CITY OF CHARLES TOWN

ORDINANCE COMMITTEE
AGENDA • MARCH 14, 2024

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

1. CALL TO ORDER

2. UNFINISHED BUSINESS

: **2024-301:** Updates to Ordinances per State Code Changes
2023 State Law Changes.pdf
Ord. #2021-007 - Article 361 Parking Generally.pdf
Ord. 2022 -011 - Article 521 Liquor Control.pdf
Ord. 2022-008 - Article 545 Weapons and Explosives.pdf

3. NEW BUSINESS

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

SCHEDULED

AGENDA ITEM (ID #)

Meeting: 03/14/24
Department: Ordinance Committee
Category: Ordinance
Initiator:

2024-301: Updates to Ordinances per State Code Changes

Article 101.02 - Codified Ordinances - General Definitions
Article 301.02 - Authorized Emergency Vehicle (State Code)
Article 301.083 - Electric Bicycles
Article 349.24 - Electronically Distracted Driving
Article 361.07 - Accessible Parking (Ordinance attached)
Article 373.11 - Electric Bicycles (State Code)
Article 521.01 - Liquor Control - Definitions (Ordinance attached)
Article 521.09 - Acts Prohibited by Private Club Licensee
Article 545.01 - Weapons and Explosives - Definitions (Ordinance Attached)

ATTACHMENTS:

- 2023 State Law Changes.pdf
- Ord. #2021-007 - Article 361 Parking Generally.pdf
- Ord. 2022 -011 - Article 521 Liquor Control.pdf
- Ord. 2022-008 - Article 545 Weapons and Explosives.pdf

CHARLES TOWN, WV
STATE LAW CHANGES
2023

(New State Law changes are highlighted. A block of highlight indicates material was deleted. When new text is added additional pages may have been changed to accommodate text being bumped to next page.)

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)

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)

301.083 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)

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)

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)

373.11 ELECTRIC BICYCLES.

(a) The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle subject to this chapter, except as otherwise provided by this section and except as to those provisions of this chapter which by their nature can have no application.

(b) A person owning or operating an electric bicycle is not subject to the provisions of West Virginia Code 17A-1-1 et seq., 17B-1-1 et seq., or 17D-1-1 et seq., relating to registration, title, driver's license, and financial responsibility requirements.

(c) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that a limit established in Section 301.083 is exceeded, that vehicle is no longer an electric bicycle. The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.

(d) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(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)

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. (WVaC 60-1-5)

(m) (1) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent (½%) alcohol by volume, but not more than eleven and nine-tenths percent (11.9%) of alcohol by weight, or fifteen percent (15%) alcohol by volume, whichever is greater. The word "liquor" as used in West Virginia Code 60-1-1 et seq. does not include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(2) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not less than one half of one percent (½%) by volume and not more than fifteen percent (15%) alcohol by volume or eleven and nine-tenths percent (11.9%) alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect. (WVaC 11-16-3)

(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.

(v) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

(w) "Winery" means an establishment where wine is manufactured or in any way prepared. (WVaC 60-1-5)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's 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. 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.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.
(WVaC 60-7-12)

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) “Controlled 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.

(j) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person who was struck. The terms "metallic or false knuckles" includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(k) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in a manner that allows the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(1) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(m) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(n) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(o) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle. (WVaC 61-7-2)

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

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 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 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.

(3) The operator of a bus shall enter a bus stop on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) Painted curbs or streets. No person shall park a vehicle where signs explicitly prohibit stopping, standing, or parking or where the curbing or street is painted yellow or red.

(e) Posted signs. No person shall park a vehicle at any place in excess of the maximum time limited by signs. The vehicle must completely vacate the space after the time limit or will be cited for a violation.

(f) Parking in alleys and narrow streets. No person shall stop, stand or park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic, except that a driver may stop temporarily during the actual loading or unloading of passengers or when directed to by a police officer or traffic control signal. Except as otherwise provided by law, no person shall stop, stand or park a vehicle within an alley except while actually loading and unloading, and then only for a period not to exceed thirty minutes.

(g) Parking between sidewalk and curb. When a portion of any street is paved no person shall park any vehicle between the sidewalk and curb or drive such vehicle between the sidewalk and curb.

(h) Parking of commercial and recreational vehicles.

(1) No person shall park any commercial or recreational vehicle as defined in this article on any street of the City except for the purpose of loading or unloading, and then only for the period of time which is spent in the actual loading or unloading of such vehicle.

(2) No person shall park, under the exception cited in 361.01(h)(1), any commercial or recreational vehicle on any street within the residential districts of the City between one hour after sunset and one hour before sunrise.

(3) No person shall park the trailer of any tractor-trailer, the property-carrying unit of any tandem vehicle, or any utility trailer upon any street in the City unless the same is fully connected to the tractor or other regular propelling unit so that the same can be immediately moved when required.

