CITY OF CHARLES TOWN

ORDINANCE COMMITTEE
AGENDA • FEBRUARY 15, 2024

Committee Meeting **COUNCIL CHAMBERS** **6:00 PM**
101 E Washington Street, Charles Town, WV 25414

1. CALL TO ORDER

2. UNFINISHED BUSINESS

3. NEW BUSINESS

: **2024-172:** Updates to Ordinances per State Code Changes
Ordinance to Approve December 2023 Replacement Pages.pdf
Part One - General Definitions.pdf
Article 301 Definitions Replacemement Page.pdf
Article 349 Miscellaneous Rules Replacement Page.pdf
Article 361 Parking Generally Replacement.pdf
Article 361 Parking Generally Markup.pdf
Article 373 Bicycles Replacement Page.pdf
Aarticle 521 Liquor Control.pdf
Article 545 Weapons and Explosives Replacement Pages.pdf
Article 545 Weapons and Explosives Replacement Pages.pdf

: **2024-173:** Creation of an Outdoor Dining Ordinance

4. ADJOURNMENT

5. NOTICE: The Public May View the Meeting Live by Clicking on the Event Link at: https://www.charlestownwv.us/government/agendas-and-minutes/

Ordinance Committee
101 East Washington Street
Charles Town, WV 25414

Meeting: 02/15/24
Department: Ordinance Committee
Category: Ordinance
Initiator:

SCHEDULED

AGENDA ITEM (ID #)

2024-172: Updates to Ordinances per State Code Changes

ATTACHMENTS:

- Ordinance to Approve December 2023 Replacement Pages.pdf
- Part One - General Definitions.pdf
- Article 301 Definitions Replacemement Page.pdf
- Article 349 Miscellaneous Rules Replacement Page.pdf
- Article 361 Parking Generally Replacement.pdf
- Article 361 Parking Generally Markup.pdf
- Article 373 Bicycles Replacement Page.pdf
- Aarticle 521 Liquor Control.pdf
- Article 545 Weapons and Explosives Replacement Pages.pdf
- Article 545 Weapons and Explosives Replacement Pages.pdf

CITY OF CHARLES TOWN

AN ORDINANCE TO APPROVE THE DECEMBER 2023 REPLACEMENT PAGES TO THE CODIFIED ORDINANCES.

WHEREAS, certain provisions within the Codified Ordinances should be amended to conform with current State law; and

WHEREAS, various ordinances of a general and permanent nature have been passed by Council which should be included in the Codified Ordinances; and

WHEREAS, Council has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish such revision; and

WHEREAS, the codification of such ordinances, together with the new matter to be adopted, the matters to be amended and those to be repealed are before the Council;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLES TOWN, WEST VIRGINIA:

Section 1. That the ordinances of the City of Charles Town, West Virginia, of a general and permanent nature, as revised, recodified, rearranged and consolidated into component codes, chapters, articles and sections within the December 2023 Replacement Pages to the Codified Ordinances are hereby approved and adopted.

Section 2. That the following sections and articles are hereby added, amended or repealed as respectively indicated in order to comply with current State law:

Part One - Administrative Code

101.02 General Definitions. (Amended)

Part Three - Traffic Code

301.02	Authorized Emergency Vehicle. (Amended)
301.083	Electric Bicycles. (Amended)
349.24	Electronically Distracted Driving. (Added)
361.07	Accessible Parking. (Added)
373.11	Electric Bicycles. (Amended)

Part Five - General Offenses Code

521.01	Liquor Control Definitions. (Amended)
521.09	Acts Prohibited by Private Club Licensee. (Amended)
545.01	Weapons and Explosives Definitions. (Amended)

Section 3. This Ordinance shall become effective from the date of its adoption.

CITY OF CHARLES TOWN

_____
Mayor

Attest:

_____
Clerk

Date of First Reading _____
_____ Date of Passage _____

Approved and enacted this _____ day of _____, 2023.

CODIFIED ORDINANCES OF CHARLES TOWN

PART ONE - ADMINISTRATIVE CODE

CHAPTER ONE - General Provisions

Art. 101. Codified Ordinances.
Art. 102. Corporate Boundaries.
Art. 103. Official Standards.
Art. 104. Wards, Elections Therein.
Art. 105. Elections.
Art. 107. Emergency Services.

ARTICLE 101
Codified Ordinances

101.01 Designation; citation; headings.
101.02 General definitions.
101.03 Rules of construction.
101.04 Repeal of repealing act; effect of repeal.
101.05 Construction of section references.
101.06 Acts by agent or deputy.
101.07 Conflicting provisions.
101.08 Separability.
101.99 General penalty.

