalk dining areas, any federal, state or Town law applicable to the Outdoor Dining and Alcohol Service Public Sidewalk Dining Area or the operation

**Commented [CP11R10]:** SECTION 3-505(e) WAS DELETED AND SOME LANGUAGE ADDED HERE.

thereof, including but not limited to, compliance with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration, that the continued operation of the ~~Outdoor Dining and Alcohol Service~~ Public Sidewalk Dining Area poses a threat to the health, safety or welfare of the public, or that the ~~Outdoor Dining and Alcohol Service~~ Public Sidewalk Dining Area constitutes a public nuisance. The Town also shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The Town additionally shall also have the right and power to prohibit the operation of an Outdoor Dining and Service a Public Sidewalk Dining Area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Planning and Zoning Administrator may suspend or revoke the ~~Outdoor Dining and Alcohol Service~~ Public Sidewalk Dining Area permit after providing at least three days' prior written notice, except in an emergency, to the Operator. ~~Outdoor Dining and Alcohol Service~~ Public Sidewalk Dining Areas must be visually appealing;

Section 3-508 – Penalty:

- (a) Any person, firm or corporation violating any provision of this article, shall be fined up to one-hundred dollars (\$100.00) per day. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 3-509 – Nondiscrimination Right to Limit or Deny Admission or Service:

- (a) No person shall be denied access or service to an ~~Outdoor Dining and Alcohol Service~~ a Public Sidewalk Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to an ~~Outdoor Dining and Alcohol Service~~ a Public Sidewalk Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.

Section 3-510 – Compliance with Federal, State, and Local Laws and Regulations:

- (a) The operation of an ~~Outdoor Dining and Alcohol Service~~ a Public Sidewalk Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act and all provisions of applicable state and local laws. The operations of an ~~Outdoor Dining and Alcohol Service~~ a Public Sidewalk Dining

Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration;

- (b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the Corporation, as set forth in Sections 3-102 and 7-112 of the Code of the Corporation of Shepherdstown, except that any permitted Outdoor Dining and Alcohol Service Public Sidewalk Dining Area Operator and patrons of permitted Operator's Outdoor Dining and Alcohol Service Public Sidewalk Dining Area shall be deemed to be exempt from said prohibition as set forth herein.

Section 3-511 – Effective Date:

- (a) Except as otherwise set forth herein, this Chapter shall become effective immediately on the date of the enactment; however, Operators are encouraged to adhere to the provisions herein as soon as practicable.

Section 3-512 – Evaluation of Provisions:

- (a) The Shepherdstown Town Council or its assigns shall evaluate the effectiveness and enforcement of this Chapter within six (6) month from the effective date, and may thereafter amend the Provisions herein as necessary and adopt any further rules and regulations regarding outdoor dining areas as deemed necessary.

Section 3-513 – Severability:

- (a) If any part of provision of this Chapter or the application thereof to any person or circumstances is held invalid, the remainder of the Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

Mayor

Recorder

AN ORDINANCE TO ENACT  
CHAPTER 5, TITLE 3 OF THE CODE OF SHEPHERDSTOWN  
AS THE PUBLIC SIDEWALK DINING ORDINANCE

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Title 3 of the Code of Shepherdstown is hereby amended by adding Chapter 5, entitled the "Public Sidewalk Dining Ordinance" to establish the requirements for dining within a legally demarcated area of a public sidewalk. Accordingly, Chapter 5, Title 3 of the Code of Shepherdstown shall read as follows:

TITLE 3

Chapter 5 – Public Sidewalk Dining Ordinance

Section 3-501 – Definitions:

As used in this Chapter, the following terms have the following meanings:

- (a) "Operator" shall mean a person, organization, proprietorship, corporation or other similar entity lawfully operating a business located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, which possesses a valid State of West Virginia food vendor's permit, *a valid Town Business License* and has been issued a Public Sidewalk Dining permit by the Corporation of Shepherdstown's Planning and Zoning Department;
- (b) "Public Sidewalk Dining Area" shall mean a legally demarcated area of the public sidewalk designated by a site plan approved by the Corporation through the Planning and Zoning Department and located in the *R/C (Residential Commercial) or C (Commercial) Zoning Districts*, and which area is adjacent and contiguous to the Operator's building/permanent structure, where patrons may sit at tables while consuming food and beverages, which may include non- intoxicating beer, wine or liquor contingent on proper licensure by the West Virginia Alcohol Beverage Control Administration.

Section 3-502 - Findings; Purposes:

The Town Council hereby finds as follows:

- (a) The purpose of these regulations is to facilitate outdoor dining with or without alcohol service within the Corporation of Shepherdstown's *R/C (Residential*

*Commercial*) or *C (Commercial) Zoning Districts* (as defined in Chapter 6 of the Planning & Zoning Ordinance) in order to create an active streetscape while promoting pedestrian and retail friendly traffic to enhance the economic and social vitality of the Corporation of Shepherdstown (also referred to herein as “Corporation” and “Town”) by providing safe opportunities for outdoor dining as a use of the public right-of-way.