361.03 REGISTERED OWNER PRIMA-FACIE LIABLE FOR UNLAWFUL PARKING

In any hearing on a charge of illegally parking a motor vehicle, testimony that a vehicle bearing a certain license plate was found unlawfully parked as prohibited by the provisions of this Traffic Code, and further testimony that the records of the Department of Motor Vehicles shows that the license plate was issued to the defendant, shall be prima-facie evidence that the vehicle which was unlawfully parked was so parked by the defendant. A certified copy of registration from the Department of Motor Vehicles shall be proof of such ownership.

361.04 PARKING TIME LIMIT.

(a) No person shall leave any vehicle continuously parked on any street, road, highway, thoroughfare, alley, or municipal parking lot within the Charles Town parking district (including all parking zones established therein), as specified in Sections 365.01 and 365.02, with or without a valid parking permit, for a period of more than seventy-two (72) consecutive hours. Violation of this subsection (a) shall subject the vehicle to fines and impoundment at the owner's expense pursuant to Section 303.07(l).

(b) No person shall leave any vehicle continuously parked on any street, road, highway, thoroughfare, alley, any other City property or right-a-way within the Charles Town city limits but outside the Charles Town parking district, with or without a valid parking permit, for a period of more than five (5) consecutive days. Any vehicle parked in violation of this subsection (b) for a period of more than five (5) consecutive days shall be deemed and considered an "abandoned motor vehicle," as such term is defined in West Virginia Code Section 17-24A-1(3), for the purposes of Section 303.07(b) and West Virginia Code Section 17-24A-3 and shall be subject to fines and impoundment at the owner's expense pursuant to such provisions.

(c) In the event any police officer observes, or any member of the public certifies to a police officer, that a vehicle appears to have been parked in violation of either of subsection (a) or (b) above, the police officer shall place upon the vehicle a written notice that: (i) the vehicle is believed to have been parked in violation of the relevant subsection, as specified; (ii) that the vehicle is subject to impoundment if not moved within the period of the next consecutive seventy-two (72) hours, in the case of an apparent violation of subsection (a), or the next consecutive one hundred twenty hours (120), in the case of an apparent violation of subsection (b); and (iii) the owner or operator of the vehicle should contact the Charles Town Police Department prior to expiration of the specified period for moving the vehicle. Failure of the

owner or operator to move the vehicle prior to expiration of the specified period may result in its impoundment.

(d) Exceptions to this section; to facilitate demolition, construction, repair, or similar operations, must be requested in writing not less than seven (7) days prior to the start of the requested exception period. The approval authority for the aforementioned exception shall be both the City Manager or designated representative and the Charles Town Police Chief or designated representative. The maximum time period for an approved exception to this section is seven (7) days, which may be renewed at the discretion of the approval authority. Exception requests under this section that include paid parking spaces will be subject to parking rates per Article 365.03.

361.05 TEMPORARY NO PARKING ZONES

(a) No person shall stop, stand, park or leave any vehicle in a designated temporary or emergency no parking zone.

(b) Temporary No Parking Zones may be established for special events, parades, or planned construction. These zones will be posted by employees of the City of Charles Town, no less than twenty-four (24) hours prior to the parking restriction taking effect. Signs noticing the No Parking Zone will display the dates and times that the No Parking Zone will be in effect. Any vehicle in violation of this section will be subject to impoundment at the vehicle owner's expense.

(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.

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.

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) if paid within five (5) days; if paid after five (5) days but before thirty (30) days an additional twenty dollars ($20) penalty will apply for a total fine amount of thirty dollars ($30); if paid after thirty (30) days an additional thirty dollars ($30) penalty will apply for a total fine and penalty amount of sixty dollars ($60):
        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); second conviction is three hundred dollars ($300); and subsequent convictions are five hundred dollars ($500).
(3) Violation of section 361.04(a) is sixty dollars ($60).
(4) Abandoned or junked motor vehicles: not more than five hundred dollars ($500) 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).

(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.

First Reading: SEPTEMBER 20, 2021

Second Reading: OCTOBER 4, 2021

Enacted this 12th day of October, 2021

City of Charles Town

Robert M. Trainor
Mayor

Attest:

Daryl Hennessy
City Manager/Clerk

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.

(v) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.
(w) "Winery" means an establishment where wine is manufactured or in any way prepared. (WVaC 60-1-5)

521.02 ARTICLE NOT APPLICABLE TO CERTAIN USES BY PHYSICIANS, DRUGGISTS AND OTHERS.

The provisions of this article shall not prevent:
(a) A physician from prescribing the use of alcoholic liquors when necessary for a bona fide patient;
(b) A druggist from selling, upon a prescription properly issued by a physician, alcoholic liquors for medicinal purposes;
(c) A physician, dentist or veterinarian, in the legitimate practice of his profession, from using and administering alcoholic liquors;
(d) Hospitals, sanitariums or that division of any institution which is regularly conducted as a hospital, dispensary or infirmary from using or administering alcoholic liquors to bona fide patients. Institutions and the divisions thereof provided in this section may carry a stock of alcoholic liquors sufficient for this purpose;
(e) Religious organizations from using wine for sacramental purposes. (WVaC 60-6-5)

