

Title 8

Municipal Licensing, Taxation and Finance

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CHAPTER 1. Licensing-In General

SECTION 8-101 Definitions.

For the purposes of chapters 1 & 2, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Business. The word "business" shall mean any economic activity, whether a person engaged expressly or impliedly holds himself out as engaged in business or supplying his products or a commodity or service to the public as a class or a limited portion of the public or sells any goods, wares, merchandise of any kind or provides a service of any kind; provided, the "business" shall not include sales of products of the farm, garden, or dairy by the producer or grower thereof; occasional sales by societies acting for charitable, religious or benevolent purposes; judicial sales directed by law or court order; or any business the gross income of which is less than one thousand dollars per license year and, in this connection, "gross income" shall mean the gross receipts of the business received as compensation for personal services and from trade, commerce, or sales and the value accruing from the sale of tangible property (real or personal), or service or both, without any deduction on account of the cost of property sold, materials used, labor costs, taxes or any other expense whatsoever.

Business franchise registration certificate. The term "business franchise registration certificate: shall mean a franchise or certificate, issued by or in behalf of the state, authorizing a person to conduct business within the State of West Virginia and when referred to in chapter. 1 & 2 as certificate or registration shall mean business franchise registration certificate.

SECTION 8-102 Purposes for which currently valid, paid up, town license required.

It shall be unlawful for any person to conduct within the town any business, profession, calling or vocation for which a town license is required by chapters 1 & 2 or elsewhere in the other titles or for which a business franchise registration certificate or any other form of state license is required by law without first obtaining from the town such town license as may be required therefore, and each person so licensed by the town shall pay such town license tax or fee as may be imposed thereon by the town and maintain such town license in a currently valid status at all times while conducting the business, profession, calling or vocation to which such town license relates.

SECTION 8-103 Application for and issuance of license; payment of tax and fees; recorder to maintain records.

(a) Each applicant for a town license shall make application to the recorder, on a form to be provided by the town, and holders of business franchise registration certificates or other forms of state licenses authorizing them to do business within the town shall display such state certificates or licenses to the recorder at the time of making application for a town license.

(b) Upon payment to the recorder of such license tax or fee as may be imposed by chapters 1 & 2 or elsewhere in the other titles for the particular town license, for which application is made, plus a license issuance fee of one dollar as compensation to the town for the recorder's services, the recorder shall issue the license applied for; provided, that the application is in proper form and that all requirements of state law and the other titles appear to the recorder to have been complied with, and provided further, that applications for licenses which are required to be issued by the common council shall be referred by the recorder to the common council at its next meeting succeeding the date of filing thereof, and he shall not issue any such license until authorized to do so by the common council, and in any such case the payment of any license tax or fee shall be deferred until such application has been approved by the common council.

(c) The recorder shall maintain on file all applications for town licenses and a record of each license issued which shall set forth the name and business address of the licensee, the date of issuance and the term for which issued, the type of license, the amount of license tax or fee paid, the number of the license, and such additional information as may be pertinent to establish that all requirements of law and this Code have been complied with.

SECTION 8-104 False statements prohibited.

It shall be unlawful for any person to knowingly make any false statement in any application for a town license, or in any tax return, report or other statement relating to any activity licensed by the town and which is required to be made to any officer or agency.

SECTION 8-105 Separate license required for each fixed place of business and each class of business.

Except as may be provided otherwise in the other titles, any person who, at more than one fixed place of business within the town engages in or prosecutes any business, profession, calling or vocation for which a town license is required, or who within the town engages in or prosecutes more than one type of business, profession, calling or vocation for which a town license is required, shall obtain a separate license and pay the prescribed tax or fee therefore for each such fixed place of business and for each such business, profession, calling or vocation.

SECTION 8-106 Expiration date; annual renewal; pro ration of license tax and fees.

(a) Town licenses shall expire at midnight on the last day of June subsequent to the date of issuance and shall be renewable annually, except such licenses for which the tax or fee is by the day, week, month or other period less than a year, and except as may be provided otherwise by other titles.

(b) The license tax or fee for an initial license upon the commencement of business shall be prorated in the following manner. All licenses granted prior to January 1 shall be charged the full amount of such license tax or fee and all licenses granted after January 1 shall be charged one half of the full license tax or fee. No license, however, shall be issued for less than two dollars.

SECTION 8-107 Display of license.

Each person to whom a town license has been issued shall keep such license conspicuously posted upon or within the premises to which such license relates. Each licensee having no fixed place of business shall carry his license upon his person at all times while engaging in the licensed business or any transaction incidental thereto, and shall display such license upon request of any person with whom he is transacting business or any law enforcement officer.

SECTION 8-108 License a personal privilege, not assignable; effect of change of name, location, ownership, etc.

Each town license shall confer a personal privilege only, to transact the business, profession, calling or vocation which is the subject of the license, and shall not be exercised except by the person holding the same and shall not be assignable to any other person.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest shall be considered a cessation of the business and a new town license shall be required. Changes of partners or members of firms or officers of a corporation shall not require a new license to be issued.

SECTION 8-109 License does not legalize unlawful acts.

Nothing in chapters 1 & 2, and no payment for or issuance of any town license under the provisions hereof, shall be deemed to legalize any act which otherwise may be in violation of law, or to exempt any person from any penalty prescribed for such violation.

SECTION 8-110 Suspension and revocation of licenses , and public hearings upon appeal from revocation.

The recorder, upon reasonable notice to the licensee, may summarily revoke any license issued by him for any reason which would have been grounds for denial of such license when first issued, for violation of any term or condition of such license, for violation of any pertinent provision of state law or other ordinances, or for the perpetration or attempted

perpetration of fraud, malpractice or malfeasance by the licensee, without prejudice to prosecution of such licensee by the town. Any person having an interest in any license so revoked and who feels aggrieved thereby may request the recorder to further investigate the grounds for revocation and to reconsider his action, and if the recorder accedes to such request he may suspend or reinstate the license pending his final decision. If the recorder refuses to accede to such request, or if, upon reconsideration, he affirms his revocation of the license, the party so aggrieved may appeal to the common council, which shall, without delay, afford such person a public hearing at which he may appear in person or by counsel, and may have the attendance of witness, books and papers in his behalf, and may testify in person. The decision of the common council following such hearing shall be final, subject only to such judicial review as may be provided by law.

SECTION 8-111 Criminal violations and penalties.

Except as may herein be expressly provided, any person violating any provisions under chapter 1 & 2 shall, upon conviction thereof, be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned in the county jail not more than thirty days or both fined and imprisoned, and each day or part thereof that any violation shall continue shall be deemed to constitute a distinct and separate offense and be punishable accordingly.

SECTION 8-112 Prosecution for violations; recourse of town to seek injunctions.

If any person engages in or prosecutes any business, profession, calling or vocation contrary to any of the provisions of chapters 1 & 2, or by any violation of the terms and conditions of such license, he shall be subject to immediate prosecution.

CHAPTER 2. License Taxes on and Regulations Governing Certain
Businesses.

AN AMENDMENT TO CHAPTER 2 OF TITLE 8 OF
THE MUNICIPAL ORDINANCES

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 2 of Title 8 of the municipal ordinances entitled "License Taxes on and Regulations Governing Certain Businesses" is hereby amended effective as of July 1, 2001 as follows:

CHAPTER 2. License Taxes on and Regulations Governing Certain
Businesses. SECTION 8-201 Definitions.

When used in this chapter the term "person" shall mean and include natural persons, partnerships, associations, corporations, limited liability companies, and all other organizations or groups by means of which any of the hereinafter specified businesses, activities, trades or employments are engaged in or prosecuted.

SECTION 8-201A Registration of businesses not otherwise licensed.

Every person engaging in any business, profession, calling or vocation in the town, for which a state business franchise registration certificate is required and for which no town license tax or fee is prescribed in chapters 1 & 2 or in the other titles shall register annually with the Town Recorder for each location within the town where he holds himself out to engage in or transact business therefrom.

SECTION 8-202 License issuance fee to be paid by all businesses.

In addition to the taxes and other fees imposed by this chapter, each applicant for an initial or renewal town license shall pay the license issuance fee as provided in Chapter 1, Section 103 (b).

SECTION 8-203 Cigarette and tobacco vendors.

Repealed.

SECTION 8-204 Coin-operated devices - Merchandise, service, music

and amusement devises, or vending machines.

Persons owning and operating coin-operated merchandise, service, amusement or music devices or vending machines shall obtain annual licenses and pay the fees prescribed in this section on or before July one of each year.

The liability for the license to operate any type of coin-operated merchandise, service, amusement or music devices or vending machines shall be upon the owner of the machine. The ownership shall be established by either a bill of sale, paid invoice or a conditional sales contract, which has been recorded in the applicable county clerk's office. The leasing of such a machine shall not be considered as a transfer of ownership of the machine and where a lessor-lessee relationship exists, the lessor shall be liable for the applicable license and fees.

The annual license fee to own and operate a coin-operated baggage or parcel checking machine or device which is used for the storage of baggage or parcels of any character, shall be fifty cents for each section of any such device which is operated on the coin-in-the-slot principle, not to exceed \$75.00 per year for all such devices; the annual license fee to own and operate any coin-operated toilet locker or device, sanitary napkin device or bed vibrator device shall be fifty cents for every such locker or device, not to exceed \$75.00 per year for all such devices. The town will not furnish decal stamps for these devices; however, the owner shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label, and the identification label shall contain the name of the owner, his town license number, his street address and name of town and state of residence.

The annual license fee to own and operate a total of twenty or more coin-operated amusement or music devices of the following types shall be: One cent devices-fifty dollars; five cent devices-seventy-five dollars; ten cent devices-seventy five dollars; over ten cent devices-seventy-five dollars. The operator of more than one type of such device shall pay the highest fee prescribed. The license fee to own and operate less than twenty amusement or music devices shall be upon a per device basis as follows: One cent devices-two dollars; five cent devices-five dollars; ten cent devices-ten dollars; over ten cent devices-twelve dollars and fifty cents; provided that the annual license fee to own and operate less than twenty amusement or music devices shall not exceed \$75.00 per year for all such devices regardless of denomination of coin. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

The annual license fee to own and operate a total of twenty or more coin-operated merchandise or service devices of the following types shall be: One cent devices-fifty dollars; five cent devices-seventy-five dollars; ten cent devices-seventy-five

dollars; over ten cent devices-seventy-five dollars. The operator of more than one type of such devices shall pay the highest fee prescribed. The license fee to own and operate less than twenty merchandise or service devices shall be upon a per device basis as follows: One cent devices-two dollars; five cent devices-five dollars; ten cent devices-ten dollars; over ten cent devices-twelve dollars and fifty cents; provided that the annual license fee to own and operate less than twenty merchandise or service devices shall not exceed \$75.00 per year for all such devices regardless of denomination of coin. Any device taking more than one denomination of coin shall be licensed on the basis of the largest denomination of coin taken or the total of the coins necessary to make the device function or operate.

The fees herein prescribed are on an annual basis, commencing July one of each year, expiring on the following June thirtieth, and are not proratable if taken out during the license year nor shall fees paid be refundable if a license is revoked, suspended or business ceased during the license year.

No license fee shall be required of stores or businesses owning and operating such machines or devices owned by them in their own licensed stores; provided, that where the principal business is the operation of the machines or devices, then licenses shall be obtained as outlined above; and provided further, that any person exempt from or not liable for such license shall identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label and the identification label shall contain the name of the owner, his store license number, his street address and name of town and state of residence.

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

Application for license required herein shall contain the necessary information for the proper licensing under the foregoing fee schedule for machines that are owned and operated on location by the licensee within this town during the ensuing license year or any part of a fiscal year. Each vending machine operator shall make application to the recorder on forms provided by him, and the applicant shall furnish such information as may be required by the recorder including a certified statement of the total number of machines, by location, of each coin denomination type in each classification, viz., service, music or amusement, and merchandise or service machines; provided, that vending machine operators operating twenty or more machines are only required to furnish the recorder with a certified statement as to the total number of machines on location in this town, and the applicant shall be subject to the penalties of false swearing for any untrue statements contained in his application.