Section 3-503 – Powers, Rules, and Regulations:

- (a) The Corporation of Shepherdstown's Planning and Zoning Administrator is hereby authorized to promulgate reasonable rules and regulations regarding the administration of the requirements of this article, to review all Public Sidewalk Dining Area permit applications on such forms and subject to such procedures as the Planning and Zoning Department may establish to either grant or deny such permits under this article;
- (b) Copies of such rules and regulations, as amended from time to time, shall be maintained by the Planning and Zoning Department, and shall be available to interested parties at all reasonable times, including via the Town's website.

Section 3-504 – General Provisions:

- (a) An Operator who serves non-intoxicating beer, wine, and/or liquor must comply with all guidelines, rules and regulations as related to Public Sidewalk Dining Areas promulgated by the West Virginia Alcohol Beverage Control Administration.
- (b) The Public Sidewalk Dining Area shall be located adjacent to the property of a permitted Operator and shall be under the responsible direction and control of that Operator;
- (c) The Public Sidewalk Dining Area may be open to patrons during hours of operation, but not before 7am or after 11pm;
- (d) All furniture and associated enclosures located on the public sidewalk/right-of-way shall not be attached or affixed to any poles, sidewalks/right-of-way or any other public facilities and must be readily removable without damage to the surface of public sidewalk/right-of-way. Penetrations into or permanent fixtures placed upon the public sidewalk/right-of-way are strictly prohibited;

- (e) As authorized by state law, including, but not limited to, W. Va. Code § 8-12-5(4), (20) and (44), all partitions or fencing required for the demarcation, designation, or enclosure of the outdoor dining area on Town right-of-way shall be provided, installed and maintained by the Operator and at the discretion of the Town;
- (f) The Town shall have the absolute authority to determine when furniture and associated enclosures must be removed from the public sidewalk/right-of-way;
- (g) No Public Sidewalk Dining Area shall interfere with pedestrian or vehicular traffic or with access to parked vehicles and shall not reduce the open portion of public right-of-way/sidewalk to less than thirty-six (36) inches. Forty-eight (48) inches of unobstructed corridor space must be maintained between the outer dimension of the Public Sidewalk Dining Area (barrier) and the face of the curb in legal parking spaces. In order to achieve a continuous pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face or curb line, for the entire length of the Public Sidewalk Dining Area;
- (h) A Public Sidewalk Dining Area permit shall not be issued for an area that would obstruct access within ten (10) feet of a fire hydrant, Fire Department standpipe connection, and fire escape, loading zone, bus stops or traffic signal stanchions;
- (i) Operation and maintenance of the Public Sidewalk Dining Area must comply in accordance with Section 3-102 Drinking in public places; illegal possession. It shall be unlawful for any person to: (a) Appear in a public place in an intoxicated condition. (b) Drink alcoholic liquor in a public place unless within the perimeters of a permitted outdoor dining area. (c) Drink alcoholic liquor in a motor vehicle on any street or in a public place;
- (j) In order to serve alcohol in a Public Sidewalk Dining Area, the legally demarcated area must be included in the floor plan for the licensed premises as approved by the West Virginia Alcohol Beverage Control Administration. Non-intoxicating beer, wine, and liquor shall be served and consumed only within the legally demarcated portion of the public sidewalk designated and permitted by the Town as a Public Sidewalk Dining Area. Patrons are not permitted to carry non-intoxicating beer, wine or liquor in or out of the Public Sidewalk Dining Area;

Section 3-505 – Application and Permit Process:

The Planning and Zoning Administrator is authorized to issue a Public Sidewalk Dining Permit, subject to the following conditions:

- (a) A Public Sidewalk Dining Area Permit shall be required prior to placing tables, chairs, or any other equipment on any public sidewalk. Permits issued hereunder shall be valid for one year from issue date, unless revoked prior to expiration. An application for a Public Sidewalk Dining Area Permit shall be accompanied by a \$95.00 administrative fee. An approved permit is valid for that one year only. Operators must reapply for each year and pay the administrative fee;
- (b) A completed Public Sidewalk Dining Area Permit application shall include: a site plan, drawn to scale showing the layout for the Public Sidewalk Dining Area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, bicycle racks, and other sidewalk features or obstructions; as well as design, location, size and space of the dining area, chairs, tables, enclosures, aisles between tables; routes of ingress and egress; clearances between the seating area and the curb, a picture and/or description of the demarcation materials to be used, as well as any outdoor furniture and any such additional requirements of the Planning and Zoning Department with respect to type, style, or specifications of the Public Sidewalk Dining Area, including those requirements that may be subject to approval of the West Virginia Alcohol Beverage Control Administration. The design and placement of tables and chairs, as well as other equipment, shall comply with applicable requirements of the Americans with Disabilities Act. Public Sidewalk Dining Areas shall not be allowed within ten (10) feet of a fire hydrant, Fire Department standpipe connection, fire escape, loading zone, bus stops or traffic signal stanchions. No permits will be issued for off-site seating (i.e. seating in front of another business);
- (c) The Planning and Zoning Administrator may approve, approve with conditions, or deny an application. The permit shall be posted at the Operator's premises, visible to customers and the public. No material change to the approved plan shall be made without prior written approval by the Planning and Zoning Department;