521.03 PROHIBITED ACTS GENERALLY.

No person shall:
(a) Manufacture or sell in this City, without a license, any alcoholic liquor except as permitted by West Virginia Code Chapter 60;
(b) Aid or abet in the manufacture or sale of alcoholic liquor without a license, except as permitted by West Virginia Code Chapter 60;
(c) Sell or tender without a license any alcoholic liquor other than provided by West Virginia Code Article 60-6;
(d) Adulterate any alcoholic liquor by the addition of any drug, methyl alcohol, crude, unrectified or impure form of ethyl alcohol, or any other foreign or deleterious substance or liquid;
(e) Refill, with alcoholic liquor, any bottle or other container in which alcoholic liquor has been sold at retail in this State;
(f) Advertise any alcoholic liquor in this City except in accordance with the rules and regulations of the West Virginia Alcohol Beverage Control Commissioner;
(g) Distribute, deal in, process or use crowns, stamps or seals required under the authority of West Virginia Code Chapter 60, except in accordance with the rules and regulations prescribed by the West Virginia Alcohol Beverage Control Commissioner.
(h) Manufacture or sell, aid or abet in the manufacture or sale, possess, transport or ship, use or in any other manner provide or furnish powdered alcohol.
(WVaC 60-6-7)
(i) Manufacture, sell, give or offer to make a sale or gift of, transport or otherwise possess any alcoholic liquor or nonintoxicating beer except as permitted by West Virginia Code Chapters 11 and 60.
(j) Whoever violates subsection (a) to (h) hereof is guilty of a misdemeanor for a first offense.

521.03 A SALE OF ALCOHOL ON SUNDAYS.

(a) "On-Premise Licensee" shall be defined to mean any person who holds one of the following Class A licenses issued by the West Virginia Alcohol Beverage Control Administration to sell alcoholic beverages:

(1) Private Club (less than 1,000 members) - liquor, wine & non-intoxicating beer;
(2) Private Club (1,000 or more members) - liquor, wine & non-intoxicating beer;
(3) Fraternal Club (Non-Profit) - liquor, wine & non-intoxicating beer;
(4) Fraternal Club (Non-Profit) - non-intoxicating beer;
(5) Tavern - non-intoxicating beer;
(6) Private Wine Restaurant - wine only;
(7) Private Wine Restaurant - wine & non-intoxicating beer only;
(8) Private Wine Spa - wine only;
(9) Private Wine Bed & Breakfast - wine only;
(10) Brew Pub (Resident Brewer/Importer License Required);
(11) Special Events (Fairs and Festivals) - wine & non-intoxicating beer;
(12) Special Events (Fairs and Festivals) - wine only;
(13) Special Events (Fairs and Festivals) - non-intoxicating beer only; or Growler.

(b) "Person" shall be defined to mean an individual, firm, corporation, association, partnership, limited partnership, Limited Liability Company or other entity, regardless of its form, structure or nature.

(c) Notwithstanding anything to the contrary contained in the Code of City of Charles Town, Code of West Virginia, or Code of State Rules of West Virginia, any On-Premise Licensee shall be permitted to sell alcoholic beverages pursuant to the terms of its license, beginning at ten o'clock a.m. (10:00 a.m.) on any Sunday.

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

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

(a) Sell, furnish, tender or serve alcoholic liquors of a kind other than that which the license or West Virginia Code Chapter 60 authorizes him or her to sell;

(b) Sell, furnish, tender or serve beer to which wine, spirits or alcohol has been added;

(c) Sell, furnish, tender or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture of the wine under rules of the Commission; (WVaC 60-6-8)

(d) (1) Sell, furnish, tender or serve alcoholic liquors or nonintoxicating beer to a person who is:
A. Less than twenty-one years of age;
B. An habitual drunkard;
C. Intoxicated;
D. Addicted to the use of any controlled substance as defined by West Virginia Code Chapter 60A;
E. Mentally incompetent.

(2) It shall be a defense to a violation of subsection (d)(1)A. hereof if the seller shows that the purchaser:
A. Produced written evidence which showed his or her age to be at least the required age for purchase and which bore a physical description of the person named on the writing which reasonably described the purchaser; or
B. Produced evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.
(WVaC 60-3-22; 60-6-8)

(e) Sell, furnish, tender or serve alcoholic liquors except as authorized by his or her license;

(f) Sell, furnish, tender or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: provided, that under certain requirements exceptions to liquor by the drink are as follows:

(1) A private club licensed under West Virginia Code 60-7-1 et seq., that is in good standing with the Commissioner and has paid a $1000 on-premises only bottle service fee to the

Commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by such a private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and the liquor bottle shall be removed from the licensed premises by any person or the licensee; and

(2) A Class A licensee licensed under West Virginia Code 60-8-1 et seq., may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless such licensee has obtained a license or privilege authorizing other activity;

(g) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: provided, that a licensee may sell, furnish, tender, and serve up to fifteen recipes of pre-mixed beverages consisting of alcoholic liquors and nonalcoholic mixer, in a manner approved by the Commissioner and in accord with public health and safety standards:

(1) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(2) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each use or after each batch of the pre-mixed beverage is made; and

(3) The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment for inspection by the Commissioner and health inspectors;

(4) A violation or violations of this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under West Virginia Code Chapter 60 or 11-16-1 et seq.