CROSS REFERENCES

See sectional histories for similar State law
Maximum penalty permitted - see W. Va. Code 8-11-1, 8-12-5(57)
Authority to impose penalties - see W. Va. Code 8-11-1, 8-12-2(11)
Codification of ordinances - see W. Va. Code 8-11-4(b)

101.01 DESIGNATION; CITATION; HEADINGS.

(a) All ordinances of a permanent and general nature of the Municipality as revised, recodified, rearranged, renumbered and consolidated into component codes, chapters, articles and sections shall be known and designated as the Codified Ordinances of Charles Town, West Virginia, 1989, for which designation "Codified Ordinances" may be substituted. Code, chapter, article and section headings do not constitute any part of the law as contained in the Codified Ordinances.

(b) All references to codes, chapters, articles and sections are to such components of the Codified Ordinances unless otherwise specified. Any component code may be referred to and cited by its name, such as the "Traffic Code". Sections may be referred to and cited by the designation "Section" followed by the number, such as "Section 101.01".

101.02 GENERAL DEFINITIONS.

As used in the Codified Ordinances, unless otherwise expressly provided or the context otherwise requires:

(a) Council means the legislative authority of the Municipality.

(b) County means Jefferson County, West Virginia.

(c) Land or lands and real estate or real property include lands, tenements and hereditaments, and all rights thereto and interests therein except chattel interests.

(d) Laws of the State includes the Constitution of the State and the Constitution of the United States, and treaties and laws made in pursuance thereof. (WVaC 2-2-10)

(e) Municipality or City means the City of Charles Town, West Virginia.

(f) Offense includes every act or omission for which a fine, forfeiture or punishment is imposed by law. (WVaC 2-2-10)

(g) Owner, when applied to property, includes any part owner, joint owner or tenant in common of the whole or part of such property.

(h) Person or whoever includes corporations, societies, associations and partnerships, and other similar legal business organizations.

(i) Personal estate or personal property includes goods, chattels, real and personal, money, credits, investments and the evidences thereof. (WVaC 2-2-10)

(j) Preceding, succeeding or following used in reference to any section or sections of an article means next preceding, next succeeding or next following that in which such reference is made. (WVaC 2-2-10)

(k) Premises, as applied to property, includes land and building.

(l) Property or estate embraces both real and personal estate. (WVaC 2-2-10)

(m) Public place includes any street, sidewalk, park, cemetery, school yard, body of water or watercourse, public conveyance or any other place for the sale of merchandise, public accommodation or amusement.

(n) Registered mail includes certified mail.

(o) State means the State of West Virginia or any department, division, commission, board, educational or other institution of the State.

(p) Street includes alleys, avenues, boulevards, lanes, roads, highways, viaducts and all other public thoroughfares within the Municipality.

(q) Tenant or occupant, as applied to premises, includes any person holding a written or oral lease, or who actually occupies the whole or any part of such premises alone or with others.

(r) Written or in writing includes any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved or acknowledged. Unless a provision of this code specifically provides otherwise, an electronic signature satisfies this signature requirement if the electronic signature meets the requirements of West Virginia Code 39A-1-2. (WVaC 2-2-10)

CODIFIED ORDINANCES OF CHARLES TOWN

PART THREE - TRAFFIC CODE

CHAPTER ONE - Administration

Art. 301. Definitions.
Art. 303. Enforcement, Impounding and Penalty.
Art. 305. Traffic Control.

ARTICLE 301
Definitions

301.01 Meaning of words and phrases.
301.02 Authorized emergency vehicle.
301.03 Bicycle.
301.04 Bus.
301.05 Business district.
301.06 Controlled-access highway.
301.07 Crosswalk.
301.08 Driver.
301.083 Electric bicycles.
301.085 Electric personal assistive mobility device.
301.09 Explosives.
301.10 Flammable liquid.
301.11 Gross weight.
301.12 Intersection.
301.13 Laned roadway.
301.14 Moped.
301.15 Motorcycle.
301.16 Motor-driven cycle.
301.17 Motor vehicle.
301.18 Owner.
301.19 Park.
301.20 Parking area.
301.201 Passenger van.
301.21 Pedestrian.
301.22 Person.
301.23 Pole trailer.
301.24 Police officer.
301.25 Private road or driveway; private property.
301.26 Railroad.
301.27 Railroad sign or signal.
301.28 Railroad train.
301.29 Residence district.
301.30 Residential street.
301.31 Right of way.
301.32 Roadway.
301.33 Safety zone.
301.34 School bus.
301.35 School grounds.
301.36 Semitrailer.
301.37 Sidewalk.
301.38 Stop.
301.39 Stop, stopping or standing.
301.40 Street or highway; alley.
301.41 Through street or through highway.
301.42 Traffic.
301.43 Traffic control devices.
301.44 Traffic control signal.
301.45 Trailer.
301.46 Truck.
301.47 Vehicle.
301.48 Wheelchair.