Section 3-506 – Additional Requirements:

- (a) Prior to the issuance of a permit, if the applicant is serving non-intoxicating beer, wine or liquor, the applicant must agree, in writing, that it shall hold harmless, indemnify, and defend the West Virginia Division of Highways, the WV Alcohol Beverage Control Administration, the Corporation of Shepherdstown and its officers, agents, and employees, from and against all liability, injuries, deaths, losses, claims, suits, damages, judgments, costs and expenses, consequential or otherwise, including attorneys' fees and expenses, of any or all types arising out of, or related in any way to, the permitted Public Sidewalk Dining Area;
- (b) The applicant of a Public Sidewalk Dining Area permit shall provide at its sole cost and expense and shall maintain in effect during the entire period of the permit, insurance in the following manner:
  - (1) Worker's Compensation insurance in at least the required statutory limits;
  - (2) The applicant shall maintain comprehensive general liability insurance, including owner's protective liability insurance and contractual liability insurance covering claims for personal injury and property damage with limits of at least one million dollars (\$1,000,000) coverage per each occurrence, and one million dollars (\$1,000,000) for any single injury; and shall name as additional insured the Corporation of Shepherdstown, its agents, officers, elected officials and employees;
  - (3) A copy of the certificates of insurance for the required policies for each type of insurance shall be furnished to the Corporation of Shepherdstown prior to the issuance of a Public Sidewalk Dining Area permit. The required insurance policies shall each provide that they shall not be changed or canceled during the life of the ~~Outdoor Dining~~ Public Sidewalk Dining Area permit until thirty days after written notice of such change has been delivered to the Town. Operators shall submit proof of General Liability Insurance when filing their renewal fee with the Corporation of Shepherdstown on an annual basis.

Section 3-507 – Denial or Revocation of Permit:

A Public Sidewalk Dining Area permit is a privilege granted to the Operator that may be revoked by the Town upon finding that the Operator has violated the Town's rules and regulations concerning ~~outdoor~~ sidewalk dining areas, any federal, state or

Town law applicable to the Public Sidewalk Dining Area or the operation thereof, including but not limited to, compliance with all code provisions and regulations of the West Virginia Alcohol Beverage Control Administration, that the continued operation of the Public Sidewalk Dining Area poses a threat to the health, safety or welfare of the public, or that the Public Sidewalk Dining Area constitutes a public nuisance. The Town also shall have broad discretion to grant or revoke permits issued pursuant to this article in the interests of promoting pedestrian and retail friendly vitality, and improve the overall public health, safety and welfare. The Town additionally shall also have the right and power to prohibit the operation of a Public Sidewalk Dining Area at any time, because of the anticipated or actual problems and conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events or parades or marches, or repairs to the street or sidewalk, or from demonstrations or emergencies occurring in the area. The Planning and Zoning Administrator may suspend or revoke the Public Sidewalk Dining Area permit after providing at least three days' prior written notice, except in an emergency, to the Operator. Public Sidewalk Dining Areas must be visually appealing;

Section 3-508 – Penalty:

- (a) Any person, firm or corporation violating any provision of this article, shall be fined up to one-hundred dollars (\$100.00) per day. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 3-509 – Nondiscrimination Right to Limit or Deny Admission or Service:

- (a) No person shall be denied access or service to a Public Sidewalk Dining Area on the basis of race, religion, national origin, sex, sexual orientation, age or disability; notwithstanding the right of the Operator to limit access and admission to a Public Sidewalk Dining Area to only bona fide paying customers of that Operator's establishment who are behaving in a lawful manner.

Section 3-510 – Compliance with Federal, State, and Local Laws and Regulations:

- (a) The operation of a Public Sidewalk Dining Area pursuant to a permit granted under this article shall comply with the Americans with Disabilities Act and all provisions of applicable state and local laws. The operations of a Public Sidewalk Dining Area shall also be conducted in accordance with the code provisions and regulations of the West Virginia Alcoholic Beverage Control Administration;

- (b) Nothing in this article shall be intended to alter or abridge the prohibition of service of alcoholic beverages or possession thereof on public property in the Corporation, as set forth in Sections 3-102 and 7-112 of the Code of the Corporation of Shepherdstown, except that any permitted Public Sidewalk Dining Area Operator and patrons of permitted Operator's Public Sidewalk Dining Area shall be deemed to be exempt from said prohibition as set forth herein.

Section 3-511 – Effective Date:

- (a) Except as otherwise set forth herein, this Chapter shall become effective immediately on the date of the enactment; however, Operators are encouraged to adhere to the provisions herein as soon as practicable.

Section 3-512 – Evaluation of Provisions:

- (a) The Shepherdstown Town Council or its assigns shall evaluate the effectiveness and enforcement of this Chapter within six (6) month from the effective date, and may thereafter amend the Provisions herein as necessary and adopt any further rules and regulations regarding outdoor dining areas as deemed necessary.