(h) Sell, furnish, tender or serve any alcoholic liquor when forbidden by the provisions of this article;

(i) Sell, possess, possess for sale, tender, serve, furnish or provide any powdered alcohol;

(j) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this article.

Whoever violates this section is guilty of a misdemeanor for the first offense.

(WVaC 60-6-8)

521.05 UNLAWFUL PURCHASE OF ALCOHOLIC LIQUORS FROM STATE AGENCY.

No person shall:

(a) Being under the age of twenty-one years, for the purpose of purchasing alcoholic liquors from a State liquor store or an agency, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase alcoholic liquors from a State liquor store or an agency.

(b) Knowingly buy for, give to or furnish to anyone under the age of twenty-one years to whom they are not related by blood or marriage, any alcoholic liquors from whatever source. (WVaC 60-3-22a)

521.06 INTOXICATION OR DRINKING IN PUBLIC PLACES; ILLEGAL POSSESSION.

(a) A person shall not:

(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor or nonintoxicating beer in a public place;

(3) Tender a drink of alcoholic liquor or nonintoxicating beer to another person in a public place;

(4) Operate a business without a license issued under West Virginia Code 60-1-1 et seq., which knowingly facilitates the consumption of alcoholic liquors in a public place by providing for on-site items such as cups, glasses, ice and nonalcoholic beverages used to mix with alcoholic liquors, refrigeration, or on-site storage of alcoholic liquors in a lounge area or space for persons to gather, perhaps offering musical entertainment, exotic

(5) dancing, or other such nude entertainment, or other similar activity or entertainment. Such business may be commonly known as a "bring your own bottle", " bring your own booze" or "BYOB" establishments;
(6) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commissioner, without having first obtained written authority from the Commissioner therefor; or
(7) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.
(8) Possess any open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entrance way, street, lane, or other public place.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section:

(1) If there is some non-intoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying the date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility: provided, that the issuance of a citation shall be used whenever feasible;
(2) If it does not impose an undue burden on the officer, he or she may, after issuance of the citation, transport the individual to the individual's present residence or arrange for the transportation;
(3) If the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by West Virginia Code 27-11-17; or
(4) If the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness. The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed, and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken:

(1) If the individual is no longer incapacitated, he or she may be released;
(2) If the individual is still incapacitated but a non-intoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or
(3) If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of West Virginia Code Article 27-5 or 6A.

(d) Any law-enforcement officer may arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law- enforcement officer violates any one or more of subdivisions (1) through (5), subsection (a) of this section: provided, that the law-enforcement officer may use

reasonable force to prevent harm to himself or herself, the individual arrested or others in carrying out the provisions of this section. (Ord. 2017-004. Passed 1-2-18.)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

(a) It is unlawful:

(1) For any licensee, his, her, its, or their servants, agents, or employees, to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises, or in any rooms directly connected, nonintoxicating beer on weekdays between the hours of 2:00 a.m. and 6:00 a.m., except in private clubs licensed under the provisions of West Virginia Code Article 60-7, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: provided, that a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to twenty-five dollars ($25.00) per stock keeping unit, to either trade or consumer buyers; provided, that a distributor may offer, for sale or rent, tanks of carbonic gas: provided, however, that, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sell of draught line services may be negotiated at no less than actual cost: provided further, that a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless specifically authorized by the Commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance

with rules promulgated by the Commissioner, and where written records of all cleanings are not maintained and available for inspection;

(8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

(9) For any licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code 60-7-1 et seq or a holder of a license or a private wine restaurant issued under the provisions of West Virginia Code 60-8-1 et seq. to possess a Federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code 60-7-1 et seq., or the premises of a private wine restaurant licensed under the provisions of West Virginia Code 60-8-1 et seq.;

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: provided, that the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code 60-7-1 et seq. nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code 60-8-1 et seq. insofar as the private wine restaurant is authorized to serve wine;

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased, or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

(13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: provided, that a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

(14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this State or Municipality;

(17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than eighteen years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of eighteen years or soft drink lawfully prepared and served or sold for consumption on the premises; is in or upon the premises in the immediate company of a parent or legal guardian, or where and while a person under the age of eighteen years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful

service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises:

(19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: provided, that nothing in this section is considered to prohibit sales of convenience between distributors licensed in this State where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

(20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the Commissioner in accordance with the provisions of West Virginia Code Chapter 29A.

(b) Any person who violates any provision of West Virginia Code 11-16, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than twenty-five dollars ($25.00), nor more than five hundred dollars ($500.00), or confined in the county or regional jail for not less than thirty days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

A. Has installed a transaction scan device on its licensed premises; and

B. Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer or nonintoxicating craft beer is sold, furnished, or given away by the use of the transaction device is not subject to:

1. Any criminal penalties whatsoever, including those set forth in subsection (b) of this section;
2. Any administrative penalties from the Commissioner; or
3. Any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer or nonintoxicating craft beer to an individual who is less than twenty- one years of age by one of his or her employees, servants, or agents.

Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnish, or given away nonintoxicating beer to an individual less than twenty-one years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence:

A. That is has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away;

B. That it has communicated this policy to each employee, servant, or agent; and

C. That it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken

corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(4) Nothing in this section nor any rule of the Commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the Commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than eighteen years of age but at least sixteen years of age: provided, that the person's duties may include the sale of nonintoxicating beer or alcoholic liquors only when directly supervised by a person twenty-one years of age or older; provided, however, that the authorization to employ persons under the age of eighteen years shall be clearly indicated on the licensee's license. (WVaC 11-16-18)

521.08 UNLAWFUL PURCHASE OF NONINTOXICATING BEER.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve nonintoxicating beer.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver nonintoxicating beer.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years for the purpose of purchasing nonintoxicating beer, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or shall illegally attempt to purchase nonintoxicating beer.

(c) No person shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one years to whom they are not related by blood or marriage.

(WVaC 11-16-19)

521.09 ACTS PROHIBITED BY PRIVATE CLUB LICENSEE.

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's

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.)

521.10 UNLAWFUL PURCHASE FROM PRIVATE CLUB.

(a) No person under the age of twenty-one years shall order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a private club licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Provided, that nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing nonintoxicating beer, wine or alcoholic liquors from a private club licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent or not actually his or her own, or illegally attempt to purchase nonintoxicating beer, wine or alcoholic liquors from a licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one years any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee.

(WVaC 60-7-12a)

521.11 ACTS PROHIBITED BY WINE DEALERS.

It shall be unlawful:

(a) For a supplier or distributor to sell or deliver wine purchased or acquired from any source other than a person registered under the provisions of West Virginia Code 60-8-6, or for a retailer to sell or deliver wine purchased or acquired from any source other than a licensed distributor or a farm winery as defined in West Virginia Code 60-1-5a;

(b) Unless otherwise specifically provided for by the provisions of West Virginia Code Article 60-8, for a licensee under West Virginia Code Article 60-8 to acquire, transport, possess for sale, or sell wine other than in the original package;

(c) For a licensee, his or her servants, agents or employees to sell, furnish or give wine to any person less than twenty-one years of age or to a mentally incompetent person or person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs: provided that the provisions of West Virginia Code 60-3A-25a shall apply to sales of wine;

(d) For a licensee to permit a person who is less than eighteen years of age to sell, furnish or give wine to any person, except as provided for in subsection (g) of this section;

(e) For a supplier or distributor to sell or deliver any brand of wine purchased or acquired from any source other than the primary source of supply of the wine which granted the distributor the right to sell such brand at wholesale. For the purposes of this article, "primary source of supply" means the vintner of the wine, the importer of a foreign wine who imports the wine into the United States, the owner of a wine at the time it becomes a marketable product, the bottler of a wine, or an agent specifically authorized by any of the above enumerated persons to make a sale of the wine to a West Virginia distributor: provided, that no retailer shall sell or deliver wine purchased or acquired from any source other than a distributor or farm winery licensed as such in this State: provided, however, that nothing herein is considered to prohibit sales of convenience between distributors licensed in this State wherein one such distributor sells, transfers or delivers to another such distributor a particular brand or brands for sale at wholesale of which brand or brands such other distributor has been authorized by a licensed supplier to distribute. The Commissioner shall promulgate legislative rules necessary to carry out the provision of this subsection;

(f) For a person to violate any rule promulgated by the Commissioner under West Virginia

Code Article 60-8.
(g) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least eighteen years of age to serve in any licensee's lawful employment, including the sale of wine or distribution of wine on behalf of a winery, farm winery, farm entity, supplier or distributor under the provisions of this article. With the prior approval of the Commissioner, a licensee may employ persons who are less than eighteen years of age but at least sixteen years of age: Provided, that the person's duties may include the sale of nonintoxicating beer or wine only when directly supervised by a person twenty-one years of age or older: Provided, however, that the authorization to employ persons under eighteen years of age shall be clearly indicated on the licensee's license: Provided, further, that nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least twenty-one years of age for the ordering and delivery of wine when licensed for the ordering and delivery of wine under the provisions of this article.
(WVaC 60-8-20)

521.12 UNLAWFUL PURCHASE OF WINE.

(a) No person under the age of twenty-one years shall purchase, consume, sell, possess or serve wine or other alcoholic liquor.

Nothing in this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of wine. Further, nothing in this section, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: provided, that such person shall not sell or deliver wine or alcoholic liquor.

Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing wine or alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years, for the purpose of purchasing wine or other alcoholic liquors from a licensee, shall misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent, or not actually his or her own, or illegally attempt to purchase wine or other alcoholic liquors.