The recorder shall assign each license issued hereunder a number. It shall be the responsibility and duty of the owners of all coin-operated devices subject to the licenses herein provided to properly identify each machine by installing on each device an identification label, plainly legible and visible, in such a manner that the machine need not be moved to observe the identification label and the identification label shall contain the name of the owner, his license number, his street address and name of town and state of residence.

In the event any coin-operated device is found on location and not bearing the owner's address and current license number as

prescribed above, the recorder or his agents may seal the device in such a manner as to make it inoperable. The seal shall state the date sealed and bear the signature and title of the sealer. Anyone other than the recorder or his authorized agent who shall break or tamper with such seals, or conceal or move a sealed machine from its location shall be subject to the criminal provisions of this chapter.

The owner of a sealed machine may petition the recorder to remove seal(s) from the owner's machine(s) by filing a petition, on forms provided by the recorder, and paying to the town treasurer a sealing fee often dollars for each sealed machine. After receiving such petition

and fee, and after the owner has complied with all the applicable provisions of this chapter, the recorder shall, within a reasonable time, cause such petitioned seals to be removed. If the owner of the sealed device has not, within thirty days from the date the device was sealed, paid a sealing fee of ten dollars to the treasurer as well as having, to the satisfaction of the recorder, complied with all other applicable provisions of this chapter, then and in which event, the recorder, or his agents, shall take such sealed device into possession and deliver the same to the police, who upon direction of the recorder shall take such sealed device into possession and forthwith sell such sealed device in the manner provided by law for the sale of personal property for taxes; and from the proceeds of sale, including any currency found in the sealed machine and removed prior to sale, shall pay his costs, including drayage, storage, penalties and other fees due the town; and the balance, if any there be, shall be paid to the town treasurer for deposit and credit in the same manner as are the license fees collected under this section.

Every person subject to the provisions of this chapter shall make such reports and keep such records as may be required by the rules and regulations of the recorder and shall permit him to inspect such records and the stocks and supplies on hand at any time. Every such person shall be required to make his records available for inspection by the recorder or his authorized agents.

The recorder is hereby authorized to make and promulgate such reasonable rules and regulations as may be necessary to administer the provisions of this section and other sections of this chapter, which relate to coin-operated devices to insure the collection of the taxes imposed thereby.

SECTION 8-205 Same-Washing, cleaning and dry cleaning devices.

Coin-operated devices which wash, dry, clean or dry clean items of any description exclusive of vehicle washing devices but including clothing and household items, or dispense merchandise for use in such washing, drying, cleaning or dry cleaning, are hereby subject to a license tax.

All persons owning the aforementioned devices, or like washing devices, shall be liable for payment of such license tax. Ownership shall be deemed established by determining who is the purchaser by either a bill of sale, paid invoice, or a conditional sales contract or agreement filed and recorded in the applicable county clerk's office in this state or in the office of the secretary of state. Leasing of machines will not be deemed a transfer of ownership.

The annual license fee to own machines being operated in this

town and whether operated by the owner or other persons shall be as follows: Upon ten or more machines, in any one location, the annual license fee shall be thirty dollars. Upon less than ten machines, in any one location, the annual license fee shall be three dollars for each machine; provided, that in no instance shall the annual license fee be less than fifteen dollars nor more than seventy-five dollars.

It is hereby provided that no machine or device licensed under the provisions of this section shall be subject to the license fees and taxes imposed by Section 8-204 of this chapter.

SECTION 8-205A Coin-operated vehicle washing devices.

Coin-operated vehicle washing devices are hereby subject to a license tax. All persons owning the aforementioned devices, or like washing devices, shall be liable for payment of such license tax. Ownership shall be deemed established by determining who is the purchaser by either a bill of sale, paid invoice, or a conditional sales contract or agreement filed and recorded in the applicable county clerk's office in this state or in the office of the secretary of state. Leasing of machines will not be deemed a transfer of ownership.

The annual license fee to own machines being operated in this town and whether operated by the owner or other persons shall be as follows: Upon ten or more machines, in any one location, the annual license fee shall be thirty dollars. Upon less than ten machines, in any one location, the annual license fee shall be three dollars for each machine; provided, that in no instance shall the annual license fee be less than fifteen dollars nor more than seventy-five dollars.

SECTION 8-206 Corporations. Repealed.

SECTION 8-207 Hawking, Peddling, Street Vending Prohibited;
Exceptions.

(a) When used in this section, the terms "hawking", "peddling", and "street vending" shall mean and include the engaging, conducting or operating of a temporary, transient or permanent business of selling goods, wares or merchandise for delivery at the time of sale, and which, for its business purpose, involves and includes the use, lease or occupation, either in whole or in part, of a shed or sheds, open ground, streets, sidewalks, pavements, roads or highways, a room or rooms, a building or other structure or place for the exhibition and sale of such goods, wares, and merchandise.

It shall be unlawful for any person, both principals and agents, to engage in, conduct or operate within this Town the business of hawking, peddling or street vending.

(b) The provisions of paragraph (a) of this section shall not apply to any person who sells any goods, wares or merchandise to be delivered in the future; or to any of the following who offer immediate delivery of the goods, wares, or merchandise being

sold:

(1) Any person or persons engaged within the state in the business or calling of agriculture, horticulture or grazing, who sells or sell individually or collectively, one or more for the other or others, the products derived from his or their business or calling aforesaid.

(2) Any retail or wholesale business concern, established and operating continuously for one year or more within this state in the sale of any product or products over regular routes who are licensed under other provisions of this chapter.

(3) Any wholesaler or jobber selling soft drinks or non-intoxicating beer for which he is duly licensed under other provisions of this or another title.

(4) Any person who sells petroleum products, ice, wood, meat, ice cream, dairy products, bread, cakes, pies and other bakery products, butter and eggs, manufactured, grown or produced by any such person and not purchased by him for resale.

(5) Sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by organizations acting for charitable, religious or benevolent purposes; nor to annual showings or street exhibits, which may include sales of their showings or exhibits conducted by members of art associations, numismatic or philatelic societies or antique associations or societies when such showing or exhibit does not continue for more than one week each calendar year; nor to judicial sales directed by law, or under the orders of any court.

(6) Any agent or salesman selling manufactured products produced by his employer, and who sells the same to retail dealers for the purpose of resale.

(7) Any firm, corporation, or individual having a stock of goods, or merchandise, or manufacturing or processing plant or plants kept or operating at a fixed sites in the State of West Virginia, and declared for taxation in the county where located, and using a vehicle or vehicles over a fixed route or routes for the purpose of selling or distributing at wholesale, their, his or its said merchandise, stock of goods or plant products.

(8) Any person who sells goods, wares, and merchandise in connection with or as a part of the business of, or in the name of any local dealer,

trader, merchant or auctioneer.

(c) Any person who is excepted from the operation of this section under paragraph (b) shall obtain from the recorder a certificate, without cost, showing that he is so exempt, and which shall run for a period of not greater than one year after the issuance thereof; but to obtain such certificate he shall make an affidavit as to the facts entitling him to such exemption on a form to be prescribed by the recorder.

SECTION 8-208 Hospitals, sanatoriums and extended care facilities.

Any person engaging in the business of providing the accommodations and services of hospital, sanatorium, or extended care facility operated in connection with a hospital shall pay an annual town license tax of \$75.00 for a facility with 5-49 beds; \$75.00 for a facility with 50-99 beds; \$75.00 for a facility with 100-199 beds; and \$75.00 for a facility with 200 or more beds; provided, that this section shall not be applicable to any institution owned or operated by the federal or state government.

SECTION 8-209 Hotels, motels., boardinghouses, etc., where lodging furnished.

Any person engaging in the business of providing the accommodations or services of a hotel, motel, inn, tourist home, rooming house, boardinghouse or other establishment where lodging is furnished for compensation shall pay an annual town license tax of two dollars. An additional twenty-five cents shall be due for each bedroom in excess of seven, provided that no fee shall exceed ten dollars.

SECTION 8-209A Landlords.*Repealed.*

SECTION 8-210 Nursing homes or facilities and personal care homes

"Nursing home" or "facility" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provided services for the rehabilitation of persons who are convalescing from illness or incapacitation.

Any person engaged in the business of providing the accommodations and facilities of a nursing home shall pay an annual town license tax of fifteen dollars per bed.

Any person engaged in the business of providing the accommodations and facilities of a personal care home shall pay an annual town license tax of six dollars per bed

SECTION 8-211 Insurance.

Repealed, See Section 8-226(19) & (20)

SECTION 8-212 Junk dealers and their agents; itinerant junk collectors.

(a) Any person engaging in the business of junk dealer shall pay an annual town license tax of twenty-five dollars; and any person engaged in the business as a junk dealer's agent shall pay an annual town license tax of ten dollars; provided, that any person who is a nonresident of the State who engages in the business of junk dealer or junk dealer's agent shall

pay an annual town license tax of one hundred fifty dollars. Any person engaging in the business of itinerant junk collector shall pay an annual town license tax of two dollars.

(b) The term "junk" as used in this section shall mean old or scrap gold, copper, brass, rope, rags, batteries, paper, rubber, automobile parts, iron, steel and other old scrap ferrous or nonferrous metals. The term "junk dealer" shall include any person engaged in the business of buying or selling junk as hereinabove defined. The term "junk dealer's agent" shall include any person who buys or sells junk as hereinabove defined for or on behalf of a junk dealer, as hereinabove defined, but the term "junk dealer's agent" shall not be construed to include any person regularly employed upon a salary by a regularly licensed junk dealer engaged in such business within the city. The term "itinerant junk collector" shall include only such persons who gather junk from place to place with the aid of a cart or hand drawn or propelled vehicle, who have no fixed place of business.

(c) No person within the town shall engage in the business of junk dealer, junk dealer's agent or itinerant junk collector without a town license therefore, which license shall be issued as provided in this section: Provided, however, that no resident license shall be issued to any junk dealer, junk dealer's agent or itinerant junk collector who has not been a resident of the State of West Virginia for a period of at least one year prior to the application for such license. No license hereunder shall be transferable.

(d) No corporation or firm shall engage in the business of junk dealer or junk dealer's agent in the town unless the officers or agents of such corporation or firm who engage in the business of junk dealer or junk dealer's agent, in behalf of such corporation or firm shall be eligible to be duly licensed as resident junk dealers or junk dealer's agent in accordance with the provisions of this section.

SECTION 8-213 Real estate brokers. *Repealed. See Section 8-226(36) & (37)*

SECTION 8-214 Small loan companies. *Repealed.*

SECTION 8-215 Theatres and public shows.

A theatre, opera house or other permanent place for public shows, may be kept or maintained upon the payment of the annual license fee hereinafter specified, based upon the population of the town, according to the last official census:

- (a) Population less than 2,000 \$ 10.00
- (b) Population over 2,000 but less than 5,000 \$ 20.00

- (c) Population over 5,000 but less than 10,000 \$ 40.00
- (d) Population over 10,000 but less than 20,000 \$ 100.00
- (e) Population over 20,000 but less than 30,000 \$ 125.00
- (f) Population over 30,000 \$160.00

SECTION 8-216 Stores.

For the purpose of this section, the term "special store" shall mean and include any store or any mercantile establishment in which goods, wares, or merchandise of any kind, except cigarettes, tobacco products or soft drinks, are purchased, ordered, sold, or offered for sale, either at retail or wholesale, and which contains no coin-operated device(s) owned and operated by the store proprietor. The term "general store" shall mean and include any store(s) or any mercantile establishment(s) in which goods, wares, or merchandise of any kind are purchased, ordered, sold, or offered for sale either at retail or wholesale. Within this section, no coin-operated device or devices shall be construed to be a store.