Section 3-513 – Severability:

- (a) If any part of provision of this Chapter or the application thereof to any person or circumstances is held invalid, the remainder of the Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

First Reading: \_\_\_\_\_

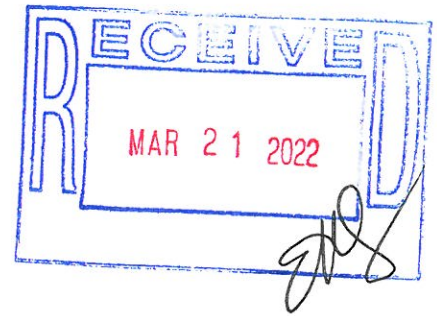
Second Reading: \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Recorder

Corporation of Shepherdstown



Event/Park Request Form

Applications and fees are due at least ninety (90) days prior to the event unless otherwise noted.

Any form of advertising of this event, prior to approval by Town Council, is done at applicant's own risk.

Please read and complete entire application. An incomplete application may result in denial or delay of request. The Corporation of Shepherdstown reserves the right to approve or deny any event request.

Organization:	ROTARY CLUB OF SHEPHERDSTOWN
Contact Name:	PETER SMITH
Mailing Address:	PO Box 603
City, State, Zip:	SHEPHERDSTOWN, WV 25443
E-mail Address:	PVSMITH@FRONTIER.NET
Daytime Phone:	304-579-9114
Evening Phone:	304-876-1139
Cell Phone:	304-579-9114

1.) Name and Complete Description of Event including location if other than one of our Parks: <i>attach on separate sheet if necessary</i> 2.) Has this event been held in Shepherdstown in the past?	JULY 4 PARADE ON GERMAN STREET	
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, on a separate sheet, please provide event dates (last three years) and describe any scheduling conflicts with other events that occurred in prior years or potential conflicts for the current requested event</i>	
3.) Is this a "one-time" event?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
4.) Date and Time of Event: <u>07/04/2022</u> 4a.) Set Up Time <u>8:30</u> 4b.) Tear Down Time <u>12:00</u>	From:	To:
	<u>11:00</u> am/pm	<u>11:45</u> am/pm

5.) Park Requested, if applicable:	<input type="checkbox"/> Banc-Harris \$100	<input type="checkbox"/> Cullison \$100	<input type="checkbox"/> Rumsey \$500	<input type="checkbox"/> Viola-Devonshire \$100
6.) Are street closures requested?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, please provide, on the attached map, streets that need to be closed. If having a parade, provide parade route. Alleys must be kept open. (No Exceptions)</i>			
7.) Is event open to the public?	<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No	
8.) What are the parking arrangements?	PARADE WILL FORM UP ON			
<i>Please explain.</i>	CHURCH ST., BETWEEN HIGH			
	AND MILDEN STS.			
9.) Will entertainment be involved?	Any entertainment must be approved by the Town Council.			
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Live Band	<input type="checkbox"/> DJ	<input type="checkbox"/> Radio/CD Player	<input type="checkbox"/> Other: Explain
<i>If yes, give details w/ # groups, type of music, time of performance(s) etc. See Noise Ordinance</i>				
10.) Will other equipment be used? (i.e. generator, tents, inflatables, etc.) If yes, give details.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No SOUND SYSTEM FOR PARADE ANNOUNCER			
11.) Are you a non-profit organization? <i>If yes, provide certification of non-profit status.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
12.) Will vendors be at the event? <i>If yes, give details including complete list of vendors and contact information.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
13.) Will event participants be charged a fee? <i>If yes, what is the cost?</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
14.) Will admission be charged for the event? <i>If yes, what is the cost?</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Cost _____			
15.) Number of people expected to attend:	<input type="checkbox"/> less than 50	<input type="checkbox"/> 51-100	<input type="checkbox"/> 101-150	<input checked="" type="checkbox"/> more than 150
16.) Name & contact info. for two (2) people with authority that will be present at event:	Name: <b>PETER SMITH</b>		Phone: <b>304-579-9114</b>	
	Name: <b>HOLLY PRYB</b>		Phone: <b>304-671-4086</b>	
17.) Check any Town assistance needed:	<input type="checkbox"/> Electric	<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Public Works	
	<input type="checkbox"/> Recycling	<input type="checkbox"/> Other		
18.) Will alcoholic beverages be served?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<i>If yes, the Shepherdstown Open Container Ordinance must be suspended by action of the Town Council for this day's event.</i>	<i>If yes, you must contact the WV Alcohol Beverage Control Commission to obtain a "one day" license.</i>			

19.) How will this event benefit Shepherdstown?	Provide wholesome family entertainment; boost tourism
---	---

Requirements:

- All event requests must be applied for at least 90 days prior to the event date.
- For park events, notification of the event must be provided, in writing, to all neighbors within two blocks of the event location (a copy of this notification must be provided to the Town)
- If this is a parade, walk or run, give details including map of route to be taken.
- General liability insurance coverage of no less than one million dollars (\$1,000,000) reflecting the Corporation of Shepherdstown as additionally insured.
- If assistance from the Police or Public Works Department is needed for the event, you will be responsible for contacting the respective departments.
- Payment of costs incurred during the event must be paid within one week following the event (i.e. Assistance from the Police Department or Public Works Department).
- All required information must be submitted at least two weeks prior to the Town Council meeting.