CROSS REFERENCES
See sectional histories for similar State law
Speed race defined - see TRAF. 335.04

301.01 MEANING OF WORDS AND PHRASES.

The following words and phrases when used in this Traffic Code shall, for the purpose of this Traffic Code, have the meanings respectively ascribed to them in this article. (WVaC 17C-1-1)

301.02 AUTHORIZED EMERGENCY VEHICLE.

"Authorized emergency vehicle" means vehicles of the Fire Department, duly chartered rescue squad, Police Department, ambulance service, hospital police department, state, county or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to West Virginia Code 17C-15-26 and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by West Virginia Code 17A-10-1. Agency authorization and emergency equipment are provided in West Virginia Code 17C-15-26. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles. In the event that emergency medical technician's ("EMTs") or paramedics on the scene of an emergency are unable to drive an ambulance in the course of administering patient care, firefighters on the scene shall be permitted to drive an ambulance: provided, that the Fire Department with which the firefighters are associated or members and the emergency medical services provider that owns the ambulance have previously entered into a memorandum of understanding or other agreement authorizing such action and the firefighter driving the ambulance has completed an Emergency Vehicle Operations Course ("EVOC") otherwise required by the West Virginia Code or legislative rule promulgated thereunder. (WVaC 17C-1-6)

301.03 BICYCLE.

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter. (WVaC 17C-1-8)

301.04 BUS.

"Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (WVaC 17C-1-13)

301.05 BUSINESS DISTRICT.

"Business district" means the territory contiguous to and including a street or highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the street or highway.
(WVaC 17C-1-45)

301.06 CONTROLLED-ACCESS HIGHWAY.

"Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway. (WVaC 17C-1-41)

301.07 CROSSWALK.

"Crosswalk" includes:

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (WVaC 17C-1-43)

301.08 DRIVER.

"Driver" means every person who drives or is in actual physical control of a vehicle. (WVaC 17C-1-31)

301.083 ELECTRIC BICYCLES.

(a) For the purpose of this section, the term "electric bicycle" means a two or three wheeled vehicle with fully operable pedals and an electric motor of fewer than 750 watts. There is a "three-class system" to differentiate between the models and top-assisted speeds of electric bicycles.

(1) "Class 1" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.

(2) "Class 2" electric bicycles have a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the e-bike reaches 20 mph.

(3) "Class 3" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.

(b) "Throttle" refers to a device that controls the flow of power to the electric motor on an electric bicycle for the purpose of propelling the electric bicycle. (WVaC 17C-1-70)

301.085 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.

"Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour. (WVaC 17C-1-66)

301.09 EXPLOSIVES.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. (WVaC 17C-1-24)

301.10 FLAMMABLE LIQUID.
"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closedcup test device. (WVaC 17C-1-25)

301.11 GROSS WEIGHT.
"Gross weight" means the weight of a vehicle without load plus the weight of any load thereon. (WVaC 17C-1-26)

301.12 INTERSECTION.
"Intersection" includes:
(a) The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of two streets or highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets or highways joining at any other angle may come in conflict; and
(b) Where a street or highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided street or highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting street or highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such streets or highways shall be regarded as a separate intersection. (WvaC 17C-1-42)

301.13 LANED ROADWAY.
"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic. (WVaC 17C-1-39)

301.14 MOPED.
"Moped" means every motorcycle or motor-driven cycle unless otherwise specified in this Traffic Code, which is equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower, but excludes electric bicycles as defined in Section 301.083. If a combustion engine is used, the maximum piston or rotor displacement shall be fifty cubic centimeters regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed thirty miles per hour on a level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. (WVaC 17C-1-5a)

301.15 MOTORCYCLE.
"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor. (WVaC 17C-1-4)

301.16 MOTOR-DRIVEN CYCLE.
"Motor-driven cycle" means every motorcycle having a piston displacement of more than fifty cubic centimeters but not more than 150 cubic centimeters, or with not more than five brake horsepower. (WVaC 17C-1-5)

301.17 MOTOR VEHICLE.
"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, except motorized wheelchairs. (WVaC 17C-1-3)

ARTICLE 349
Miscellaneous Rules

349.01 Unattended motor vehicle.
349.02 Backing a vehicle.
349.03 Drivers' view and control to be unobstructed by load or persons.
349.04 Passengers in seat with operator.
349.05 Passengers on running board.
349.06 Following authorized emergency vehicles.
349.061 Approaching authorized emergency vehicles.
349.07 Driving over fire hose.
349.08 Right of way of funeral or other procession.
349.09 Opening door of vehicle on traffic side.
349.10 Boarding or alighting from vehicle.
349.11 Unauthorized riding or jumping onto vehicles.
349.12 Squealing tires, cracking exhaust noises.
349.13 Taking, injuring or tampering with vehicle.
349.14 Driving upon sidewalk, street lawn or curb.
349.15 Shortcutting; avoiding traffic control devices.
349.16 Coasting prohibited.
349.17 Driving through safety zone.
349.18 Driving upon street posted as closed for repair.
349.19 Obstruction of traffic.
349.20 Vehicle security.
349.21 Littering from a motor vehicle.
349.22 All terrain vehicles prohibited.
349.23 Prohibited use of an electronic communication device.
349.24 Electronically distracted driving.
349.99 Penalty.