General Store:

1 to 5 stores	\$ 15.00 each
6 to 10 stores	\$ 40.00 each additional store
11 to 15 stores	\$ 80.00 each additional store
16 to 20 stores	\$ 120.00 each additional store
21 to 30 stores	\$ 160.00 each additional store
31 to 50 stores	\$ 400.00 each additional store
51 to 75 stores	\$ 800.00 each additional store
Over 75 stores	\$1,000.00 each additional store

Special Stores:

1 to 5 stores	\$ 15.00 each
6 to 10 stores	\$ 20.00 each additional store
11 to 15 stores	\$ 40.00 each additional store
16 to 20 stores	\$ 60.00 each additional store
21 to 30 stores	\$ 80.00 each additional store
31 to 50 stores	\$200.00 each additional store
51 to 75 stores	\$400.00 each additional store
Over 75 stores	\$500.00 each additional store

The establishment, operation, or maintenance of stores by the following shall be exempt from the license fee imposed by this article: (1) the United States of America, the State of West Virginia and its political subdivisions (2) religious or charitable organizations (3) any person(s) engaged within the town in the business of producing agricultural products who, individually or collectively, sell in such store only agricultural products which he or they have produced.

SECTION 8-217 Restaurants.

The annual license tax to operate a restaurant shall be \$50.00 for a restaurant with seating capacity of 0-35; \$75.00 for a restaurant with seating capacity of 36-75; and \$75.00 for a restaurant with seating capacity of 76 or more.

SECTION 8-218 Bowling alleys and billiard, pool or bagatelle tables.

The annual license fee to keep or maintain a bowling alley, a billiard, pool or bagatelle table, or table of like kind, for public use, where any charge is made for the use of the same, shall be twenty-five dollars; but, if more than one of such alleys or tables be kept or maintained in the same building by the same person, the fee shall be twenty-five dollars for the first one and fifteen dollars for each additional one, not to exceed seventy-five dollars per year.

The licensee, his agents or employees shall not permit any person in any manner to bet or wager anything of value upon any game played upon such alleys or tables. Such licensee, his agents or employees shall not permit anyone to bring any intoxicating liquors of any kind into such building or other place where such alleys or tables are located.

Persons keeping or maintaining billiard, pool or bagatelle tables, or other tables of like kind, their agents or employees, shall not permit any person under the age of eighteen years to play at such tables and shall not permit any such person under the age of eighteen years to remain or loiter, whether playing at such tables or not, in the room where such tables are located.

SECTION 8-219 Circuses, carnivals and other public shows.

The license to exhibit a circus or menagerie, a circus and menagerie combined, wild west show, or other itinerant show not exhibited in a theatre, opera house or other permanent place for public shows, shall be based upon the number of railroad cars or motor trucks used to transport the property or equipment of such shows, but not including railroad cars or motor trucks used to transport the personnel thereof. If railroad cars are used the fee shall be four dollars for each car for each day on which any performance is given; if motor trucks are used the fee shall be three dollars for each truck for each day on which any performance is given.

The license fee to exhibit a street or other carnival shall be five dollars a week for each entertainment, performance or exhibition given at or in the vicinity of any such carnival. Each such entertainment, performance or exhibition shall require a separate license, whether or not shown under the same canvas and whether or not exhibited for additional compensation; and upon any such entertainment, performance or exhibition being concluded, so that an

additional fee for admission is charged, an additional license fee shall be required for any further or additional entertainment, performance or exhibition. To operate any riding device of any kind at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such device.

To keep or maintain any concession stand selling service, goods, wares or merchandise, such as food, soft drinks, ice cream, candy floss and the like, at or in the vicinity of such street or carnival show, the fee shall be five dollars a week for each such concession. To maintain any concession stand such as ball games, bingo, cane rack, penny pitch-till-you-win, striking machine, weighing machine, shooting gallery, artful dodger, bumper, fish pond, dart game, or other legitimate games of skill, none of which shall be controlled by the operator, at or in the vicinity of any street or carnival show, the fee shall be ten dollars a week for each such concession. To operate or maintain a candy wheel or any other legitimate merchandise wheels, when operated without control of the operator, shall be twenty-five dollars a day. To operate or maintain rides of all kinds shall be ten dollars each a week: Provided, however, that such games as roll downs, blowers, spinners, swinging ball, creepers, race tracks, spot the spot, and all other games controlled by the operator are hereby forbidden and no license shall be granted to any circus, show or street carnival where such games are operated: Provided further, that no circus, show or street carnival shall be licensed which has any gypsy fortune-tellers or gypsies connected therewith in any manner.

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

Each applicable license fee in this Section 8-219 shall not exceed seventy-five dollars per year.

SECTION 8-220 Fortune-telling.

The annual license to act as a fortune-teller, palmist, phrenologist, spiritualist, medium, clairvoyant, mind reader, or any other person who performs the art or profession of telling the past or forecasting the future shall be one hundred dollars.

SECTION 8-221 Collection agencies.

The annual license fee to engage in the business of a collection agency within this town shall be one hundred dollars. For purposes

of this section, solicitation or collection by or through an agent operating within this town shall be considered to be engaging in the business of a collection agency within this town. Before such certificate of license is issued, the person applying for the same shall execute a continuing bond in the form prescribed by the town recorder with satisfactory corporate surety in the penalty of five thousand dollars, conditioned that such person will pay all damages resulting from any unlawful act or action by such person or his or its agent in connection with the conduct of the business of the collection agency. This bond shall be filed with the town recorder.

SECTION 8-222 Employment agents; exemption.

The annual license fee to conduct the business of an employment agent, to receive applications for employment, to hire or contract with persons for employment shall be two hundred dollars, except that the annual license fee for an agency or registry for the employment of registered professional nurses, practical nurses or undergraduate nurses shall be twenty-five dollars: Provided, however, that the provisions of this section shall not be applicable to any such agency or registry operated by a registered professional nurses association or any district subdivision thereof for the exclusive benefit of its registrants and not for profit.

When used in this section the term "employment agent" shall mean and include all persons, firms, corporations or associations, excepting municipal corporations, church and charitable associations, which furnish, to persons seeking employment, information enabling or tending to enable such persons to secure the same, or which furnish, to employers seeking laborers or help of any kind, information enabling or tending to enable such employers to secure such help, or shall keep a register of persons seeking employment or help as aforesaid, whether such agents conduct their operations in a fixed place of business, on the streets, or as transients, and also whether such operations constitute the principal business of such agent or only as a sideline or incidental to other business.

SECTION 8-223 Itinerant vendors.

(a) When used in this section the term "itinerant vendor" shall mean and include all person who engage in conduct within this town, either in one locality, or in traveling from place to place, a temporary or transient business of selling goods, wares and merchandise; and who, for the purpose of carrying on such business, use, lease or occupy for such purposes a room or rooms in any hotel or lodging house, for the exhibition and sale of such goods, wares and merchandise; and the person so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as part of the business of, or in the name of, any local dealer, trader, merchant or auctioneer. The provisions of this section

shall not apply to sales made to persons by commercial travelers, or selling agents in the usual course of business, nor to bona fide sales of goods, wares or merchandise by sample for future delivery; nor to hawkers or peddlers in the streets, roads or highways, from packs or vehicles, nor to persons selling meat or the products of the farm, garden or dairy, nor to any sales of goods, wares or merchandise on the grounds of any agricultural association during the continuance of any annual fair held by such association; nor to any sales by societies acting for charitable, religious or benevolent purposes; nor to judicial sales directed by law, or under the orders of any court; nor to the sales of the common necessities of life in any public market place.

(b) No itinerant vendor shall advertise, represent or hold forth a sale of goods, wares or merchandise as a bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, attorney, manufacturer's wholesale or closing out sale, or a sale of any goods damaged by smoke, fire, water or otherwise, unless before so doing he shall state in writing, under oath, to the town recorder at the time he makes application for a license, hereinafter provided for, all the facts relating to the reason and character of such special sale as advertised, held forth, or represented, including a statement of the names of the person from whom such goods, wares or merchandise were purchased, and the date of the delivery of the same to the person applying for license; the place, if any, where such goods, wares or merchandise were previously exposed for sale, and such details as are necessary to exactly locate and fully identify all such goods, wares and merchandise proposed to be sold. And such itinerant vendor shall also include in such statement the name and residence of the owner or owners in whose interest the business is conducted, to be kept on file in the office of the town recorder and a record shall be kept by said town recorder of all such statements, in convenient form and open to public inspection.

(c) Every itinerant vendor shall execute a continuing bond in the form prescribed by the town recorder with satisfactory corporate surety in the penalty of five thousand dollars, payable to the Corporation of Shepherdstown, conditioned that such itinerant vendor will pay all damages accruing to anyone by reason of any act or action done, performed or taken by such itinerant vendor in or about the conduct of his business and further conditioned that such itinerant vendor will pay all taxes, fees and penalties imposed by this town: Provided, however, that he aggregate liability of the surety for all such damages, taxes, fees and penalties shall, in no event, exceed the sum of said bond.

(d) This bond shall be filed with the town recorder and shall be open to inspection during business hours to any person desiring to inspect the same.

(e) The license fee to carry on the business of itinerant vendor shall be five hundred dollars.

(f) Every itinerant vendor who sells or exhibits for sale at public or private sale, any goods, wares or merchandise without first obtaining a license therefore, and in all other respects complying with the provisions of this chapter, or who makes any false statement in reference to the matter set out in subsection (b) hereof, or who fails to comply with the requirements of any of the sections of this chapter, and every person, whether principal or agent, who, by circular, handbills, newspaper, or in any manner advertises such sale, as herein described, before proper licenses are issued to the vendor and before he has complied with the provisions of this chapter, shall be guilty of a violation of this chapter, and shall be punished accordingly.

SECTION 8-224 Pawnbrokers.

The annual license fee to engage in the business of pawnbroker shall be one hundred dollars. The term pawnbroker shall include any person, firm, association or corporation engaged in the business of lending money on deposit or pledge of personal property or other valuable

think, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product.

SECTION 8-225 Trading stamps.

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

SECTION 8-226 Professions and other occupations.

The annual license fee for the following professions and other occupations licensed by the State of West Virginia shall be:

Accountants. For each licensed accountant engaging in the practice of public accounting within the town, the annual license fee is \$65.00.

Acupuncturists. For each licensed acupuncturist engaging in the practice of acupuncture within the town, the annual license fee is \$75.00.

Architects. For each licensed architect engaging in the profession of architecture within the town, the annual license fee is \$50.00.

Attorney. For each licensed attorney engaging in the practice of law within the town, the annual license fee is \$75.00.

Auctioneer. For each licensed auctioneer engaging in the business of an auctioneer within the town, the annual license fee is \$50.00.

Barbers, Beauticians or Manicurists. For each licensed barber, beautician or manicurist engaging in the business of barbering, beauty culture or manicuring within the town, the annual license fee is \$25.00.

Barbers and Beauticians School. For each licensed barber and beautician school located within the town, the initial annual license fee shall be \$500.00, and the annual license fee thereafter shall be \$250.00.

Chiropractors. For each licensed chiropractor engaging in the practice of chiropractic within the town, the annual license fee is \$100.00.

Contractors.

a. For each licensed contractor, except for an electrical contractor licensed as a sole proprietor, doing business within the town, the annual license fee is \$75.00.

b. For each licensed electrical contractor licensed as a sole proprietor doing business within the town, the annual license fee is \$20.00.

Dental Corporation. For each licensed dental corporation engaging in the practice of dentistry within the town, the annual license fee is \$150.00.

Dentists. For each licensed dentist engaging in the practice of dentistry within the town, the annual license fee is \$75.00.

Dental Hygienist. For each licensed dental hygienist engaging in the practice of dental hygiene within the town, the annual license fee is \$50.00.

Dietitians. For each licensed dietitian engaging in the practice of dietetics within the town, the annual license fee is \$50.00.

Embalmers and Funeral Directors.

a. For each licensed embalmer engaging in the practice of embalming within the town, the annual license fee is \$30.00.

b. For each licensed funeral director engaging in the business of funeral directing within the town, the annual license fee is \$30.00.

c. For each licensed apprentice embalmer engaging in the practice of embalming within the town, the annual license fee is \$25.00.

d. For each licensed apprentice funeral director engaging in the business of funeral directing within the town, the annual license fee is \$25.00.

Engineers. For each licensed engineer engaging in the practice of engineering within the town, the annual license fee is \$25.00.

Foresters. For each licensed forester engaging in the practice of professional forestry within the town, the annual license fee is \$15.00.