(c) No person shall knowingly buy for, give to or furnish wine or other alcoholic liquors from any source to anyone under the age of twenty-one years to whom they are not related by blood or marriage. (WVaC 60-8-20a)

521.13 UNLAWFUL PURCHASE FROM RETAIL LIQUOR LICENSEE.

(a) (1) No person who is eighteen or over but under the age of twenty-one years shall purchase, consume, sell, serve or possess alcoholic liquor. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in West Virginia Code 49-1-4, and, upon adjudication therefor, shall be referred to the Department of Health and

Human Resources for services, as provided in West Virginia Code 49-5-11.

(2) Nothing is this section, nor any rule or regulation of the Alcohol Beverage Control Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) No person under the age of twenty-one years shall, for the purpose of purchasing liquor from a retail licensee, misrepresent his or her age, or for such purpose present or offer any written evidence of age which is false, fraudulent, or not actually his or her own, or illegally attempt to purchase liquor from a retail licensee.

(c) No person shall knowingly buy for, give to or furnish to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source.

(d) No person while on the premises of a retail outlet shall consume liquor or break the seal on any package or bottle of liquor.

(WVaC 60-3A-24)

521.14 HARD CIDER.

(a) "Hard Cider" means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey or other fruit, or from apple, pear, peach, or other fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent (½%) and less than twelve and one-half percent (12 ½%) alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as a wine, wine product, or as a substitute for wine. (WVaC 60-8A-1)

(b) Except as stated in West Virginia Code Article 60-8A, all wine licenses and other wine requirements set forth in West Virginia Code 60-8-1 et seq., 60-4-3b, and 60-6-2, shall apply to the manufacture, distribution or sale of hard cider. Any person or licensee legally authorized to manufacture, distribute, or sell wine may manufacture, distribute or sell hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as such license or legal right authorizes him or her to manufacture, distribute or sell wine. No additional wine license fees shall be charged for the privilege of manufacturing, distributing, or selling hard cider.

(c) Except as stated in West Virginia Code Article 60-8A, all hard cider distributors are bound by all wine distribution requirements set forth in West Virginia Code 60-8-1 et seq., 60-4-3b, and 60-6-2, which shall apply to distribution of hard cider. Any person or licensee legally authorized to distribute hard cider may distribute hard cider in the same manner and to the same persons, and subject to the same limitations and conditions, as a license or legal right would authorize him or her to distribute wine. An additional hard cider license fee shall not be charged for the privilege of distributing hard cider.

(WVaC 60-8A-2)

521.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99 for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 521.05(a), 521.12(b) or 521.13(b) shall be fined not more than fifty dollars ($50.00), or imprisoned for not more than seventy-two hours, or both, or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for not more than one year.

(b) Whoever violates Section 521.05(b), 521.12(c) or 521.13(d) shall be fined not more than one hundred dollars ($100.00), or imprisoned for not more than ten days, or both.

(WVaC 11-16-19, 60-3-22a, 60-8-20a, 60-3A-24)

(c) Whoever violates subdivision (1), subsection (a) of Section 521.06 shall be sentenced by a judicial officer in accordance with the following options:

(1) Upon first offense, a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00). If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours duration at the nearest community mental health - mental retardation center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

(2) Upon conviction for a second offense, a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center;

(3) Upon third and subsequent convictions, a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) and not less than five nor more than thirty days in jail or a fine of not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) and completion of not less than five hours of alcoholism counseling at the nearest community mental health - mental retardation center: provided, that three convictions for public intoxication within the preceding six months is considered evidence of alcoholism. For the educational counseling programs described in this subsection the community mental health - mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(4) A person charged with a violation of subdivision (1), subsection (a) of Section 521.06 who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to West Virginia Code Articles 27-5 and 6A.

(d) Whoever violates subdivision (2), subsection (a) of Section 521.06 shall be fined not less than five dollars ($5.00) nor more than one hundred dollars ($100.00); and upon a second or subsequent conviction thereof, shall be fined not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both.

(e) Whoever violates subdivision (3), subsection (a) of Section 521.06 shall be fined not less than five dollars ($5.00) nor more than one hundred dollars ($100.00) or imprisoned not more than thirty days, or both.

(f) Whoever violates subdivision (4) or (5), subsection (a) of Section 521.06 shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). Upon conviction of a second or subsequent offense, he or she is guilty of a felony and, shall be prosecuted under appropriate State law.

(WVaC 60-6-9)

(g) (1) Whoever violates Section 521.08(a) shall be fined an amount not to exceed five hundred dollars ($500.00) or shall be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed seventy-two hours, or both fined and

confined or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not to exceed one year.

(2) Whoever violates Section 521.08(b) shall be fined an amount not to exceed one hundred dollars ($100.00) or shall be confined in jail, or in the case of a juvenile, a juvenile detention facility, for a period not to exceed seventy-two hours, or both such fine and confinement or, in lieu of such fine and confinement, may, for the first offense, be placed on probation for a period not exceeding one year.

(3) Whoever violates Section 521.08(c) shall be fined an amount not to exceed one hundred dollars ($100.00) or shall be confined in jail for a period not to exceed ten days, or both such fine and confinement.