Added Section

CROSS REFERENCES
See sectional histories for similar State law
Obedience to traffic control devices - see TRAF. 313.01

349.01 UNATTENDED MOTOR VEHICLE.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the street or highway.
(WVaC 17C-14-1)

349.02 BACKING A VEHICLE.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.
(WVaC 17C-14-2)

349.03 DRIVERS' VIEW AND CONTROL TO BE UNOBSTRUCTED BY LOAD OR PERSONS.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle.
(WVaC 17C-14-4)

349.04 PASSENGERS IN SEAT WITH OPERATOR.

No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while such motor vehicle is being operated on the streets or highways of this Municipality: provided, however, that the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles.
(WVaC 17C-14-5)

349.05 PASSENGERS ON RUNNING BOARD.

No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this Municipality.
(WVaC 17C-14-6)

349.06 FOLLOWING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than 500 feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.
(WVaC 17C-14-9)

349.061 APPROACHING AUTHORIZED EMERGENCY VEHICLES.

The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, shall:

(a) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

(b) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.
(WVaC 17C-14-9a)

349.24 ELECTRONICALLY DISTRACTED DRIVING.

(a) Definitions. As used in this section:

(1) "Smartwatch" means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;

(2) "Stand-alone electronic device" means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

(3) "Utility services" means and includes electric, natural gas, water, wastewater, cable, telephone or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way or associated infrastructure;

(4) "Wireless telecommunications device" means one of the following portable devices:

A. A cellular telephone;

B. A portable telephone;

C. A text-messaging device;

D. A personal digital assistant;

E. A stand-alone computer including, but not limited to, a tablet, laptop or notebook computer;

F. A handheld global positioning system receiver;

G. A device capable of displaying a video, movie, broadcast television image or visual image;

H. Any substantially similar portable wireless device that is used to initiate or receive communication, information or data;

I. "Wireless telecommunications device" does not include a smartwatch, any type of radio including but not limited to, radios used by first responders or school bus operators; citizens band radio or radio hybrid; commercial two-way radio communication device or its functional equivalent, subscription-based emergency communication device; prescribed medical device; amateur or ham radio device, or any built-in vehicle equipment for security, navigation, communications or remote diagnostics; and

(5) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(b) The driver of a school bus shall not use or operate a wireless telecommunications device or two-way radio while loading or unloading passengers.

(c) The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion nor while stationary in traffic nor at a traffic control signal, unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

(e) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, no driver may:

(1) Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: provided, that such prohibition shall not apply to the wearing of a smartwatch;

(2) Write, send or read any text-based communication including, but not limited to, a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device: provided, that such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form;

(3) Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: provided, that, such prohibition shall not apply to a voice operated or hands-free communication feature or function;

(4) Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;

(5) Manually enter letters, numbers or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

(6) Watch a video or movie on a wireless telecommunications device or standalone electronic device other than watching data related to the navigation of such vehicle;

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device: provided, that such prohibition does not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle; or

(8) Actively play any game on a wireless telecommunications device or stand-alone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, no driver may:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:
A. No longer be in a seated driving position; or
B. No longer be properly restrained by a safety belt.

(g) Each violation of this section shall constitute a separate offense.

(h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:
(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than one hundred dollars ($100.00);
(2) For a second conviction within a 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than two hundred dollars ($200.00);
(3) For a third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:
A. A fine of not more than three hundred fifty dollars ($350.00);
B. Three points on the driver's record maintained by the Division of Motor Vehicles; and
C. At the court's discretion, suspension of the driver's license for a period of ninety days;
(4) Any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to thirty days in jail or a fine not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00);
(5) Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section shall be punished in accordance with West Virginia Code 17C-14-15(h)(5).
(6) Any driver who causes the death of another as the proximate result of committing a violation of this section is guilty of negligent homicide and shall be punished in accordance with West Virginia Code 17C-5-1.

(i) The Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(j) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

(k) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(l) This section shall not apply to:

(1) Drivers reporting to state, county, or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or a road condition that causes an immediate and serious traffic or safety hazard;

(2) An employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(3) A driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data;

(4) A law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) While in a motor vehicle that is lawfully parked.