Funeral Establishment. For each funeral establishment located within the town, the annual license fee to operate the principal establishment is \$100.00 and the annual fee to operate each additional funeral establishment by the same applicant is \$75.00.

Hearing Aid Dealers and Fitters. For each hearing aid dealer and fitter engaging in the business of dealing in or fitting of hearing aids within the town, the annual license fee is \$40.00.

Insurance Agent, Solicitor and Broker.

a. For each licensed insurance agent engaging in the business of an insurance agent within the town, the annual license fee is \$25.00.

b. For each licensed insurance solicitor engaging in the business of an insurance solicitor within the town, the annual license fee is \$25.00.

c. For each licensed insurance broker engaging in the business of an insurance broker within the town, the annual license fee is \$25.00.

Insurance Company. For each licensed insurance company engaging in the business of an insurance company within the town, the annual license fee is \$200.00.

Landscape Architects. For each licensed landscape architect engaging in the practice of landscape architecture within the town, the annual license fee is \$25.00.

Land Surveyor. For each licensed land surveyor engaging in the business of land surveying within the town, the annual license fee is \$40.00.

Massage Therapists. For each licensed message therapist engaging in the practice of massage therapy within the town, the annual license fee is \$50.00.

Medical Corporation. For each licensed medical corporation engaging in the practice of medicine and surgery or the practice of podiatry within the town, the annual license fee is \$75.00.

Midwives. For each licensed midwife engaging in the practice of nurse-midwifery within the town, the annual license fee is \$10.00.

Nursing Home Administrators. For each licensed nursing home administrator engaging in the business of a nursing home administrator within the town, the annual license fee is \$100.00.

Occupational Therapists. For each licensed occupational therapist engaging in the practice of occupational therapy within the town, the annual license fee is \$60.00.

Optometrists. For each licensed optometrist engaging in the practice of optometry within the town, the annual license fee is \$20.00.

Osteopathic Physicians and Surgeons. For each licensed osteopathic physician and surgeon engaging in the practice of osteopathy within the town, the annual license fee is \$75.00.

Pharmacists. For each licensed pharmacist engaging in the practice of pharmacy within the town, the annual license fee is \$50.00.

Physical Therapists. For each licensed physical therapist engaging in the practice of physical therapy within the town, the annual license fee is \$60.00.

Physical Therapy Assistant. For each licensed physical therapy assistant engaging in the business of physical therapy assistant within the town, the annual license fee is \$40.00.

Physicians, Surgeons and Podiatrists.

a. For each licensed physician and surgeon engaging in the practice of medicine and surgery within the town, the annual license fee is \$75.00.

b. For each licensed podiatrist engaging in the practice of podiatry within the town, the annual license fee is \$75.00.

Physician Assistants. For each licensed physician assistant engaging in the practice of an assistant to a physician within the town, the annual license fee is \$25.00.

Practical Nurses. For each licensed practical nurse engaging in the practice of practical nursing within the town, the annual license fee is \$40.00.

Private Detectives and Investigators.

a. For each licensed private detective and investigator engaging in the business of private investigation within the town, the annual license fee is \$50.00 for a resident of West Virginia or \$500.00 for a non-resident of West Virginia.

b. For each licensed private detective or investigative firm engaging in the business of private detection or investigation within the town, the annual license fee is \$100.00 for a West Virginia corporation or business entity or \$500.00 for a foreign corporation or business entity.

Professional Counselor. For each licensed professional counselor engaging in the practice of counseling or therapy within the town, the annual license fee is \$37.50.

Psychologists. For each licensed psychologist engaging in the practice of psychology within the town, the annual license fee is \$75.00.

Radiologic Technologists. For each licensed radiologic technologist engaging in the practice of radiologic technology within the town, the annual license fee is \$10.00.

Real Estate Brokers. For each licensed real estate broker engaging in the business of a real estate broker within the town, the annual license fee is \$75.00.

Real Estate Salesmen. For each licensed real estate salesman engaging in the business of a real estate salesman within the town, the annual license fee is \$40.00.

Registered Professional Nurses. For each licensed registered professional nurse engaging in the practice of registered professional nursing within the town, the annual license fee is \$25.00.

Respiratory Care Practitioners. For each licensed respiratory care practitioner engaging in the practice of respiratory therapy within the town, the annual license fee is \$65.00.

Sanitarians. For each licensed sanitarian engaging in the business of a sanitarian within the town, the annual license fee is \$20.00

Security Guards.

a. For each licensed security guard engaging in the business of a security guard within the town, the annual license fee is \$75.00 for a resident of West Virginia or \$75.00 for a non-resident of West Virginia.

b. For each licensed security guard firm engaging in the business of a security guard firm within the town, the annual license fee is \$75.00 for a West Virginia corporation or business entity or \$75.00 for a foreign corporation or business entity.

Social Workers. For each licensed social worker engaging in the practice of social work within the town, the annual license fee is \$22.50.

Speech-Language Pathologists or Audiologists. For each licensed speech-language pathologist or audiologist engaging in the practice of a speech-language pathology or audiology within the town, the annual license fee is \$37.50.

Tattoo Studios. For each licensed tattoo studio engaging in the business of a tattoo studio within the town, the annual license fee is \$75.00.

Veterinarians. For each licensed veterinarian engaging in the practice of veterinary medicine within the town, the annual license fee is \$75.00.

Upon application for the initial license or renewal of any license, the applicant must attach a copy of the applicant's valid state license.

SECTION 8-218 Administrative costs; payments by recorder into town treasury.

Any and all expenses incurred by the recorder in the administration of this chapter shall be paid out of the general fund. All money collected under the provisions of this chapter shall be paid into the town treasury by the recorder and shall be added to and constitute a part of the general fund.

SECTION 8-219 Payment under protest and remedy of persons feeling aggrieved.

Any person claiming that any license is not due, for any reason, shall pay the tax under protest, with the right to collect the same from the town treasurer by an appropriate remedy as provided by law.

First Reading: October 9.

2001 Second Reading:

November 13. 2001 Adopted:

November 13. 2001

AN ORDINANCE RE-ENACTING TITLE 8 OF
THE SHEPHERDSTOWN CODE, BY ADDING
CHAPTER 8, SECTIONS 801 THROUGH 831
AUTHORIZING A HOTEL OCCUPANCY TAX

The Shepherdstown Town Council ordains:

Title 8 of the Shepherdstown Code is re-enacted by adding thereto Chapter 8, Sections 801 through 831, pursuant to the provisions of West Virginia Code, 7-18-1 et seq, as amended, for the purposes of imposing a local hotel occupancy tax in conformity with State law, to read as follows:

TITLE 8: MUNICIPAL LICENSING, TAXATION AND FINANCE
Chapter 8 - Hotel Occupancy Tax

- 8-801 Definitions
- 8-802 Authority to Impose Tax
- 8-803 Levy of Tax
- 8-804 Rate of Tax, Imposition, and Exceptions
- 8-805 Consumer to Pay Tax; Accounting by Hotel
- 8-806 Hotel or Hotel Operator Not to Represent That It Will Absorb Tax
- 8-807 Occupancy Billed to Government Agencies or Employees
- 8-808 Collection of Tax When Sale on Credit
- 8-809 Receivership/Bankruptcy; Priority of Tax
- 8-810 Failure to Collect or Remit Tax; Liability of Hotel Operator
- 8-811 Total Amount Collected to be Remitted
- 8-812 Interest and Penalties
- 8-813 Tax Return and Payment
- 8-814 Exception; Special Rule
- 8-815 Keeping and Preserving of Records
- 8-816 Liability of Officers
- 8-817 Cessation of Business
- 8-818 Treasurer as Agent of Town
- 8-819 Assessment of Tax When Insufficiently Returned
- 8-820 Notice of Assessment; Petition for Reassessment
- 8-821 Hearing Procedure; Administrative Decision
- 8-822 Appeals to Circuit Court
- 8-823 Tax Constitutes Debt Due Town
- 8-824 Injunction
- 8-825 Limitation on Assessments; Fraud
- 8-826 Refunds
- 8-827 Criminal Penalties
- 8-828 Application of Proceeds
- 8-829 Required Expenditures
- 8-830 Permissible Expenditures
- 8-831 Severability

SECTION 8-801 Definitions

For the purposes of this Ordinance, the term:

(a) "Town" and "Town Council" shall mean the Town Council of Shepherdstown, West Virginia, a political subdivision of the State of West Virginia.

(b) "Commission", "County", or "County Commission" shall mean the County Commission of Jefferson County, West Virginia, acting on behalf of Jefferson County, a political subdivision of the State of West Virginia.

(c) "Consideration paid" or "consideration" means the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.

(d) "Consumer" means a person who pays the consideration for the use or occupancy of a hotel room. The term "consumer" shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivision thereof.

(e) "Convention and Visitor's Bureau" and "Visitor's and Convention Bureau" are interchangeable, and shall mean any convention and/or visitor's bureau formed for the promotion of conventions and tourism within this Town or within Jefferson County and approved by resolution of the Town Council.

(f) "Convention Center" means a convention facility owned by the State, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the Convention Center and forming reasonable appurtenances thereto.

(g) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the State of payment of any tax which there is a known legal duty to pay.

(h) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge it is not true and correct, with the intention that such representation or concealment be relied upon by the State.

(i) "Hotel" means any facility, building or buildings, publicly or privately owned in which the public may for a

consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, lodges, cabins and tourist houses. The term "hotel" shall include State, county and city parks offering accommodations as herein set forth. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit or any facility providing fewer than three hotel rooms, nor any tent, trailer or camper campsites: Provided, that where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term "hotel" shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.

(j) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purpose of this Ordinance and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Ordinance by either the principal or the managing agent shall, however, be considered to be compliance by both.

(k) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.

(l) "Net Proceeds" means the gross amount of tax collected less the amount of tax lawfully refunded.

(m) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust business trust, trustee, committee, estate, executor, administrator, or any other group or combination acting as a unit.

(n) "Promotion of the Arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting in the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

(o) "Recreation Facilities" means and includes any public parks, parkway, playground, public recreation center, athletic

field, sports arena, stadium, skating rink arena, golf course, tennis courts and other park and recreational facilities, whether of a like or different nature, that are owned by the Town.

(p) "Regional Travel Council" means a non-stock, non-profit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this State served by the Regional Travel Council.

(q) "Tax", "taxes" or "this tax" means the hotel occupancy tax authorized by this Ordinance.

(r) "Taxing authority" means the Shepherdstown Town Council levying or imposing the tax authorized by this Ordinance.

(s) "Taxpayer" means any person liable for the tax authorized by this Ordinance.

(t) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this Ordinance, in respect of which the violation occurs: Provided, that the mere failure to perform any act shall not be a willful violation under this Ordinance. A willful violation of the Ordinance requires that the defendant have had knowledge of ;or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

SECTION 8-802 Authority to Impose Tax.

On or after July 1, 1991, there is hereby imposed and levied a privilege tax upon the occupancy of hotel rooms located within the Town's taxing jurisdiction, in accordance with the provisions of Section 1, Article 18, Chapter 7 of the Code of West Virginia, as amended.

SECTION 8-803 Levy of Tax

Such privilege tax shall be imposed by the taxing authority uniformly throughout the Town. The tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the State of West Virginia or any political subdivision of the State of West Virginia.

SECTION 8-804 Rate of Tax, Imposition, and
Exceptions. Rev. November 2007

The rate of tax imposed shall be six percent (6%) of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of tax imposed on the transaction under Article 15, Chapter 11 of the West Virginia Code, as amended, or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for use or occupancy of a hotel room.

The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room. Provided, that the tax shall not be imposed on any consumer occupying a hotel room for thirty (30) or more consecutive days; or, shall not be applicable to any hotel providing fewer than three (3) hotel rooms.