(h) Whoever violates Section 521.09 shall be fined not less than five hundred dollars ($500.00) or more than one thousand dollars ($1,000), or imprisoned not more than thirty days, or both.
(WVaC 60-7-12)

(i) Whoever violates Section 521.10(a) or (b) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than thirty days, or both, and in addition may, for the first offense be placed on probation for a period not to exceed one year.

(j) Whoever violates Section 521.10(c) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than ten days, or both.
(WVaC 60-7-12a)

(k) Whoever violates 521.12(a) or 521.13(a) shall be fined not more than five hundred dollars ($500.00) or imprisoned not more than seventy-two hours, or both, or in lieu thereof, may, for the first offense, be placed on probation for a period not to exceed one year.
(WVaC 11-16-19, 60-8-20a, 60-3A-24)

(l) Whoever violates Section 521.13(c) shall be fined not more than two hundred fifty dollars ($250.00) or imprisoned not more than ten days, or both.
(WVaC 60-3A-24)

First Reading: October 3, 2022

Passed on Second Reading: November 7, 2022

Enacted: 7th this day of November, 2022

City of Charles Town

Robert M. Trainor
Mayor

Attest:

John Barkley
City Clerk

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)(1) 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) "Controlled 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 over the age of sixteen solely for self-defense purposes.
(f) "Drug" has the same meaning as is described 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 (l) 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.
(j) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person who was struck. The terms "metallic or false knuckles" includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.
(k) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in a manner that allows the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.
(l) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.
(m) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.
(n) "Revolver" means a short firearm having a cylinder of several chambers that are brought

successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.
(o) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle. (WVaC 61-7-2)

545.02 CARRYING A DEADLY WEAPON WITHOUT PROVISIONAL LICENSE OR OTHER AUTHORIZATION BY PERSONS UNDER TWENTY-ONE YEARS OF AGE.

(a) No person under twenty-one years of age and not otherwise prohibited from possessing firearms under Section 545.03 shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of the West Virginia Code.
(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor.
(WVaC 61-7-3)

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.

(a) The provisions in Section 545.02 do not apply to any person at least eighteen years of age and fewer than twenty-one years of age who is:

(1) Carrying a deadly weapon upon his or her own premises;
(2) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or
(3) Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;
(4) A member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this State or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;
(5) A law-enforcement officer or law-enforcement official or chief executive as defined in West Virginia Code 30-29-1;
(6) An employee of the West Virginia Division of Corrections duly appointed pursuant to West Virginia Code 25-1-11c, while the employee is on duty;
(7) A member of the United States Armed Forces, Reserve or National Guard;
(8) A resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in West Virginia Code 61-7-6a;
(9) A federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and
(10) A parole officer appointed pursuant to West Virginia Code 62-12-14 in the performance of his or her duties.

(b) The following judicial officers and prosecutors and staff are exempt from paying any application fees or licensure fees required under the West Virginia Code. However, they shall make application and satisfy all licensure and handgun safety and training requirements to obtain

a license as set forth in West Virginia Code 61- 7-4:

(1) Any justice of the Supreme Court of Appeals of West Virginia;
(2) Any circuit judge;
(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;
(4) Any family court judge;
(5) Any magistrate;
(6) Any prosecuting attorney;
(7) Any assistant prosecuting attorney; or
(8) Any duly appointed investigator employed by a prosecuting attorney. (WVaC 61-7-6)

545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.

(a) Except as provided in this section, no person shall possess a firearm, as such is defined in Section 545.01 , who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
(2) Is habitually addicted to alcohol;
(3) Is an unlawful user of or habitually addicted to any controlled substance;
(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of West Virginia Code Chapter twenty-seven or in similar law of another jurisdiction: provided, that once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession; provided, however, that the Mental Hygiene Commissioner or Circuit Judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;
(5) Is an alien illegally or unlawfully in the United States;
(6) Has been discharged from the armed forces under dishonorable conditions;
(7) Is subject to a domestic violence protective order that:
   A. Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;
   B. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
   C. 1. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
      2. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of West Virginia Code 61-2-28, or the provisions of West Virginia Code 61-2-9(a) or (b), or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or

ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

(b) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: provided, that a person prohibited from possessing a firearm by the provisions of subsection (a)(4) of this section may petition to regain the ability to possess a firearm in accordance with West Virginia Code 61-7A-5.

(c) Any person may carry a concealed deadly weapon without a license therefor who is:

(1) At least twenty-one years of age;

(2) A United States citizen or legal resident thereof;

(3) Not prohibited from possessing a firearm under the provisions of this section; and

(4) Not prohibited from possessing a firearm under the provisions of 18 U.S.C. §922(g) or (n).