Corporation of Shepherdstown

It is hereby agreed and understood that GERMAN ST. is reserved, as specified, for the use of the above named organization and/or individual. The Facility reserved is subject to inspection by any authorized representative of the Corporation of Shepherdstown in order to assure proper use of Town property. This permit must be in the possession of the organization and/or individual to whom it is issued and shown upon request to any authorized Town Official.

The organization and/or individual assumes personal liability and responsibility for any and all costs of cleanup of the premises, loss, breakage, damage to or removal of Town property and further assumes liability and responsibility for the conduct and good order of the group and its invitees and guests.

The organization and/or individual shall be responsible for any and all loss, damage or injury to any and all personal property that it or its agents, representatives, invitees or guests, may bring to, store at, or leave at the facility, and shall indemnify and hold harmless the Corporation of Shepherdstown and any department, agent, official and/or employee thereof for any personal injury incurred during, or as a result of such use. The organization and/or individual further agrees to abide by all procedures, policies, and rules governing use of the above-mentioned facility.

☒ I have read and agree to these responsibilities.

Signature of Organization and/or Individual: Peter [Signature]

Date: 3/18/22

(Per the notary clerk of Shepherdstown)

Any individual under the age of 21 must have the signature of a parent or guardian who shall assume any and all responsibility and liability as set forth above and the person signing must be in attendance at the rental event.

Parent/Guardian: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Phone: \_\_\_\_\_

PLEASE NOTE APPROVAL IS REQUIRED FOR USE OF THE PARK FACILITIES. Once approved, this permit will be issued.

FOR OFFICE USE ONLY

<p>Rental Fee: \$ _____ <input type="checkbox"/> Cash</p> <p>Date Paid: _____ <input type="checkbox"/> Check</p> <p><input type="checkbox"/> Approved</p> <p>Approved by: _____</p> <p>Title: _____ Date: _____</p>	<p><input type="checkbox"/> Denied</p> <p>Comments:</p> <p>_____</p> <p>_____</p> <p>_____</p>
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Internal Revenue Service  
District Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Date: OCT 15 1993

Person to Contact:

Lois Parrott

Telephone Number:

513-684-3957

Refer Reply to:

EP/EO

Employer Identification Number:

55-0672814

Group Exemption Number:

0573

Rotary International  
Shepherdstown Rotary Club  
P. O. Box 603  
Shepherdstown, WV. 25443-0603

OCT 19 1993

Dear Sir or Madam:

COX ALLEN & NICHOLS, P.A.

This is in response to your request for a copy of your determination letter.

Our records indicate that you are included in a group ruling issued to Rotary International National Headquarters which is located in Evanston, Illinois. Our records indicate that your organization is exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

There is no individual exemption letter for your organization, since you are included in a group ruling. The group exemption letter applies to all of the subordinate organizations on whose behalf the Rotary International has applied for recognition of exemption. If you want a copy of the group exemption letter, please contact your parent organization.

If we can be of further assistance in this matter, please contact us.

Sincerely yours,



Robert T. Johnson  
District Director



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/17/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Arthur J. Gallagher Risk Management Services, Inc. 2850 Golf Road Rolling Meadows IL 60008	<b>CONTACT NAME:</b> Ali Sulita		
	<b>PHONE (A/C, No, Ext):</b> 1-833-3ROTARY	<b>FAX (A/C, No):</b> 630-285-4062	
	<b>E-MAIL ADDRESS:</b> rotary@ajg.com		
<b>INSURED</b>  All Active US Rotary Clubs & Districts  ATTN: Risk Management Dept. 1560 Sherman Ave. Evanston, IL 60201-3698	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A:</b> Lexington Insurance Company		19437
	<b>INSURER B:</b>		
	<b>INSURER C:</b>		
	<b>INSURER D:</b>		
	<b>INSURER E:</b>		
<b>INSURER F:</b>			

## COVERAGES

CERTIFICATE NUMBER: 899307648

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Liquor Liability Included GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		015375594	7/1/2021	7/1/2022	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			015375594	7/1/2021	7/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	NOT APPLICABLE			PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Certificate Holder is included as an additional insured where required by written contract or permit subject to the terms and conditions of the general liability policy, but only to the extent bodily injury or property damage is caused in whole or in part by the acts or omissions of the insured.

## CERTIFICATE HOLDER

Corporation of Shepherdstown  
PO Box 248  
Shepherdstown, WV 25443  
Re: Rotary Club of Shepherdstown  
2022 July 4 Community Parade

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Cynthia L. LaMonte*

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## **Addendum to Rotary Club of Shepherdstown 2022 July 4 Parade event request**

**2. EVENT HISTORY.** This July 4 parade has been organized and sponsored by the Rotary Club of Shepherdstown annually since 2007, except in 2020 and 2021 when it was cancelled because of Covid. As far as we know, there have never been any scheduling conflicts with other events in the past, and none are foreseen this year.

The parade has always been followed by a Rotary-sponsored community picnic. In 2007 and 2008, this picnic was held at Morgan's Grove Park. From 2009 through 2012, the picnic was held at the town's Rumsey Memorial Park.