SECTION 8-805 Consumer to Pay Tax; Accounting by Hotel

The consumer shall pay to the hotel operator the amount of tax imposed by the Town, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this Ordinance on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may co-mingle taxes hereunder with the proceeds of the rental of hotel accommodations. Provided, however, the taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the monies so co-mingled, excepting only claims of the State for monies held by the hotel pursuant to the provisions of Article 15 Chapter 11, of the West Virginia Code, as amended. All taxes collected pursuant to the provisions of this Ordinance shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

SECTION 8-806 Hotel or Hotel Operator Not to Represent That It Will Absorb Tax

The hotel or hotel operator shall not represent to the public, in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element on the price to be collected from the consumer.

SECTION 8-807 Occupancy Billed to Government Agencies or Employees

(a) Hotel room occupancy billed directly to the Federal Government shall be exempt from this tax. Provided, however, that rooms paid for by a Federal Government employee for which reimbursement is made shall be subject to this tax.

(b) Hotel room occupancy billed directly to the State of West Virginia or its political subdivisions, shall be exempt from this tax. Provided, however, that rooms paid for by an employee of the State of West Virginia or its political subdivisions for which reimbursement is made shall be subject to this tax.

SECTION 8-808 Collection of Tax When Sale on Credit.

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty (30) days thereafter.

SECTION 8-809 Receivership/Bankruptcy; Priority of Tax

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid authorized under this Ordinance shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due to the United States, which, under federal law, are given priority over the debts and liens created by Ordinance of the Town for this tax and taxes due to the State of West Virginia. Any person charged with the administration or distribution of any such property or estate, who shall violate the provisions of this Section, shall be personally liable for any taxes accrued and unpaid, which are chargeable against the person whose property or estate is in administration or distribution.

SECTION 8-810 Failure to Collect or Remit Tax;
Liability of Hotel Operator

If any hotel operator fails to collect the tax authorized by and levied pursuant to this Ordinance or shall fail to properly remit such tax to the taxing authority, he shall be personally liable for such amount if he failed to collect or remit. Provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can, by good and substantial evidence, prove the refusal of the purchaser to pay this tax despite the diligent effort and good faith of the hotel operator to collect the tax.

SECTION 8-811 Total Amount Collected to be Remitted

No profit shall accrue to any person as a result of the collection of the tax authorized under this Ordinance. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of six percent (6%) for the occupancy of a hotel room or rooms, the

total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

SECTION 8-812 Interest and Penalties

The tax imposed and levied by this Ordinance, if not paid when due, shall bear interest at the rate of six percent (6%) per annum from the due date of the return until paid.

If any hotel operator fails to make the return on any installment required by this ordinance, or makes his return, but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five (5%) of the tax for the first month, or fraction thereof, of delinquency and one percent (1%) of the tax for each succeeding month, or fraction thereof, of delinquency; provided, that if such failure is due to reasonable cause, then the taxing authority may waive in whole or in part these penalties.

SECTION 8-813 Tax Return and Payment

The tax authorized by this Ordinance shall be due and payable in monthly installments on or before the fifteenth (15th) day of the calendar month next succeeding the month in which the tax accrued. Provided, that for credit sales in which the tax authorized by this Ordinance, is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this Ordinance be regarded as having accrued until the date on which it is either received by the hotel operator, or upon the expiration of the thirty (30) day payment period set forth in Section 8-808 of this Ordinance, whichever shall first occur. The hotel operator shall, on or before the fifteenth (15th) day of each month, prepare and deliver to the taxing authority, a return for the preceding month, in the form prescribed by the taxing authority. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

SECTION 8-814 Exception; Special Rule

In the event that the tax due for any reporting period is less than ten dollars (\$10.00) the reporting requirements as stated under Section 8-813 of this order are hereby waived and no reporting shall be required until such time as the tax liability exceeds ten dollars (\$10.00).

SECTION 8-815 Keeping and Preserving Records

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the

tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three (3) years. Taxing authorities shall have the right to inspect the records of the hotel operator at all reasonable times.

SECTION 8-816 Liability of Officers

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties, which may be imposed by State law, Ordinance of the Town of Shepherdstown or other authority, may be enforced against such officers as against the association or corporation which they represent.

SECTION 8-817 Cessation of Business

Whenever any operator required to collect and pay the taxing authority any tax collected pursuant to the provisions of this Ordinance shall cease to operate, go out of business or otherwise dispose of his business, any tax then payable to the Town shall become immediately due and payable; and such operator shall immediately make a report and pay the tax due the Town.

SECTION 8-818 Treasurer as Agent of Town

The Treasurer shall be the Town's agent for administration and collection of the tax and shall have the power to distrain property and to initiate civil suits for collection of the tax authorized by this Ordinance.

The Treasurer shall have the power and the duty to issue tax returns for this tax.

SECTION 8-819 Assessment of Tax When Insufficiently Returned

If the Treasurer believes that the tax imposed by this Ordinance has been insufficiently returned by an operator, either because the operator has failed or refused to properly collect or remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the operator and make an assessment therefore. Assessments shall be served upon the taxpayer, either personally or by certified mail.

SECTION 8-820 Notice of Assessment; Petition for Reassessment

The Treasurer shall give the operator written notice of any assessment made pursuant to this Ordinance. Unless the operator to whom a notice of assessment is given shall within thirty (30) days after service thereof, either personally or by certified mail, file with the Treasurer a petition in writing, verified under oath by the operator or his duly authorized agent having knowledge of the fact, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment shall become final and not subject to administrative or judicial review. The amount of an assessment shall be due and payable on the day following the date upon which the assessment becomes final.

SECTION 8-821 Hearing Procedure; Administrative Decision

(a) When a petition for reassessment provided for in Section 8-820 is filed within the time prescribed in such Section for such filing, the Treasurer shall assign a time and place of a hearing hereon and shall notify the operator of such hearing by written notice at least twenty (20) days in advance thereof. Such hearing shall be held within one hundred (100) days from the date of filing the petition unless continued by agreement of the parties or by the Treasurer for sufficient cause.

(b) The hearing shall be informal and shall be conducted in an impartial manner by the Treasurer or a hearing examiner designated by the Treasurer. The burden of proof shall be upon the operator to show the assessment is incorrect and contrary to law, in whole or in part.

(c) After any such hearing, the Treasurer or a hearing examiner shall, within a reasonable time, not to exceed thirty (30) days, give notice in writing of his decision.

SECTION 8-822 Appeals to Circuit Court

(a) An appeal may be taken by the operator to the Circuit Court of Jefferson County within thirty (30) days after service of the Treasurer's or hearing examiner's decision.

(b) The appeal shall be taken by the filing of a petition and notice, which petition and notice shall be served upon or accepted by the Treasurer as an original notice. When the petition and notice are so served they shall, with the return or acceptance thereon, be filed in the Office of the Clerk of the Circuit Court and docketed as other cases, with the operator as plaintiff and the Treasurer as defendant. The filing of the appeal shall not stay the collection of the tax. The collection

of the tax shall be stayed if the plaintiff shall file with such Clerk a bond for the use of the defendant, with sureties approved by the Clerk, the penalty of the bond to be not less than the total amount of the tax, interest and penalties (to such date) appealed from and conditioned that the plaintiff shall perform the orders of the Court; provided, that a Judge of the Circuit Court may stay the collection of the tax without the requirement of a bond upon a proper showing by the operator that the properties of the operator are sufficient to secure performance of the Court's orders or that the ends of justice will be served thereby.

(c) The Court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the Treasurer. In such appeal, a certified copy of the Treasurer's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of the Ordinance. The Court shall render its decree thereon; and a certified copy of the decree shall be filed by the Clerk of the Court with the Treasurer, who shall then, if applicable, correct the assessment in accordance with such decree.

(d) Unless an appeal is taken pursuant to this Section within thirty (30) days after service of the administrative decision, the Treasurer's decision shall become final and conclusive and not subject to administrative or judicial review. The amount, if any, due the Town under such decision shall be due and payable on the day following the date upon which such decision becomes final.

SECTION 8-823 Tax Constitutes Debt Due Town

Any tax, penalties or interest due and payable under this Ordinance shall be a debt due the Town and shall be recoverable in an action brought in the name of the Town for the recovery of such tax, penalty or interest.

SECTION 8-824 Injunction

If the failure of any operator to comply with the provisions of this Ordinance shall have continued sixty (60) days, the Treasurer may proceed to obtain an injunction restraining the operator from doing business in this Town until he fully complies with the provisions of this Ordinance. If any proceeding under this Section upon judgment or decree for the plaintiff, he shall be awarded his costs.

SECTION 8-825 Limitation on Assessments; Fraud

The amount of tax, interest and penalties imposed by this Ordinance shall be assessed within two (2) years after the due

date of the return; provided, that in the case of a false or fraudulent return filed with the intent to evade the tax or in case no return is filed, the assessment may be made at any time.

SECTION 8-826 Refunds

(a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Town under the provisions of this Ordinance, it may be refunded as provided in subsections (b) and (c) of this Section, if a claim in writing therefor, stating under penalty of perjury, the specific grounds upon which the claim is founded, is filed with the Town within two (2) years of the date of payment of such tax, interest or penalty. Claims for refunds shall be made in writing.

(b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established that the person from whom the tax has been collected was not liable for the payment of such tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has been refunded to the person from whom the tax was collected.

(c) A person paying the tax may obtain a refund of tax overpaid or paid more than once or erroneously or illegally collected or received by the Town by filing a claim for refund, but only when the tax was paid by such person directly to the Town or when such person, having paid the tax to the operator, establishes that such person has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid unless the claimant establishes his right thereto by written records evidencing this entitlement thereto.

SECTION 8-827 Criminal Penalties

(a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this Ordinance; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or any part thereof; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return or any false

statement in any return authorized by this Ordinance, with the intent to evade the payment of this tax.

(b) Any person willfully violating any of the provisions of this Ordinance shall for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than Five Hundred Dollars (\$500.00) or imprisoned by a period of not more than thirty (30) days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or imprisoned in the penitentiary not less than one (1) year, nor more than three (3) years, or in the discretion of the Court, be confined in the County Jail no more than one (1) year, or both fined and imprisoned.

(c) Every prosecution for any offense arising under this Ordinance shall be commenced within three (3) years after the offense was committed, notwithstanding any provision of this code to the contrary.

(d) Proceedings against any person under this Section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.

SECTION 8-828 Application of Proceeds

The net proceeds of the tax collected and remitted to the taxing authority pursuant to this Ordinance shall be deposited into the General Revenue Fund of the Town, and after appropriation thereof, shall be expended only for the purposes as hereinafter provided.

SECTION 8-829 Required Expenditures

At least fifty percent (50%) of the new revenue received during the fiscal year by the Town, pursuant to the provisions of this Ordinance, shall be expended in the following manner for the promotion of conventions and tourism:

(a) If a Convention and Visitor's Bureau or Regional Bureau is located within the Town, the Town shall appropriate at least fifty percent (50%) of the revenue derived as hereinabove provided to that Convention and Visitor's Bureau or Regional Bureau.

(b) If a Convention and Visitor's Bureau or Regional Bureau is not located within the Town, then the percentage appropriation required by this Section shall be appropriated as follows:

(i) Any hotel located within the Town may apply to the Town for an appropriation to such hotel of a portion of the tax authorized by this Ordinance and collected by such hotel and remitted to Town, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel, which is required to be expended pursuant to this Section. Provided, that prior to appropriating any monies to such hotel, the Town shall require the submission of, and give approval to, a budget setting forth the proposed uses of such monies.

(ii) The balance of net revenue of the required expenditures shall be appropriated to the Regional Travel Council serving the area, in which the Town is located.

Section 8-830 Permissible Expenditures

After making the appropriations required by Section 8-829, the remaining portion of the new revenues receivable during the fiscal year by the Town may be expended for one or more of the purposes set forth in this Section, but for no other purpose. The purposes for which expenditures may be made pursuant to this Section are as follows:

- (a) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;
- (b) The payment of principal or interest or both on Revenue bonds issued to finance such convention facilities;
- (c) The promotion of conventions;
- (d) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition);
- (e) The promotion of the arts.
- (f) Historic sites;
- (g) Beautification projects, or
- (h) Medical care, in an amount not exceeding one hundred thousand dollars, in the county where: (i) There is an urgent necessity to preserve the delivery of acute medical care services; (ii) there is an increase in need for acute medical

care services directly related to tourism; (iii) recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery / of acute medical care services; (iv) there is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care services; (v) there is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety; and (vi) there is one and only one hospital within the county; and the county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist.