(m) This section does not supersede the provisions of West Virginia Code 17B-2-3a or any more restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions of West Virginia Code 17E-1-1 et seq. or by federal law or rule. (WVaC 17C-14-15)

349.99 PENALTY.

(a) General Article Penalty. Whoever violates any provision of this article for which no other penalty is provided shall be fined not more than one hundred dollars ($100.00); upon a second conviction within one year thereafter shall be fined not more than two hundred dollars ($200.00); and upon a third or subsequent conviction, shall be fined not more than five hundred dollars ($500.00).

(b) (1) Any person who violates Section 349.061 shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both fined and imprisoned.

(2) If violation of Section 349.061 results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.

(3) If violation of Section 349.061 results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of Section 349.061 results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates Section 349.061 and while doing so also violates Section 333.01 shall be prosecuted under appropriate State law. (WVaC 17C-14-9a)

(c) Taking, Injuring or Tampering With Vehicle. Whoever violates Section 349.13 shall, for a first offense, be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both. (WVaC 17A-11-1)

(d) Vehicle Security. Whoever violates Section 349.20 shall be fined not less than two hundred dollars ($200.00) or more than five thousand dollars ($5,000) or imprisoned not more than thirty days, or both. (WVaC 17D-2A-9)

(e) Electronic Communication Devices.

(1) Any person who violates the provisions of Section 349.23 is guilty of a traffic offense and, shall for a first offense be fined one hundred dollars ($100.00); for a second offense be fined two hundred dollars ($200.00): and for a third or subsequent offense be fined three hundred dollars ($300.00). No court costs or other fees shall be assessed for a violation of Section 349.23.

(2) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of Section 349.23, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver's record maintained by the Division of Motor Vehicles.

(3) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense until July 1, 2013 and as a primary offense as of July 1, 2013 for purposes of citation.

(4) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law enforcement agency. (WVaC 17C-14-15)

CHAPTER SEVEN - Parking

Art. 361. Parking Generally.
Art. 365. Parking Meters.

ARTICLE 361
Parking Generally

361.01 Definitions.
361.02 Stopping, standing, or parking on streets and highways.
361.03 Registered owner prima-facie liable for unlawful parking.
361.04 Parking time limit.
361.05 Temporary no parking zones.
361.06 Severability.
361.07 Accessible parking.
361.99 Penalties and appeals.

New Section

CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate the standing or parking of vehicles - see W. Va. Code 17C-2-8(a)(1)
Authority to regulate parallel and angle parking - see W. Va. Code 17C-13-4
Applicable West Virginia State Codes to this Article include: WV Code 17-24A-2; 17C-14; 17C-14-13
Impounding of abandoned vehicles - see TRAF. 303.07
Duty to stop engine, set brake on grade and remove key - see TRAF. 349.01

361.01 DEFINITIONS.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

(a) Commercial vehicle shall mean any motor vehicle, truck, bus, tractor-trailer, or other tandem vehicle licensed or used for the transportation of property and/or people, delivery of goods, wares, merchandise or any other commercial-related service upon any street of the City.

(b) Recreational vehicle shall mean any motor home, travel trailer, truck camper, or camping trailer with or without motive power designed for human habitation for recreational or emergency occupancy.

(Ord. 2021-007. Passed 10-12-21.)

361.02 STOPPING, STANDING, OR PARKING ON STREETS AND HIGHWAYS.

In addition to those prohibitions cited in WV Code 17C-13 & 14 the following sections apply:

(a) Parking for Certain Purposes Prohibited. No person shall park any vehicle upon any street within the Municipality for the principal purpose of:

(1) Displaying such vehicle for sale.

(2) Displaying advertising.

(3) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.

(4) Relieving the crowded condition of any parking lot, automobile sales lot, repair garage, or automobile rental lot.

(b) Loading and Unloading Zones. No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivering or pickup and loading of materials in any place marked as a loading and unloading zone during the hours of 8:00 a.m. and 5:00 p.m., on all weekdays, except legal holidays as specified in West Virginia Code §2-2-1, official acts or court proceedings and as revised, amended or modified from time to time by the State Legislature. One additional holiday will be recognized for City Election Day. In no case shall the stop for loading and unloading of materials exceed fifteen (15) minutes.

(c) Bus Stops.

(1) No person shall stop, stand or park a vehicle other than a bus in a bus stop when any such stop or stand has been officially designated and appropriately posted, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually, engaged in loading or unloading passengers when such stopping does not interfere with any bus waiting to enter or about to enter such zone, and then only for a period not to exceed three (3) minutes if such stopping is not prohibited therein by posted signs.

(2) The operator of a bus shall not stop, stand or park such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop so designated and posted as such, except in case of an emergency.