(d) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.
(WVAC 61-7-7)

545.05 POSSESSION OF DEADLY WEAPONS BY MINORS PROHIBITED.

(a) Notwithstanding any other provision of this article to the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: provided, that a minor may possess a firearm upon premises owned by such minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property. Nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

(b) A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of West Virginia Code 49-4- 701 et seq., and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent. (WVaC 61-7-8)

545.06 POSSESSION OF MACHINE GUNS.

No person shall carry, transport or have in his possession, any machine gun, submachine gun or any other fully automatic weapon unless he or she has fully complied with applicable Federal statutes and all applicable rules and regulations of the Secretary of the Treasury of the United States relating to such firearms. (WVaC 61-7-9)

545.07 DISPLAY OR SALE OF DEADLY WEAPONS.

No person shall publicly display and offer for rent or sale, or, where the person is other than a

natural person, knowingly permit an employee thereof to publicly display and offer for rent or sale, to any passersby on any street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun or ammunition for same. (WVaC 61-7-10)

545.08 BRANDISHING DEADLY WEAPONS.

No person armed with a firearm or other deadly weapon, whether licensed to carry the same or not, shall carry, brandish or use such weapon in a way or manner to cause, or threaten, a breach of the peace. (WVaC 61-7-11)

545.09 POSSESSING DEADLY WEAPONS ON PREMISES OF EDUCATIONAL FACILITIES.

(EDITOR'S NOTE: Former Section 545.09 which was derived from West Virginia Code 61-7-11a is no longer included in the Codified Ordinances. By Acts 1995 Chapter 90, the West Virginia Legislature reclassified such offense as a felony. Charges for possessing deadly weapons on premises of educational facilities should now be filed under state law.)

545.10 FIREWORKS SALE, POSSESSION AND DISCHARGE.

(a) Definitions: As used in this section, the following terms shall be defined as follows:

(1) "APA Standard 87-1" means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

(2) "Consumer fireworks" means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets;

(3) "Firework" or "fireworks" means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks does not include sparkling devices, novelties, toy caps or model rockets;

(4) "Minor" means an individual who is less than 18 years of age;

(5) "Sparkling devices" means "ground or handheld sparkling devices" as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5;

(b) Ignition, Discharge, and Use of Consumer Fireworks. A person shall not ignite, discharge, or use consumer fireworks within the Charles Town City limits.

(c) Exemptions. Exemption requests to subsection (b) shall be submitted in writing to the City Council; the City Council will render its decision after appropriate consultation with the Fire and Police Chiefs.

(d) Manufacture, Transportation, Distribution, or Sale of Consumer Fireworks. Pursuant to West Virginia Code 529-3E, it is unlawful for a person to manufacture, wholesale, distribute, import, sell or store for the purpose of resale, consumer fireworks, sparkling devices, novelties or toy caps without a license, registration, certificate or permit from the State Fire Marshal.

(e) Responsibility. Any damage to property or persons resulting from the ignition, discharge, or use of consumer fireworks, whether or not intentional, is the responsibility of the person igniting, discharging, or using the consumer firework(s) that is determined by competent

authority to have caused the damage.

(f) Violations of this article.

(1) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

(2) A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

(3) A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:

A. Is under the influence of alcohol;

B. Is under the influence of any controlled substance;

C. Is under the influence of any other drug; or

D. Is under the combined influence of alcohol and any controlled substance or any other drug.

(4) A person who is less than eighteen years of age may not possess consumer fireworks.

(g) Determination of Violation; Seizure. If a police officer determines that a violation of this section has occurred, then the officer may seize the consumer fireworks as evidence of the violation.

(h) Penalty.

(1) A person in violation of this section is subject to a fine up to $500.00, plus the costs of prosecution.

(2) Following final disposition of a finding of responsibility for a violation of this section, the city may dispose of or destroy any consumer fireworks retained as evidence in that prosecution.

(3) In addition to any other penalty, a person that is found responsible for a violation of this section is subject to reimbursing the city for the costs of storing, disposing of, or destroying consumer fireworks that were confiscated for a violation of this section.

(i) Severability. The provisions of this section shall be liberally construed to accomplish its objective and purposes. If any provision of this section 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. 2018-001. Passed 1-2-18.)

545.11 DISCHARGING FIREARMS.

(a) No person shall discharge any air gun, rifle, shotgun, revolver, pistol or other firearm within the corporate limits of the Municipality.

(b) This section does not apply when firearms are used in self defense, in the discharge of official duty or when otherwise lawfully authorized.

545.12 THROWING OR SHOOTING MISSILES.

No person shall throw, shoot or propel an arrow, missile, pellet, stone, metal or other similar substance capable of causing physical harm to persons or property, in or on any public place, in or on the property of another, or from any private property into or onto any public place or the property of another. This section does not apply to supervised archery ranges or instruction nor when otherwise lawfully authorized.

545.99 PENALTY.

(EDITOR'S NOTE: See Section 501.99(a) for general Code penalty if no specific penalty is provided.)

(a) Whoever violates Section 545.04 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than thirty days, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this State or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this State or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in West Virginia Code 60A-2-204, 60A-2-205 and 60A- 2-206, and who possesses a firearm as such is defined in Section 545.01 shall be guilty of a felony and shall be prosecuted under appropriate State law. The provisions of Section 545.04(b) shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(WVaC 61-7-7)

First Reading: October 3, 2022

Passed on Second Reading: November 7, 2022

Enacted: 7th this day of November, 2022

City of Charles Town

Attest:

Robert M. Trainor
Mayor

John Barkley
City Clerk