SECTION 8-831 Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable

Section 8-832 Definitions

For purposes of this section, the following terms are defined:

- (a) Convention and visitor's bureau and visitor's and convention bureau. - "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable, and either shall mean a non-stock, non profit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the town and county in which such convention and visitor's bureau or visitor's and convention bureau is located or engaged in business within.
- (b) Convention center. - "Convention center" means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed; or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto. :
- (c) Fiscal year. - "Fiscal year" means the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.
- (d) Net proceeds. - "Net proceeds" means the gross amount of tax collections less the amount of tax lax/fully refunded.
- (e) Promotion of the arts. - "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of ' music for all types, the dramatic arts, dancing, painting

and the creative arts through shows/ exhibits/ festivals, concerts, musicals and plays.

- (f) Recreational facilities. - "Recreation facilities" means and includes any public park, parkway/ playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.
- (g) Region. - "Region" means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor's bureau to promote those counties.
- (h) Regional travel council. - "Regional travel council" means a nonstock, non-profit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.
- (i) Historic site. - "Historic site" means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association and are open from time to time to accommodate visitors.

CHAPTER XXXIV

An amendment to the laws and ordinances of the Town of Shepherdstown by adding thereto a new chapter relating to the levying and collecting of a business and occupation tax upon public service and utility business.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF SHEPHERDSTOWN:

Section 1 - Business and Occupation Tax - There is hereby levied and shall be collected annual privilege taxes against any person, firm or corporation on account of business and other activities, and in the amount following:

Upon any person, firm or corporation engaging or continuing within this town in any public service or utility business, except railroad, railroad car, express, pip line, telephone and telegraph companies, water carriers by steamboat or steamship and meter carriers, there is hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows: Water companies, four percent except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same; and upon tax shall not include gross income derived from commerce between this State and other States of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public utility services. The gross income of the taxpayer from any other activity shall not be included in the measure of the tax imposed by this ordinance.

Section 2 - Definitions: Reduction allowed in tax due; how computed-

When used in this section, the phrase "normal tax" shall mean the tax computed by the application of rates against values or gross income as set forth in Section 1, less exemption at the rate of fifty dollars annually or at the rate of four dollars and sixteen

cents per month for the period actually engaged in business.

The normal tax shall be computed by the application of rates against values or gross income as set forth in Section 1.

Section 3 - Computation of Tax; Payment. - The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, sign the same, and mail the same together with a remittance, to the recorder of the Town of Shepherdstown. In estimating the amount of tax due for each quarter, the taxpayer may deduct one-fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of the One Hundred (\$100.00) dollars in any year, the taxpayer may pay the same quarterly as aforesaid, or with the consent in writing of the Mayor of the Town of Shepherdstown, at the end of the month next following the close of the tax year.

Section 4 - Return and Remittance by Taxpayer - On or before the expiration of one month after the end of the tax year each taxpayer shall make a return of and for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this chapter and transmit with his report a remittance of the same; such returns shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, co-partnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer.

Section 5 - Tax Year - The assessment of taxes herein made and the return required therefore shall be for the year ending on June 30th. If the taxpayer, in exercising a privilege taxable under this article, keeps the annual returns and pay taxes for the year covering his accounting periods, method used in paying a like tax to the State of West Virginia.

Section 6 - Payment: Penalty for Non-payment; - Every remittance of taxes imposed by the

Chapter shall be made by bank draft, certified check, money order, or certificate of deposit to the Town of Shepherdstown, which town shall issue its receipt therefore.

If any taxpayer fails to make the return required by this chapter, or makes his return but fails to remit in whole or in part the proper amount of tax, there shall be added to the amount of tax unpaid, from the date such tax should have been paid, a penalty in the amount of five percent of the tax for the first month, or fraction thereof, of delinquency and one percent of the tax for each succeeding month, or fraction thereof for delinquency.

Section 7 - Collection by Action or Suit: Injunction. - The town may collect any tax, interest and penalty due and unpaid under the provisions of this chapter by action in debt, assumpait (?), motion for judgement or other appropriate proceeding in the county in which (a) the activity taxes were in or (b) the taxpayer resides; or by suit to enforce the lien therefore tax due and unpaid under this article is three hundred dollars or less, by suit in the court of any justice having jurisdiction of the taxpayer or of his property. If the failure of any taxpayer to comply with the provisions of this article shall have continued sixty (60) days, the town may proceed to obtain an injunction restraining the taxpayer from doing business in said town until he fully complies with the provisions of this chapter.

Section 8 - Offenses: Penalties; - It shall be unlawful for any person to refuse to make the return provided to be made in this chapter; or to make any false or fraudulent return or false statement in any return, with intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this chapter; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. And any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and , on conviction thereof, shall be fined not more than One Hundred (\$100.00) Dollars or imprisoned not exceeding thirty (30) days in the town jail or punished by both fine and imprisonment, at the discretion of the Mayor, within the limitations aforesaid.

Section 9 - Authorization to Inspect State Tax Return. - The Mayor with the consent of the council may request the State Tax Commissioner of West Virginia for permission to inspect and make copies of the State Gross Sales Tax Returns filed in the Commissioner's Office by any taxpayer of such municipality for the purpose of securing information for municipal tax purposes and it is further provided that the necessary funds to pay reasonable costs and expenses to obtain the information required shall be paid by the town.

Section 10 - Tax Cumulative. - The tax imposed by this ordinance shall be in addition to all other licenses and taxes levied by ordinance of this city.

Section 11 - In the calculation of the tax, the power company and the gas company shall, in their calculation of their sales, exclude such portion of the electricity or gas that can be allocable to domestic space heating, and shall allocate 60% of the total revenue collected from each space heating utility customer as revenue derived from space heating and the gas company shall exclude 7-% of the total revenue collected from each space heating utility customer where no separate charge is made.

Section 12 - Severability. - The provisions of this ordinance are severable and if any provision or part thereof shall be held invalid for any reason, such invalidity shall not affect or impair any of the other provisions or parts of this ordinance. It is hereby declared to be the intent of Counsels that this ordinance would have been adopted if such invalid provision or part hereof had not been included herein.

Section 13 - Effective Date. - This ordinance shall become effective July 1, 1966.

CHAPTER 3-- Methods for enforcing collection of license taxes, penalties and interest.

Section 8-301 Procedure for assessment and collectionA. Mathematical errors; collection of balance due on return without a remittance.

(1) Mathematical error - When it appears to the recorder that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), the recorder shall correct such error and notify the taxpayer, in writing, of the deficiency in tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the recorder shall make an assessment of such deficiency in accordance with subsection B and shall give the taxpayer written notice thereof.

(2) Collection of balance due - If a taxpayer files a mathematically correct return which reflects a balance due of the tax administered under chapters 1-3, and if full payment thereof has not been made, the recorder shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such fifteen day period, the recorder shall proceed under subsection F to collect the amount due.

E. Assessment.

(1) General - If the recorder believes that the tax administered under chapters 1-3 has been insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability and make an assessment therefore.

(2) Jeopardy assessments - If the recorder believes that the collection of the tax administered under chapters 1-3 will be jeopardized by delay, he shall thereupon make an assessment of tax, noting that fact upon the assessment. The amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such assessment shall become final: Provided, that upon written request of the taxpayer made within such twenty-day period, showing reasonable cause therefore, the recorder may grant an extension of time not to exceed thirty additional days within which such petition may be filed. If a taxpayer against whom a jeopardy assessment has been made petitions for reassessment or requests an extension of time to file a petition for reassessment, the petition or request shall be accompanied by such security as the recorder may deem necessary to insure compliance with the applicable provisions of this chapter. If such petition for reassessment is filed, accompanied by the necessary security, the provisions for hearing, determination and appeal set forth in subsection D and E shall then be applicable.

(3) Abatement or amendment of assessment - The recorder may abate

or amend, in whole or in part, any assessment whenever he ascertains that such assessment is improper or incomplete in any material respect.

C. Notice of assessment; petition for reassessment.

The recorder shall give the taxpayer written notice of any assessment or amended assessment made pursuant to this chapter. Unless the taxpayer to whom a notice of assessment, or amended assessment, is given shall, within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in subsection B, either personally or by certified mail, file with the recorder a petition in writing, verified under oath by the taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment or amended assessment shall become final and not subject to either administrative or judicial review under the provisions of subsections D and E. The amount of an assessment or amended assessments shall be due and payable on the day following the date upon which the assessment or amended assessment becomes final.

D. Hearing procedure.

When a petition for reassessment provided for in subsection C, or a petition for refund or credit provided for in subsection I, is filed within the time prescribed by said subsections for such filing, or a hearing is requested pursuant to the provisions of any other sections of this chapter, the recorder shall assign a time and place for a hearing upon the same and shall notify the petitioner of such hearing by written notice at least twenty .days in advance thereof. Such hearing shall be held within ninety days from the date filing the petition or other written request for hearing unless continued by agreement of the parties or by the recorder for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the recorder or a hearing examiner designated by him. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.

After any hearing as provided for, the recorder shall, within a reasonable time, give notice in writing of his decision. Unless an appeal from the decision of the recorder rendered in any such hearing is taken, pursuant to the provisions of subsection D, within sixty days after service of such notice the recorder's decisions shall become final and conclusive and not subject to either administrative or judicial review, The amount, if any, due the Town under such decision shall be due and payable on the day following the date upon which such decision becomes final. The amount, if any, due the taxpayer under such decision shall be promptly refunded, or the same may be credited pursuant to subsection I.

E. Appeals,

(1) Right of appeal - A taxpayer may appeal the administrative decision of the recorder issued under subsection D or I, by taking an appeal to the magistrate court within sixty days after being served with notice of the administrative decision.

(2) Venue - The appeal may be taken in the magistrate court of the county in which the municipality is situated.

(3) Petition for appeal - The appeal proceeding shall be instituted by filing a petition with the magistrate court, or the magistrate thereof in vacation, within the sixty-day period prescribed in subsection E-1. The clerk of the magistrate court shall, within ten days after date the petition is filed, serve the recorder with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer or his duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections

(4) Appeal bond - Before the appeal is heard, the taxpayer shall file with the clerk of the magistrate court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the recorder. Notwithstanding the foregoing and in lieu of such bond, the recorder may, upon a sufficient showing by the taxpayer, certify to the clerk of the magistrate court that the assets of the taxpayer subject to the lien imposed by subsection G, or other indemnification, are adequate to secure performance of the orders of the court.

(5) Appeal - The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the recorder. In such appeal a certified copy of the recorder's notice of assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of chapters 1-3. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of the court with the recorder who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the recorder to the circuit court of the county.

F. Collection.

(1) General - The recorder shall collect the tax, additions to tax, penalties and interest imposed by chapters 1-3. In addition to all other remedies available for the collection of debts due this town, the recorder may proceed by foreclosure of the lien provided in subsections G and H.

(2) Payment when person sells out or quits business; lien.

(a) If any person subject to the tax administered under chapter 1-3 sells out his or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by chapters 1-3 shall become due and payable immediately and such person shall, within thirty days after selling out his or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.

(b) The successor in business of any such person shall withhold so much of the purchase money as will satisfy the tax, additions to tax, penalties and interest which may be due until the former owner shall produce a receipt from the recorder evidencing the payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as provided above, and if any such tax, additions to tax, penalties and interest remain unpaid after expiration of the thirty-day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, additions to tax, penalties and interest and the same shall be recoverable by the recorder by action as provided by this section.

(3) Injunction - If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this section or of any other section of this chapter to which this section is applicable, the recorder may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this town until the taxpayer fully complies with the provisions of this chapter.

(4) Costs - In any proceeding under this section, upon judgement or decree for the town it shall be awarded its costs.

G. Liens.

(1) General -The tax, additions to tax, penalties or interest due and payable under chapters. 1-3 or to which this chapter is applicable shall be a debt due this Town. It shall be a personal obligation of the taxpayer and shall be a lien upon the real and personal property of the taxpayer.

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

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

(4) Release - The recorder, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien.

H. Distraint.

If the tax administered under chapters 1- 3 is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the recorder and notice thereof is given as required by this chapter and such assessment has become final and is not subject to administrative or judicial review, the recorder may issue a warrant directed to the sheriff of any county of this State commanding him to levy upon and sell the real and personal property, including intangibles represented by negotiable evidences of indebtedness, of the taxpayer owning the same found within his county for the payment of the amount of all taxes, additions to tax, penalties and interest accrued and unpaid under chapters 1-3 or to which this chapter is applicable. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all additions to tax collected over and above the principal amount of tax, penalties and interest due, but in no case shall such compensation exceed one hundred dollars. The sheriff shall return such warrant to the recorder and pay to him the money collected by virtue thereof by the time specified in the warrant, but not later than sixty days from the date of such warrant. In the discretion of the recorder, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the town and in the execution thereof such officer or employee shall have all powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of all reasonable and necessary expenses actually paid in the performance of such duty. If a warrant is returned not satisfied in full, the recorder may proceed to enforce the claim for taxes by civil action.

I. Overpayments; credits; refunds and limitations.

(1) Refunds or credits of overpayments - In the case of overpayment of the tax, additions to tax, penalties or interest imposed by chapters 1-3 or to which this chapter is applicable, the recorder shall, subject to the provisions of this chapter, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for such tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of subsection K.

(2) Claims for refund or credit - No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the recorder. A person against whom an assessment or an administrative decision has become final shall not be entitled to file a claim for refund or credit with the recorder as prescribed herein. The recorder shall determine the taxpayer's claim and notify the taxpayer in writing of his determination.

(3) Petition for refund or credit hearing . - If the taxpayer is not satisfied with the recorder's determination of his claim for refund or credit, or if the recorder has not determined the taxpayer's claim within ninety days after such claim was filed, or six months in the case of claims for refund or credit of the taxes, after the filing thereof, the taxpayer may file with the recorder either personally or by certified mail, a petition for refund or credit: Provided, that no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of his claim. The petition for refund or credit shall be in writing, verified under oath by the said taxpayer or his duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to, together with the reasons for the objections. Then a petition for refund or credit is properly filed, the procedures for hearing and for decision prescribed in subsection C shall be followed.

(4) Appeal - An appeal from the recorder's decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that set forth in section F relating to an appeal from the recorder's decision on a petition for reassessment, but no bond shall be required of the taxpayer.

(5) Decision of the court - Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgement for money.

(6) Refund made or credit established - The recorder shall promptly issue his requisition on the treasury or establish a credit, as requested by the taxpayer, for any amount finally administratively or judicially determined to be an overpayment of the tax administered under chapters 173. The treasurer shall pay such amount out of the fund into which the amount so refunded was originally paid.

(7) Forms for claim for refund or a credit; where return shall constitute claim - The recorder may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by chapters U 3. a return signed by the taxpayer which shows on its face that an overpayment of such tax has been made shall constitute a claim for refund or a credit.

(8) Remedy exclusive - The procedure provided by this subsection shall constitute the sole method of obtaining any refund or any credit.

(9) Erroneous refund or credit - If the recorder believes that an erroneous refund has been made or an erroneous credit has been established he may proceed to investigate and may make an assessment or institute civil action to recover the amount of such refund or credit.

(10) Limitation on claims for refund or credit -

(a) General Rule - Whenever a taxpayer claims to be entitled to a refund or credit of any tax, additions to tax, penalties or interest paid into the treasury of this town, such taxpayer shall, except as provided in subsection (3), file his claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid, and not thereafter.

(b) Extension of Time for Filing Claim by Agreement - The recorder and the taxpayer may enter into written agreement to extend the period but shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Special Rule Where Agreement to Extend Time for Making an Assessment.- Notwithstanding subdivisions (a) and (b) of this subsection, if an agreement is made under the provisions of section 10 of this chapter extending the time period in which an assessment of a tax can be made, then the time period for filing a claim for refund or credit for an overpayment of the same tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus ninety days.

(d) Notwithstanding subdivisions (a) and (b) of this subsection, in the event of a final administrative or judicial determination of a deficiency in the taxpayer's liability for the tax imposed the period of limitation upon claiming a refund reflecting such final determination in the taxes imposed shall not expire until six months after such final determination is made.

J. Limitations on assessment.

(1) General rule - The amount of the tax, additions to tax, penalties and interest imposed by chapters 1-3 shall be assessed within three years after the due date of the returns: Provided, that in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return is filed, the assessment may be made at any time.

(2) Extension by agreement - The recorder and the taxpayer may enter into written agreements to extend the period within which the recorder may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

K. Limitations on collection.

(1) Where assessment is issued - Every proceeding instituted by the recorder for the collection of the amount found to be due under an assessment which has become final of the tax, additions to tax, penalties or

interest imposed by chapters 1-3 irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, penalty or interest, shall be brought or commenced within five years after the date on which such assessment; has become final.

(2) Where assessment is not issued - Every proceeding instituted by the recorder for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of the tax, additions to tax, penalties or interest imposed by chapters 1-3 , irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within five years after the date on which the taxpayer filed the annual return is required., such five-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.

(3) Exception as to false or fraudulent return or no return - In the ease of the filing of a false or fraudulent return, or in case no return is filed, the limitations specified in this section shall not apply.

(4) Extension of time for institutions of collection proceedings by agreement - The recorder and the taxpayer may enter into written agreement to extend the period within which the recorder may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment of the tax, additions to tax, penalties or interest imposed by chapters 1-3. Such period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

L. Interest.

(1) Underpayments - If the amount of a tax administered under chapter 1-3 is not paid on or before the last date prescribed for payment, interest on such amount at the rate of eight percent per annum shall be paid for the period from such last date to the date paid. For purposes of this section, the last date prescribed for payment shall be the due date of the return and shall be determined without regard to any extension of time for payment.

(2) Underpayment of estimated business and .occupation tax - In the case of an underpayment of estimated tax by a person who is taxable under the provisions of a B & O tax, there shall be added to the amount of tax due from the date such tax should have been paid, interest in the amount of eight percent per annum. An underpayment of estimated tax means the application of rates set forth in this chapter against estimated values or gross income which constitutes less than eighty percent of actual receipts.*

(3) Erroneous refund or credit - If any refund is made or credit is established upon an erroneous claim for refund or credit, interest on such amount refunded or credited at the rate of eight percent per annum shall be paid by the claimant from the date the refund was made or the credit was taken to the date such amount is recovered.

* B & O tax currently not in use

(4) Overpayments - Interest shall be allowed and paid at the rate of eight percent per annum upon any amount which has been finally administratively or judicially determined to be an overpayment in respect of the tax administered under this chapter. Such interest shall be allowed and paid for the period commencing with the date of the filing by taxpayer of a claim for refund or credit with the recorder and ending with the date of final administrative or judicial determination of overpayment. The recorder shall, within thirty days after such final determination of entitlement to refund, issue his requisition or establish a credit as requested by the taxpayer. Whenever the recorder fails or refuses to issue any such requisition or establish such credit within said thirty-day period, the interest provided herein shall commence to accrue anew until performance by the recorder. The acceptance of such refund check or credit shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(5) Applicable rules:

(a) No Interest Payable on Tax Refunded or Credited Within Ninety Days After Claim for Refund or Credit is Filed - In the event of any overpayment of the tax administered under chapters 1-3, where the recorder issues his requisition or establishes a credit as requested by the taxpayer within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.

(b) Interest Treated as Tax - Interest prescribed under this subsection on the tax shall be collected and paid in the same manner as taxes.

(c) No Interest on Interest - No interest under this section shall be imposed on the interest provided by this subsection.

(d) Interest on Penalties or Additions to Tax - Interest shall be imposed under subsection L1 on any assessable penalty or additions to tax only if such penalty or additions to tax is not paid within fifteen days from the date of notice and demand therefore, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(e) Payments Made within Fifteen Days after Notice and Demand - If notice and demand is made for payment of any amount, and if such amount is paid within fifteen days after the date of such notice and demand, interest under this subsection on the amount so paid shall not be imposed for the period after the date of such notice and demand.

M. Additions to tax.

(1) Failure to file return or pay tax due:

(a) In the case of failure to make or file a required return of the tax administered under chapter 1-3, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for

more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, that this addition to tax shall be imposed only on the net amount of tax due;

(b) In the case of failure to pay the amount shown as tax on any required return of the tax administered under chapter 1-3 on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: Provided, however, that the addition to tax shall be imposed only on the net amount of tax due.

(2) Limitation and special rule - In computing additions to tax under this section, only one of the paragraphs of subsection (1) shall be applicable to any one taxable period. If the correct amount of tax due is less than the amount shown on the return, paragraphs (a) and (b) of subsection (1) shall apply only to the lower amount.

(3) Negligence or intentional disregard of rules and regulations - In the case of underpayment of the tax administered under chapters 1-3 which is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment is due to negligence or intentional disregard of rules and regulations is for more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: Provided, that these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided for in subsection (1).

(4) False or fraudulent return - In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided for in subsection (1) and (3). The burden of proving fraud, willfulness or intent to evade tax shall be upon the recorder.

(5) Additions to tax treated as tax - Additions to tax prescribed under this section on the tax shall be assessed, collected and paid in the same manner as taxes.

N. Penalties.

(1) Fraudulent claim for refund or credit - In the case of the filing of a false or fraudulent claim for refund or credit with the intent to defraud this Town, there shall be added to such amount erroneously refunded or credited a penalty equal to fifty percent thereof. No additions to tax shall be imposed under section M for any offense to which this subsection is applicable. The burden of proving fraud or intent to defraud shall be upon the recorder.

(2) Collection of penalty- Any money penalty may be collected In the same way as the taxes imposed herein.

CHAPTER 4 - Utility Excise Tax

An excise tax upon the privilege of purchasing, using or consuming within the corporate limits of this municipality any public utility service and tangible personal property supplied by any public utility subject to the jurisdiction of the Public Service Commission of West Virginia (whether such public utility be privately or municipally owned or otherwise owned by any type of governmental entity) is hereby imposed and levied as follows:

Section 8-401 Definitions

The following words and phrases when used in this title shall for the purposes of this title have the following meaning:

(a) "Person" includes individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form and character;

(b) "Public Utility Services" means all services and tangible personal property purchased within this municipality from a seller, as hereinafter in this section defined, to include but not limited to local telephone service, electric service, gas service, including bottled or liquid gas; water service, garbage and sanitary sewer service; if purchased, used or consumed within the corporate limits of this municipality; if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of West Virginia;

(c) "Purchaser" includes every person who purchases, uses or consumes a public utility service;

(d) "Seller" includes every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of West Virginia, who sells, furnishes or supplies a public utility service;

(e) "Residential User" means the owner or tenant of a private residential property who pays for utility service in or for said property, except that, with respect to local telephone service, such term shall mean any person furnished service classified as "residential" under tariffs filed with the Public Service Commission of West Virginia;

(f) "Commercial or Industrial User" means the owner or tenant or property used for commercial, industrial or other such business purposes, who pays for utility services for said property, except that, with respect to local telephone service, such term shall mean any person furnished service classified as "business" under the tariffs filed with said Public Service Commission.

Section 8-402 Imposition and levying of tax; amount of tax

There is hereby imposed and levied upon each and every purchaser of a public utility service an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the Town of Shepherdstown such public utility service. Such tax shall be in the amount of two (2) percent of the charge (exclusive of any federal or state tax thereon imposed upon the purchaser) made by the seller against the purchaser

upon the amount of each periodic statement rendered such purchaser by the seller under the agreement made between the purchaser and the seller, and said tax shall be paid by the purchaser to the seller at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this title is in addition to all other taxes imposed and levied by this municipality.

Section 8-403 Collection; time of payment

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to this municipality and each seller shall remit the amount of tax shown by said report to have been collected, to the Town of Shepherdstown on or before the last day of the second calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The required reports shall be in the form prescribed by the official of the Town of Shepherdstown charged with the responsibility of collecting taxes due this municipality (treasurer).

Section 8-404 Records; inspection thereof

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

Section 8-405 Exemptions

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

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

- (e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

Section S-406 Nonliability of utility; duty of municipality; refunds; rules and regulations

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

Section 8-407 Enforcement provisions; penalties

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

Any purchaser failing or refusing to pay the tax hereby imposed and levied and seller or purchaser violating any of the provisions hereof shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars. The failure or refusal to pay the said tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense

Section 8-408 Effective date of tax; notice to utilities

The tax hereby imposed and levied shall not be effective until this municipality gives sixty (60) days written notice by certified mail of the tax to any public utility doing business within this municipality which is required to collect the tax imposed and levied hereby.

CHAPTER 5 - Property Tax

Section 8-501 Property tax, classes of taxable property

This municipality shall tax real and personal property within the municipal boundaries at its "true and actual value" for each of the following three classes of property:

CLASSES OF PROPERTY

Class I All tangible personal property exclusively

in agriculture including horticulture and grazing; all products of agriculture (including livestock) while owned by the producer; all monies, and all notes, bonds, bills and accounts receivable, stocks and any other tangible property.

Class II All property owned, used, and occupied by the owner exclusively for residential purposes; all farms, including land used in horticulture and grazing, occupied arid cultivated by their owners or bona fide tenants.

Class IV All real and personal property situated inside of municipalities exclusive of Classes I and II.

Class III Property includes all real and personal property situated outside of municipalities exclusive of Classes I and II and is therefore not taxable by this municipality.

Section 8-502 Maximum Property Tax Levy Rates

The maximum property tax levy rates for each property class per \$100 valuation that can be assessed without requiring a vote from the electorate are:

Class I	Class II	Class IV
12.5 cents	25 cents	50 cents

This municipality may impose an excess levy lasting up to three years for a special or general purpose if such a levy is approved by at least 60% of the votes cast in the special levy election. The maximum rates for each \$100 of assessed value are:

Class I	Class II	Class IV
6.25 cents	12.5 cents	25 cents

CHAPTER 6 - Budgeting

Section 8-601 Budget meeting by municipal council

No later than between March 7 and March 28 of each year this municipal council shall meet to construct the municipal budget (levy estimate) for the fiscal year. During this period, this municipal council shall identify its projected revenues and expenditures for the coming year and prepare the levy estimate on the forms and in accordance with the System of Accounts required by the State Tax Commissioner.

Section 8-602 Submission of levy estimate to State Tax Commissioner

No later than March 29, this municipal council must mail or deliver two copies of the completed budget (levy estimate) to the State Tax Commissioner.

Section 8-603 Publication of levy estimate

On or before March 29, the municipality shall begin publication of the levy estimate. It shall be published once a week for two successive weeks in two newspapers of general circulation and of opposite politics published in the area. If there is only one such newspaper, it shall be published in that one. If there is no such newspaper, the levy estimate shall be published in the most widely read newspaper in the municipality.

Section 8-604 Audit and review by the Tax Commissioner

The Tax Commissioner will audit and review the levy estimate prior to the third Tuesday in April. The Commissioner will notify the municipal council by letter of the results of his audit and review and requests for any change.

Section 8-605 Laying the levy

This municipal council shall meet on the third Tuesday in April officially to lay the levy. This entails the hearing of objectives and the adopting of the levy rates to be used during the next fiscal year.

Section 8-606 Revisions of levy estimate during the fiscal year

Changes in the municipal budget which result in a change in the balance of any department or unclassified line item, or a change in the amount of revenue from any source, shall be submitted in letter form to the Tax Commissioner for his written approval.

CHAPTER 7 - Accounting and Financial Reporting

Section 8-701 Reports, etc., to conform to fiscal year

All reports, settlements, accounts, and statements of municipalities which are now, or which may hereafter be required by law, shall be kept and made to conform to the fiscal year.

Section 8-702 Audits and accounts

The Tax Commissioner shall be the chief inspector of all audits of the town. However, this municipality has the right, by ordinance, to establish a system for budgeting, accounting, and record keeping for the conduct of the transactions of this municipality.

Section 8-703 Capital reserve fund

This municipality shall have the power to establish a special fund

known as the "capital reserve fund." The fund shall consist of unexpended balances and other funds which may be transferred to the reserve fund with the approval of the State Tax Commissioner.

This fund shall be used to purchase or improve public or municipal works. Expenditures shall be made from the fund only in accordance with an appropriation made pursuant to the annual budget.

If this municipality accumulates its capital reserve fund for more than two years it shall be transmitted to the state municipal bond commission on or before the first day of September of each year. The proceeds can be withdrawn from this fund upon reasonable notice in writing to the state municipal bond commission.

Section 8-704 Special account for federal and state grants-in-aid authorized

In addition to the special fund account authorized by the provisions in Section 8-703 of this chapter, the governing body of this municipality shall have plenary power and authority to establish a special account for the deposit of funds received from and granted by the United States of America or the State of West Virginia and shall provide for the expenditure and appropriation of such funds in accordance with the applicable laws and regulations promulgated by the government authority making such grants. The funds so received and held in such special account shall not be considered as revenue in determining the amount of real and personal property taxes to be levied for the regular fiscal budget of this municipality.

Section 8-705 Balances in municipal bond fund may be transferred or remitted to general fund where bonded indebtedness has been paid or where payment of bonded indebtedness has been provided for use of transferred or remitted funds

- (a) This municipality shall have the power and authority to transfer to the general funds of this municipality:
 - (1) Any unexpended balances used to pay the interest or principle of any municipal bonds that were left over after the bonds were paid off.
 - (2) Any balance remaining in any fund levied and collected under authority of any special levy election.
- (b) The state municipal bond commission is authorized to remit to this municipality when the issuances of bonds have been made, to be credited to the general fund of this municipality, any balances of funds remaining under the supervision and control of the state municipal bond commission when the bonded indebtedness for the payment which such funds were raised and paid to the state municipal bond commission has been fully paid and discharged or when provision has been made, as hereinafter provided in subsection (c) of this section, to fully pay and discharge such bonded indebtedness.
- (c) All outstanding bonds of any series shall, prior to the maturity date thereof, be deemed to have been fully paid and discharged

within the meaning and with the effect expressed in subsections (a) and (b) of this section when there shall have been deposited with the municipal bond commission.

- (1) Either moneys in amount which shall be sufficient, or
- (2) Securities put into the sinking fund which will be invested by the state municipal bond commission so that the moneys along with the interest can be applied to the paying of the bill.
- (3) The municipal bond commission shall take all funds not needed for payment of the interest on the town bond and invest at a date which will mature on the same day as the bonds so the funds can be used for the payment of the bonds. All interest collected from the investment of the funds or left over after all bonds are paid for shall be returned to this-municipality.
- (4) In any case when moneys are returned from the sinking funds to this municipality, they are not to be spent for the payment of current municipal expenditures but as the governing body shall elect for the liquidating of existing nonbonded indebtedness, if any, of this municipality or for existing or planned capital improvements of such municipality or for the liquidation of other bonded indebtedness of this municipality or for any combination of such use.

Section 8-706 Payment of money out of municipal treasury; penalty

No money shall be paid out of the treasury except upon the order of the mayor, treasurer or municipal recorder. Such signature may be made by any mechanical or electrical device that the governing body may choose. Such machine shall be kept in the office of the recorder or treasurer for safe keeping.

If any of the above officers should allow someone to make, or if they themselves should make, an unauthorized signing then they shall be liable jointly or severally for the amount of any loss resulting to the municipality,

Section 8-707 Investment of municipal funds

All municipal funds the investment of which is not governed by other provisions of this chapter and not required for the payment of current obligations may be invested by the treasurer or recorder in the following classes of securities and accounts and not otherwise:

- (a) Certificates or other obligations of the United States in which the faith and credit of the United States is pledged.
- (b) Certificates of deposit secured by (1) obligations of the United States of America; (2) general obligations of revenue bonds of the State of West Virginia; (3) general obligation bonds of other states; (4) general obligation bonds of any county or

any county board of education or (5) general obligation bonds of any municipality of this state.

- (c) Interest bearing savings accounts which are insured by the federal deposit insurance corporation or a savings and loan association insured by the federal savings and loan insurance corporation building and loan association which are insured by the federal savings and loan corporation. Provided: that the banking institution or savings and loan association would place a bond on the money, the security of the bonds is to be determined by the town treasurer or recorder.

Section 8-708 How and by whom system of accounting for local offices prescribed

The system of keeping accounts by the recorder shall be done in the following matter. All accounts shall show the receipt, use and disposition of all public property under the municipalities control and the income (if any) derived from them, and all sources of such public income, and the amounts due and received from each source, all receipts, vouchers and other documents kept and necessary to identify and prove the validity of every transaction, and all statements and reports made or required to be made for the internal administration of the office to which they pertain, and all reports published or required to be published for the information of the people regarding any and all details of the financial administration of such public affairs.

Section 8-709 Separate accounts for different appropriations of funds, departments undertakings etc., transfer of unexpended balances

Separate accounts shall be kept for every appropriation of funds made by this municipality, showing the date and manner of each payment made out of the funds provided by such appropriation or levy, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid. Separate accounts shall be kept for each department, public improvement, undertaking, institution and public service industry under the jurisdiction of every town agency; and all service rendered by property transferred from one department, public improvement, undertaking institution or public service industry to another shall be paid for at its true and full value by the department, public improvement, undertaking, institution or public service industry receiving the same and no department, public improvement, undertaking, institution or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another department, public improvement, undertaking, institution or public service industry. All unexpended balances or appropriations shall be transferred to the credit of the fund from which originally appropriated or levied whenever the account with an appropriation is closed.

Section 8-710 Management accounting

The municipal; council may formulate its own requirements for a system of management accounting for the planning, management reporting, and control of town expenditures. The requirements may include methods for recording the collection of all revenues, amounts available for expenditure, encumbrances and expenditures for all funds and its own internal system of accounts.

The expenditures and encumbrances of a spending unit shall not exceed the approved appropriation of the fiscal year unless a budget amendment has been authorized by the municipal council and approved by the State Tax Department.

Section 8-711 Borrowing power

This municipality shall have plenary power and authority to borrow money on the general faith and credit of the municipality for any municipal purpose, in the manner and subject to the limitations provided by law for the issuance of general obligation bonds.

Section 8-712 Special charge for municipal service

This municipality, when furnishing any essential or special municipal service, shall have the power to provide for the continuance, improvement, or maintenance, or set up any regulations or charge a reasonable service charge that it specifies. This municipality, shall not, however, have a lien on any property as security for payments due under such ordinance. When establishing such ordinance, it shall be published as a Class II legal advertisement, and the publication area for such publication shall be this municipality and if thirty percent of the legal voters sign a petition against the ordinance it will not come into effect unless passed by a majority of the legal voters voting in a regular or special election as deemed by the governing body.

Section 8-713 Preparation, publication and disposition" of financial statements

This municipality shall prepare in a format prescribed by the State Tax Commissioner a Financial Statement revealing:

- (a) The receipts and expenditures of the town during the previous fiscal year arranged under descriptive headings.
- (b) The name of anyone who received more than fifty dollars from any fund during the year, how much he was paid, and for what purpose.

Payees receiving \$50 or less from any fund during the reporting year are not required to be published. Rather, at the end of each expenditure category or classification, such payees are added into an item "Less than \$50 (aggregate)". However, upon request by any resident of the municipality, a copy of the published statement must be provided and supplemented by a document listing the names of each person who received less than \$50 from any fund during such reporting year, showing the amount paid to each and the purpose for which paid. All salaries appearing in the financial statement must reflect gross earnings.

Municipalities with 2,000 or less population (Class IV) are not required to publish their financial statements in newspapers. However, the municipality shall prepare a financial statement from within 120 days after the beginning of each fiscal year

and a copy thereof made available upon request to any resident of the municipality.

The financial statement(s) shall be sworn to by the recorder, mayor and two members of the town council of the municipality. As soon as such fiscal statement is drawn, a copy shall be sent to the clerk of the county commission and the clerk of the circuit court.