(c) Emergency No Parking Zones may be established for public safety, emergency repairs, or disaster recovery efforts without prior notice. Any vehicle in these zones may be subject to towing or impoundment as required.
(Ord. 2021-007. Passed 10-12-21.)

361.06 SEVERABILITY.

The provisions of this article shall be liberally construed to accomplish its objective and purposes. If any provision of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not otherwise affect or invalidate the other provisions hereto, all of which are hereby declared, and shall be construed, to be separate and severable.
(Ord. 2021-007. Passed 10-12-21.)

361.07 ACCESSIBLE PARKING.

(a) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath chiropractor, advanced nurse practitioner or physician's assistant licensed to practice in West Virginia:
   A. Cannot walk two hundred feet without stopping to rest;
   B. Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;
   C. Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
   D. Uses portable oxygen;
   E. Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American heart association; or
   F. Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic physical condition.

(2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger style placard measuring three inches by nine and one half inches, with all of the following on each side:
   A. The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;
   B. An identification number measuring one inch in height;
   C. An expiration date in numbers measuring one inch in height for a temporary placard; and
   D. The seal or other identifying symbol of the issuing authority.

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's vehicle;

(5) "Public entity" means state or local government or any department, agency, special purpose district or other instrumentality of a state or local government.

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots or other real or personal property, including the site where the facility is located.

(7) "Place(s) of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

A. Inns, hotels, motels and other places of lodging;

B. Restaurants, bars or other establishments serving food or drink;

C. Motion picture houses, theaters, concert halls, stadiums or other places of exhibition or entertainment;

D. Auditoriums, convention centers, lecture halls or other places of public gatherings;

E. Bakeries, grocery stores, clothing stores, hardware stores, shopping centers or other sales or rental establishments;

F. Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

G. Terminals, depots or other stations used for public transportation;

H. Museums, libraries, galleries or other places of public display or collection;

I. Parks, zoos, amusement parks or other places of recreation;

J. Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social service establishments; and

K. Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation.

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the American with Disabilities Act (ADA).

(10) "Parking enforcement personnel" includes any law enforcement officer as defined by West Virginia Code 30-29-1, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.

(b) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart along with the words "no parking" in painted letters which are at least twelve inches in height. All accessible parking spaces should have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(c) A vehicle displaying a disabled veterans special registration plate issued pursuant to West Virginia Code 17A-3-14(c)(6) shall be recognized and accepted as meeting the requirements of this section.

(d) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(e) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(f) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, that this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this State is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined two hundred dollars ($200.00); upon second conviction thereof, in addition to any other penalty, he or she may otherwise incur, shall be fined three hundred dollars ($300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars ($500.00).

(g) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined two hundred dollars ($200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars ($300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars ($500.00).

(h) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to $500 fine".

(i) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined two hundred dollars ($200.00); upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars ($300.00); and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars ($500.00).

(j) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(k) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(l) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (k) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.
(WVaC 17C-13-6)

361.99 PENALTIES AND APPEALS.

(a) General Article Penalty. Whoever violates any provision of this article shall be assessed fines and penalties. according to the following:

(1) The following violations will result in a fine of ten dollars ($10.00) if paid within five (5) days; if paid after five (5) days but before thirty (30) days an additional twenty dollars ($20.00) penalty will apply for a total fine amount of thirty dollars ($30.00); if paid after thirty (30) days an additional thirty dollars ($30.00) penalty will apply for a total fine and penalty amount of sixty dollars ($60.00):
   A. Expired meter;
   B. Failure to display a valid parking permit or pay via an applicable mobile pay app at the Liberty Street Parking Lot;
   C. Parking permit violation;
   D. Exceeding the two (2) hour free parking;
   E. Improper manner of parking;
   F. Exceeding time in a ten minute take away parking space.

(2) Accessible parking violations (WV Code 17C-13-6): first conviction is two hundred dollars ($200.00); second conviction is three hundred dollars ($300.00); and subsequent convictions are five hundred dollars ($500.00).

(3) Violation of Section 361.04(a) is sixty dollars ($60.00).

(4) Abandoned or junked motor vehicles: not more than five hundred dollars ($500.00) or imprisonment of not more than thirty (30) days, or both.

(5) Other violations not otherwise listed in this section will result in a fine of sixty dollars ($60.00).

(b) To appeal a ticket, a person must notify the Charles Town Municipal Court within five (5) calendar days of the date and time the parking ticket was originally issued. At the time an appeal is made, the required fines and/or penalties will be fixed until a resolution is reached by a municipal judge. If the ticket is upheld as valid, the owner/operator will satisfy the fixed cost of the citation and may be subject to additional court costs.

(Ord. 2021-007. Passed 10-12-21.)