In 2013, we shifted the picnic location back to Morgan's Grove Park and it has remained there ever since. Public reaction to the Morgan's Grove Park location has been very positive because of the parking and superior facilities it offers. Thus, the picnic now does not involve any town facilities.

The Rotary Club pays all costs associated with the parade and picnic, which total about \$5,000 annually.

**6. STREET CLOSURES.** As in previous years, this year's parade route will be limited to the section of German Street between Church and Princess streets. The parade will form up on Church Street, between Minden and High streets, and disperse on Princess Street, in the block north of German Street.

**Therefore, we are requesting the following closures:**

**1.) The two + blocks of Church Street between German Street and the town line just south of Washington Street from 9:30 am until 12 noon. (We also ask that the meters in the block between German and Church streets be hooded the night before, with "no parking" signs posted in that area.)**

**2.) The block of Church Street between German Street and High Street from 9:30 am until 12 noon.**

**2.) German Street, between Duke and Princess streets, from 10:30 a.m. until the end of the parade at 12 noon or so.**

**3.) The block of Princess Street between German and High streets from 11:00 a.m. until 12 noon.**

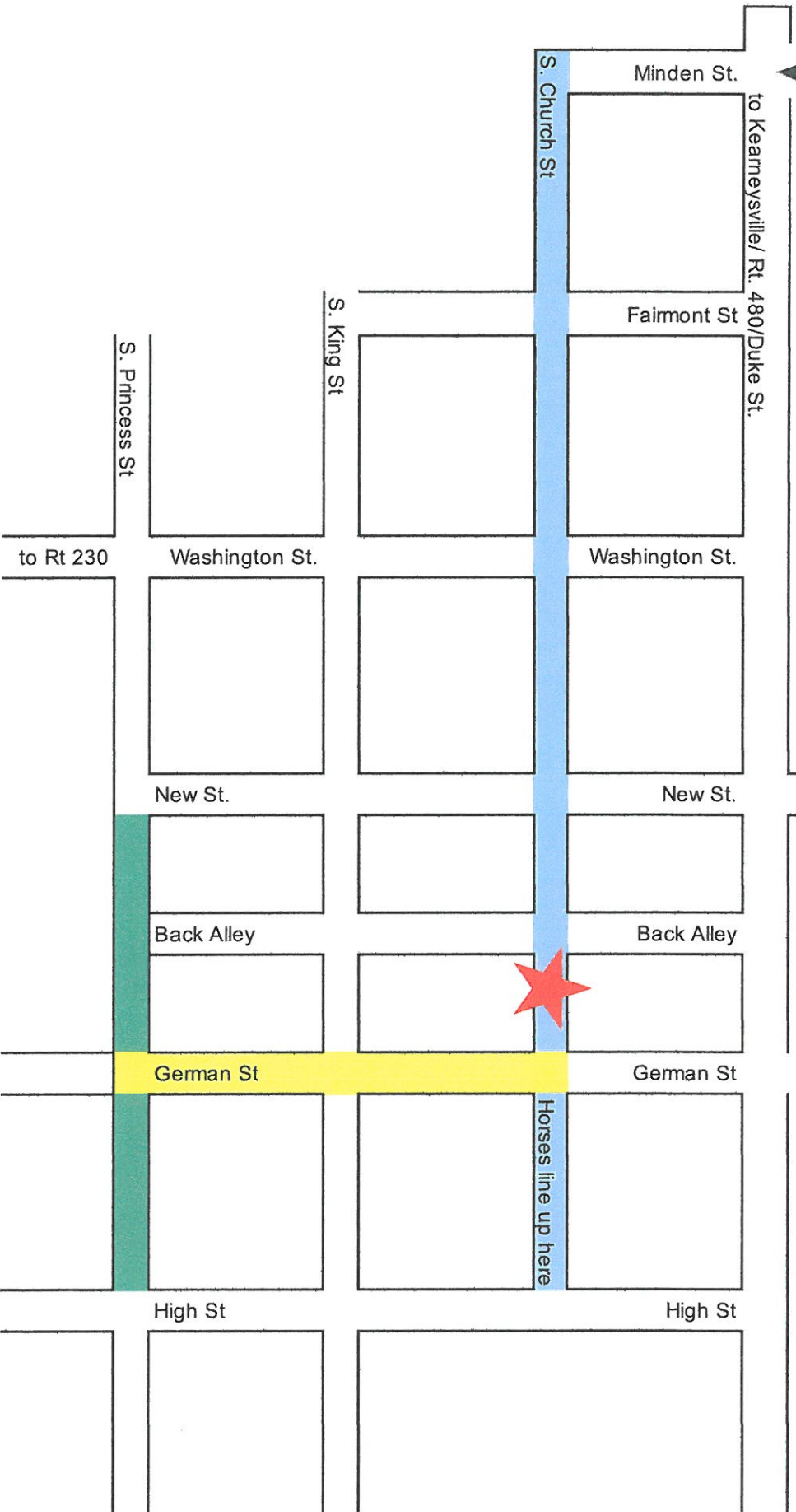
**INSURANCE CERTIFICATE.** The Rotary Club of Shepherdstown receives general liability insurance coverage through a blanket Rotary liability insurance policy that covers all active Rotary clubs in the United States. This policy is renewed every year effective July 1. Because of this schedule, it is not possible to provide an up-to-date Certificate of Liability Insurance for any event occurring on July 4 in any year until the annual renewal process is completed. This takes place during June, typically during the last two weeks of the month. At that time, the Rotary Club of Shepherdstown will provide the Corporation of Shepherdstown with an updated Certificate naming the Corporation as Additional Insured. In the meantime, a copy of our current Certificate accompanies this request form.

# July 4 Shepherdstown parade

Motorized vehicles use Minden to enter lineup

to Kearneysville/ Rt. 480/Duke St.

Rt.45 to Martinsburg



Parade entries will line up on Church Street (access restricted 9:30 am-12 noon)

Parade coordinator will be stationed here

Parade route (closed to traffic 11:00 am-12 noon)

Parade entries disperse here (closed to traffic 11:00 am-12 noon)

## Finance Committee Minutes

Wednesday March 16, 2022

1:00 PM, Town Hall

### 1. Call to Order

1. Mayor call meeting to order at 1:02.
2. Committee members present: J. Auxer, C. Roberts (phone), J. Ford
3. Staff present: A. Body, F. Welch, A. Beall, B. Bennett
4. Visitors: None

### 2. Reading/Approval of Minutes

1. Minutes of the Dec. 2021 meeting were approved without comment.

### 3. Unfinished Business - None

### 4. New Business

#### 1. 2022-2023 General Fund Budget (General Fund Levy Estimate)

1. Proposed budget was presented by A. Boyd and B. Bennett. Summary of the general budgeting strategy was to begin with a 5% estimated increase in both income and expenses, to customize particular entries where the increase is known to be higher or lower than 5% and, finally, to adjust some entries in order to produce a balanced budget.
2. J. Ford questioned the large increase in Police salaries and it was explained that there is a plan to hire an additional full-time officer.
3. C. Roberts enquired as to how the Parks and Rec. Committee could obtain additional funding for a planned trail project. It was noted that the full amount of the Hotel/Motel tax had not yet been allocated to appropriate accounts (some was allocated to General Budget accounts) and when that was adjusted, as it must be, a portion could be allocated to the trails project.
4. J. Ford moved and C. Roberts seconded that the proposed budget be recommended to Town Council for approval. The motion passed unanimously without further discussion.

#### 2. Potential Annexation Cost & Benefit Analysis

1. A. Beall presented that outlined the estimated financial costs and benefits potentially associated with annexation of various commercial properties near Town. After some discussion of what appears to be obvious financial benefits, it was decided to add this to the Town Council agenda as a discussion item before it is pursued any further.

5. Financial Reporting - None available

6. Mayor's Report - None

The meeting was adjourned at 1:25.

Respectfully submitted,

J. Ford

**PUBLIC WORKS COMMITTEE MINUTES**  
**Wednesday, March 30, 2022**  
**1:30 p.m.**  
**Town Hall – In person**  
**104 North King Street**

1. Call to Order – 1:26 pm – Jim Auxer, Jim Ford; Staff – Frank Welch.
2. Visitors – None.
3. Public Comment – None.
4. Garbage and recycling update - discussion of rates

F. Welch presented various data concerning the collection costs and customer rates of garbage and recycling, including:

The expenses incurred by the Town exceed the collected rates by more than \$100K per year.

The current rates charged by the Town are less than those of Martinsburg and Apple Valley Waste.

The Town has not raised rates since 2015.

Since 2009 residential garbage rates have gone from \$12.89/month to \$14.82/month. Similarly,

- residential recycle rates have gone from \$3.00 to \$3.45.
- Commercial garbage rates have gone from \$143.80 to \$165.37
- Commercial recycle rates have gone from \$15.00 to \$17.25.

All those increase represent an annualized increase of only 1.15% per year.

It was agreed that a rates recommendation would be considered at next month's Public Works meeting.

5. Adjournment - 2:10

Respectfully submitted,  
Jim Ford

**DRAFT MINUTES**  
**CORPORATION OF SHEPHERDSTOWN, WEST VIRGINIA**  
**WATER & SANITARY BOARDS**

March 24, 2022

**ATTENDEES:** **Water Board** – J. Auxer (Mayor), J. Bresland, J. Ford, M. Godfrey, S. Kemnitzer (Chair), C. Stroeck  
**Sanitary Board** – J. Auxer (Chair), H. Heyser (via phone)  
**Town Staff** –B. Bennett, C. Coe, K. Shipley, F. Welch  
**Visitors:** Sylke Knuppel

1. **CALL TO ORDER.**

The Water and Sanitary Boards meeting was called to order by J. Auxer at 12:32 p.m.

2. **MINUTES FROM PRIOR MEETING.**

The proposed minutes of the February 23, 2022, regular meeting were reviewed and approved as submitted.

3. **VISITORS.**

S. Knuppel introduced herself. She works as a Civil Engineer, has resided in the Shepherdstown area for 4 years and is a Water customer.

4. **FINANCES.** Financial Statements Discussion

J. Auxer explained that the accounting consultant (Dana Fogle) has estimated that the financial statements will be fully reconciled by the end of May.