ARTICLE 361
Parking Generally

361.01 Definitions
361.02 Stopping, standing, or parking on streets and highways
361.03 Registered owner prima-facie liable for unlawful parking
361.04 Parking time limit
361.05 Temporary no parking zones
361.06 Severability
361.99 Penalties and Appeals

CROSS REFERENCES
Applicable West Virginia State Codes to this Article include: WV Code 17-24A-2; 17C-13; 17C-14-13. See sectional histories for similar State law.

361.01 DEFINITIONS
For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

(a) Commercial vehicle shall mean any motor vehicle, truck, bus, tractor-trailer, or other tandem vehicle licensed or used for the transportation of property and/or people, delivery of goods, wares, merchandise or any other commercial-related service upon any street of the City.
(b) Recreational vehicle shall mean any motor home, travel trailer, truck camper, or camping trailer with or without motive power designed for human habitation for recreational or emergency occupancy.

361.02 STOPPING, STANDING, OR PARKING ON STREETS AND HIGHWAYS
In addition to those prohibitions cited in WV Code 17C-13 & 14 the following sections apply:

(a) Parking for certain purposes prohibited. No person shall park any vehicle upon any street within the Municipality for the principal purpose of:
(1) Displaying such vehicle for sale.
(2) Displaying advertising.
(3) Washing, greasing or repairing such vehicle, except repairs made necessary by an emergency.
(4) Relieving the crowded condition of any parking lot, automobile sales lot, repair garage, or automobile rental lot.

(b) Loading and unloading zones. No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivering or pickup and loading of materials in any place marked as a loading and unloading zone during the hours of 8:00 AM and 5:00 PM, on all weekdays, except legal holidays as specified in West Virginia Code §2-2-1, official acts or court proceedings and as revised, amended or modified from time to time by the

(e) The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.

(f) A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

(g) Class 2 electric bicycles are permitted to use a throttle to propel the bicycle.

(h) Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:

(1) Class 1, and Class 2 electric bicycles being used on roads and trails where traditional, non-electronic bicycle use is allowed will be given the same rights and privileges of a traditional, non-electric bicycle and will be subject to all of the duties of a traditional, non-electric bicycle. This rule intends to facilitate increased access to public lands that may otherwise be inaccessible to those with disabilities, health issues, or age-related limitations.

(2) A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway: provided, that the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.

(3) Electric bicycles will not be given special access beyond what traditional or non-electric bicycles are allowed. For example, electric bicycles will not be allowed on roads or trails or in areas where traditional, non-electric bicycle travel is prohibited.

(4) This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

(i) Age restrictions related to the operation of electric bicycles are as follows:

(1) A person under sixteen years of age may not operate a Class 3 electric bicycle;

(2) A person under fifteen years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, West Virginia Code 17C-11A-1 et seq.

(j) A person under the influence of alcohol or controlled substances shall not operate a Class 1,Class 2 or Class 3 electric bicycle.
(WVaC 17C-11-8)

373.99 PENALTY.
(EDITOR'S NOTE: See Section 303.99 for general Traffic Code penalty.)

ARTICLE 521

Liquor Control

521.01 Definitions.
521.02 Article not applicable to certain uses by physicians, druggists and others.
521.03 Prohibited acts generally.
521.03A Sale of alcohol on Sundays
521.04 Unlawful sale or possession by alcoholic liquor licensee.
521.05 Unlawful purchase of alcoholic liquors from State agency.
521.06 Intoxication or drinking in public places; illegal possession.
521.07 Acts prohibited by non-intoxicating beer licensee.
521.08 Unlawful purchase of non-intoxicating beer.
521.09 Acts prohibited by private club licensee.
521.10 Unlawful purchase from private club.
521.11 Acts prohibited by wine dealers.
521.12 Unlawful purchase of wine.
521.13 Unlawful purchase from retail liquor licensee.
521.03A Sale of alcohol on Sundays.
521.14 Hard cider.
521.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to regulate liquor sales - see W. Va. Code 8-12-5(20)
Nonintoxicating beer - see W. Va. Code Art. 11-16
Local option - see W. Va. Code Art. 60-
5 Search warrants - see W. Va. Code 60-
6-18 Public drunkenness - see GEN.
OFF. 517.05

521.01 DEFINITIONS.

For the purposes of this article:

(a) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

(b) "Alcoholic liquor" includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

(c) "An agency" means a drugstore, grocery store, or general store designated by the Commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commission.

(d) "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

(e) "Brewery" means an establishment where beer is manufactured or in any way prepared.

(f) "Commissioner" or "Commission" means the West Virginia Alcohol Beverage Control Commissioner.