S. Kemnitzer asked what her process was. J. Ford stated that there was no special process but that she has reconciled all the outstanding transactions, whereas some of the transactions had been unreconciled in the past.

M. Godfrey stated that there are several layers of detail missing from the latest reports that are useful and that we have been used to seeing.

S. Kemnitzer suggested some format changes that she would find useful.

J. Auxer suggested that M. Godfrey and S. Kemnitzer send their changes to him and that he would pass them along to D. Fogle at their next meeting. J. Ford suggested that, if possible, M. Godfrey and/or S. Kemnitzer should attend the meeting and present their requests in person.

S. Kemnitzer asked that we have an agenda item on next month's agenda to have a detailed discussion of the FY 2022/2023 budget.

M. Godfrey noted that the Water income on the latest reports is significantly above expenses. F. Welch stated that it might not be as it appears since there have been several significant expense items in recent months not shown on the finance report.

S. Kemnitzer asked if the recent reconciliation had uncovered anything worrisome. J. Ford stated that one worrisome thing came up: the consultant informed us that some accounts had not been reconciled since April of 2021.

5. **FLOW AND QUALITY REPORTS.**

5.a **WATER - NO VIOLATIONS.**

C. Coe reported that things were working well in general and that all readings were less than maximum allowable levels.

5.b. **SANITARY REPORTS – NO VIOLATIONS.**

K. Shipley reported that everything was going well but that the current reports were not available because the lab did not deliver them due to Covid issues.

6. **UNFINISHED BUSINESS.**

6.a **SEWER USE ORDINANCE – REVISION AND COMMENTS - SPRING 2022.**

H. Heyser reported that no progress has been made on this effort.

6.b **WATER PLANT IMPROVEMENT PROJECT - JEFF EKSTROM TO REPORT.**

C. Coe reported for J. Ekstrom that the project is on schedule. Currently the plant is intermittently running at half capacity so that work can proceed on the idled portion of the plant. To date they have had no difficulty meeting their required output.

C. Coe reported that the aging plant fence (40+ years) is causing problems. Project has \$13K allocated for repairing sections of the fence that the contractors have had to disassemble but the condition of the fence has made it impossible to repair. C. Coe suggested that we should remove the requirement for the contractor to repair the fence (also remove the \$13K from the contract) and plan to rebuild the entire fence ourselves at an estimated cost of \$31K. J. Bresland and S. Kemnitzer stated that they agreed with that decision and there was no disagreement.

M. Godfrey stated that he recently toured the plant and was impressed with effort and results of the project.

6.c **UPDATE ON WATER DISTRIBUTION PROJECT - JEFF EKSTROM TO REPORT.**

J. Auxer reported in J. Ekstrom's absence. He stated that the \$2Million Congressional grant has been approved. It requires a 25% match from Water, which is currently available from capacity fees.

S. Knuppel asked if this project was considered maintenance or upgrade. F. Welch responded that it will be mainly upgrade - specifically upgrading the capacity delivered to Mecklenburg Heights in order to provide capacity required for fire hydrants.

S. Kemnitzer asked if there would be any special accounting requirements. J. Auxer stated that we are still waiting to get information as to how to administer the grant.

7. **NEW BUSINESS.**

7.a **SHEPHERD VIEW APTS - APPROVAL OF STEP II - HOY SHINGLETON WORKING ON ALTERNATE MAINLINE EXTENSION AGREEMENT - TO BE SENT TO PSC.**

F. Welch stated that the Alternate Mainline Extension Agreement is the only outstanding issue, that H. Shingleton had submitted it to the PSC and expects to hear from them in about 1 month.

7.b **SHEETZ STORE - APPROVAL OF STEP II - HOY SHINGLETON WORKING ON ALTERNATE MAINLINE EXTENSION AGREEMENT - TO BE SENT TO PSC.**

K. Shipley explained that all water lines have been completed and that 52 of the 62 feet of drilling under Route 45 required to connect the sewer line to the existing system have been completed.

F. Welch stated that H. Shingleton is preparing to send the Alternate Mainline Extension Agreement to the PSC.

8. **MAYOR'S REPORT.**

C. Coe explained that he and M. Godfrey were working together to audit the Lead and Copper Rule project being executed by 120Water. They have a meeting scheduled with the contractor next week to define responsibilities.

S. Kemnitzer stated that there was a need to inform customers of this project. C. Coe stated that there was a plan to send informative postcards to the customer base.

M. Godfrey explained that to execute this project we need a GIS tool in order to accurately map the existing system. C. Coe stated that we had solicited bids and, to date, have received only 1 response.

9. **NEXT MEETING DATE.**

Thursday, April 28, 2022, at 12:30PM at the Community Club.

10. **SUMMARIZE ACTION ITEMS FROM THIS MEETING.**

As per S. Kemnitzer's request we should have an agenda item on next month's agenda to have a detailed discussion of the budget.

11. **DRAFT AGENDA FOR NEXT MEETING.**

12. **ADJOURNMENT.** J. Auxer adjourned the meeting at 1:33 p.m.

Respectfully Submitted: J. Ford