(g) "Department" means the organization through which the Commission exercises powers imposed upon it by this article.
(h) "Distillery" means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.
(i) "Intoxicated" means a person's faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.
(j) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of West Virginia Code 11-16-1 et seq. and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.
(k) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.
(l) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.
(m) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by West Virginia Code 11-16-2.
(n) "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.
(o) "Person" means an individual, firm, partnership, limited partnership, corporation, or voluntary association.
(p) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.
(q) "Public place" means any place, building, or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement: provided, that the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this article to sell alcoholic liquors for consumption on the premises: provided, however, that the term "public place" shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this article to sell alcoholic liquors for consumption thereupon: provided further, that the term "public place" shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of West Virginia Code 60-8-3, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.
(r) "Sale" means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.
(s) "Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.
(t) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.
(u) "State liquor store" means a store established and operated by the Commission under this article for the sale of alcoholic liquor in the original package for consumption off the premises.

521.09

premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in Section 521.04;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by duly licensed charitable or public service organization (or its auxiliaries), pursuant to West Virginia Code 47-20-1 et seq., and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to West Virginia Code 47-21-1 et seq., all of which are permissible on a licensee's licensed premises when operated in accordance with the West Virginia Code and rules promulgated thereunder. A private resort hotel holding a license issued pursuant to West Virginia Code 60-7-1 et seq., may sell, tender or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under West Virginia Code 29-22A-1 et seq., and 29-22C-1 et seq., or West Virginia Code 29-25-1 et seq., during hours of operation authorized by West Virginia Code 29-22A-1 et seq., and 29-22C-1 et seq., or 29-25-1 et seq;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 6:00 a.m. on weekdays, Saturdays, and Sundays, or between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in West Virginia Code 7-1-3ss, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this article, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues- paying member in good standing of the private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the Commissioner;

(10) A. Employ any person who is less than sixteen years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine or alcoholic liquors to any person;

B. Employ any person who is between sixteen years of age and younger than twenty-one years of age who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the Commissioner. (WVaC 60-7-12)

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

(Ord. 2016-003. Passed 11-7-16.)

ARTICLE 545
Weapons and Explosives

545.01 Definitions.
545.02 Carrying a deadly weapon without provisional license or other authorization by persons under twenty-one years of age.
545.03 Exceptions as to prohibitions against carrying concealed handguns for persons at least eighteen years of age and fewer than twenty-one years of age.
545.04 Persons prohibited from possession of firearms.
545.05 Possession of deadly weapons by minors prohibited.
545.06 Possession of machine guns.
545.07 Display or sale of deadly weapons.
545.08 Brandishing deadly weapons.
545.09 Possessing deadly weapons on premises of educational facilities. (Repealed)
545.10 Fireworks.
545.11 Discharging firearms.
545.12 Throwing or shooting missiles.
545.99 Penalty.

CROSS REFERENCES

See sectional histories for similar State law
Authority to prohibit carrying weapons - see W. Va. Code 8-12-5(16)
Limitations on power to restrict ownership - see W. Va. Code 8-2-5a
Dangerous weapons - see W. Va. Code Art. 61-7

545.01 DEFINITIONS.

As used in this article, unless the context otherwise requires:

(a) "Antique firearm" means:

(1) Any firearm, including, but not limited to, a firearm with a match lock, flintlock, percussion cap, or similar type of ignition system which was manufactured on or before 1898;

(2) Any replica of any firearm described in subsection (a)(l) hereof if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon which includes a firearm frame or receiver, any firearm which is converted into a muzzle-loading weapon, or any muzzle-loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(b) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. "Blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag or slapjack.

(c) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(d) "Control led substance" has the same meaning as is ascribed to that term in West Virginia Code 60A-1- 101(e).

(e) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subsections (a) through (h) hereof, inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of West Virginia Code 18A-5-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (i) hereof, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of West Virginia Code 18A-5-1a and 61-7-11a, the term "deadly weapon" includes explosive, chemical, biological and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term "deadly weapon" does not include pepper spray as defined in subsection (l) hereof when used by any person solely for self-defense purposes.

(f) "Drug" has the same meaning as is ascribed to that term in West Virginia 60A-1-101(m).

(g) "Firearm" means any weapon which will expel a projectile by action of an explosion: provided, that it does not mean an antique firearm as defined in subsection (a) hereof; except for the purposes of West Virginia Code 48-27-502.

(h) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when released is locked in place by means of a button, spring, lever or other locking or catching device.

(i) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. The term "knife" includes, but is not limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

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Ordinance Committee
101 East Washington Street
Charles Town, WV 25414

SCHEDULED

AGENDA ITEM (ID #)

Meeting: 02/15/24
Department: Ordinance Committee
Category: Ordinance
Initiator:

2024-173: Creation of an Outdoor Dining Ordinance

ATTACHMENTS: