

CODIFIED ORDINANCES OF GLEN DALE
PART FIVE - GENERAL OFFENSES CODE

- Art. 501. Administration and Law Enforcement.**
- Art. 505. Animals and Fowl.**
- Art. 509. Disorderly Conduct and Peace Disturbance.**
- Art. 511. Fair Housing.**
- Art. 513. Gambling.**
- Art. 517. Indecency and Obscenity.**
- Art. 521. Liquor Control.**
- Art. 525. Minors.**
- Art. 527. Noise Control.**
- Art. 529. Offenses Relating to Persons.**
- Art. 533. Offenses Relating to Property.**
- Art. 541. Railroads.**
- Art. 545. Weapons and Explosives.**

CODIFIED ORDINANCES OF GLEN DALE
PART FIVE - GENERAL OFFENSES CODE

ARTICLE 501
Administration and Law Enforcement

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| <p>501.01 Refusal to aid officer.</p> <p>501.02 Obstructing or giving false information to an officer; fleeing.</p> <p>501.03 False fire alarm.</p> <p>501.04 False reports concerning bombs or other explosive devices.</p> <p>501.05 Impersonating an official or law enforcement officer.</p> | <p>501.06 Attempts.</p> <p>501.07 Citation in lieu of arrest; failure to appear.</p> <p>501.08 Falsely reporting an emergency incident.</p> <p>501.09 False report.</p> <p>501.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Specific types of bribery - see W. Va. Code 3-1-1 et seq.,
 15-2-17 et seq., 18-2A-9, 61-10-15 and 61-10-22
 Penalty not to exceed that provided in W. Va. Code
 Ch. 61 - see W. Va. Code 8-12-5(57)
 Crimes against public justice - see W. Va. Code Art. 61-5
 Bribery and corrupt practices generally - see W. Va. Code
 Art. 61-5A
 Failure to comply with lawful order of police officer -
 see TRAF. 303.02

501.01 REFUSAL TO AID OFFICER.

No person shall, when required by the Police Chief or any other officer, refuse or neglect to assist him in the execution of his office in a criminal case, in the preservation of the peace or in the apprehension or securing of any person for a breach of the peace or in any case of escape or rescue.

(WVaC 61-5-14)

501.02 OBSTRUCTING OR GIVING FALSE INFORMATION TO AN OFFICER; FLEEING.

(a) No person shall by threats, menaces, acts or otherwise, forcibly or illegally hinder or obstruct, or attempt to hinder or obstruct, any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity.

(b) No person shall, with intent to impede or obstruct a law enforcement officer in the conduct of an investigation of a felony offense, knowingly and willfully make a materially false statement. Provided, that the provisions of this subsection (b) shall not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For the purposes of this subsection, "law enforcement officer" shall not include a watchman, state police or college security personnel who is not a certified law-enforcement officer.

(c) No person shall intentionally flee or attempt to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her.

(d) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer, or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop.

(e) No person shall intentionally flee or attempt to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and cause damage to the real or personal property of any person during or resulting from his or her flight.

(f) For purposes of this section, "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in West Virginia Code 17A-1-1 whether or not it is being operated on a public highway at the time and whether or not it is licensed by the State.

(g) For purposes of this section, "flee" and "fleeing" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer, probation officer, or parole officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop. (WVaC 61-5-17)

(h) No person shall refuse or fail to comply with any lawful order, direction or signal of a police officer.

501.03 FALSE FIRE ALARM.

No person shall make, turn in or telephone, or by use of any means or method of communication aid or abet in the making or turning in of any alarm of fire which he knows to be false at the time of making such alarm. (WVaC 29-3-21)

501.04 FALSE REPORTS CONCERNING BOMBS OR OTHER EXPLOSIVE DEVICES.

(a) No person shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device.

(b) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section for a second offense or whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and prosecuted under appropriate State law. (WVaC 61-6-17)

501.05 IMPERSONATING AN OFFICIAL OR LAW ENFORCEMENT OFFICER.

(a) No person shall falsely represent himself or herself to be a law-enforcement officer or law-enforcement official or be under the order or direction of any such person. No person not a law-enforcement officer or law-enforcement official shall wear the uniform prescribed for such persons, or the badge or other insignia adopted for use by such persons with the intent to deceive another person.

For purposes of this section, "law-enforcement officer" and "law-enforcement official" shall have the meanings set forth in West Virginia Code 30-29-1 except that such terms shall not include members of the State Division of Public Safety and shall not include individuals hired by non-public entities for the provision of security services.
(WVaC 61-1-9)

(b) No person shall falsely represent himself to be an officer or employee of the Municipality, or exercise or attempt to exercise any of the duties, functions or powers of a Municipal officer. No person not a member of the Fire Department, for the purpose of such false representation, shall wear a uniform or part thereof similar to the uniform worn by a member of the Fire Department.

501.06 ATTEMPTS.

Every person who attempts to commit an offense, but fails to commit or is prevented from committing it, shall be subject to the penalty provided in Section 501.99 if the offense is punishable by confinement in jail.
(WVaC 61-11-8)

501.07 CITATION IN LIEU OF ARREST; FAILURE TO APPEAR.

A police officer may issue a citation instead of making an arrest for the following offenses, if there are reasonable grounds to believe that the person being cited will appear to answer the charge:

- (a) Any misdemeanor, not involving injury to the person, committed in a police officer's presence: provided, that the officer may arrest the person if he has reasonable grounds to believe that the person is likely to cause serious harm to himself or others; and
- (b) When any person is being detained for the purpose of investigating whether such person has committed or attempted to commit shoplifting, pursuant to Section 533.01 of this Code.

The citation shall provide that the defendant shall appear within a designated time.

If the defendant fails to appear in response to the citation or if there are reasonable grounds to believe that he will not appear, a complaint may be made and a warrant shall issue. When a physical arrest is made and a citation is issued in relation to the same offense, the officer shall mark on the citation, in the place specified for court appearance date, the word "arrested" in lieu of the date of court appearance.

(WVaC 62-1-5(a))

501.08 FALSELY REPORTING AN EMERGENCY INCIDENT.

A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed or circulated is false or baseless, he:

- (a) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency under circumstances in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or
- (b) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness or other emergency in which it is likely that public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or
- (c) Reports to a law enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur or an allegedly impending occurrence of an offense or incident which is not in fact about to occur or false information relating to an actual offense or incident or to the alleged implication of some person therein; or
- (d) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles or other emergency vehicles.

(WvaC 61-6-20)

501.09 FALSE REPORT.

No person shall make or give a false report or false information to any police or fire officer of the City.

501.99 PENALTY.

(a) Whoever violates any provision of this Part Five - General Offenses Code for which no other penalty is provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both. Each day such violation continues shall constitute a separate offense.

(b) Whoever violates Section 501.01 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both. (WVaC 61-5-14)

(c) Whoever violates Section 501.02(b) shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than five days, or both.

(d) Whoever violates Section 501.02(d) shall be fined not more than one thousand dollars (\$1,000) and shall be imprisoned not more than thirty days.

(e) Whoever violates Section 501.02(e) shall be fined not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) and shall be imprisoned for not more than thirty days. (WVaC 61-5-17)

- (f) (1) Except as provided by the provisions of subsection (f)(2) of this section, any person who violates the provisions of Section 501.03 shall be fined for a first offense not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty days, or both; and for a second and each subsequent offense fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) or imprisoned for not more than thirty days, or both.
- (2) Any person who violates the provisions of Section 501.03 with the intent to cause injury to the person of another, to cause destruction of the property of another or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and shall be prosecuted under appropriate state law.

(g) Whoever violates Section 501.04 shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.
(WVaC 61-6-17)

(h) Whoever violates Section 501.05(a) shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000).
(WVaC 61-1-9)

ARTICLE 505
Animals and Fowl

<p>505.01 Cruelty to animals. 505.02 Definitions. 505.03 Restraint. 505.04 Impoundment and violation notice. 505.05 Exposing animals to poison. 505.06 Keeping of wild animals. 505.07 Performing animal exhibitions. 505.08 Animal waste. 505.09 Sterilization. 505.10 Animal care. 505.11 Enforcement. 505.12 Bird sanctuary designated.</p>	<p>505.13 Keeping fowl. 505.14 Keeping hogs. 505.15 Dogs. 505.16 Dangerous or vicious animals. 505.17 Carrier or racing pigeons. 505.18 Hunting and trapping prohibited. 505.19 Cruelty to dogs and cats. 505.20 Display or exhibition of feral, exotic or vicious animals, snakes or birds. 505.99 Penalty.</p>
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CROSS REFERENCES

Authority to regulate the keeping of animals - see
W. Va. Code 8-12-5(26)
Authority to prevent ill-treatment of animals - see
W. Va. Code 8-12-5(27)
Domestic animal tax - see W. Va. Code 8-13-10
Disposing of dead animals - see W. Va. Code 16-9-3
Diseases among domestic animals - see W. Va. Code
Art. 19-9
Dogs generally - see W. Va. Code Art. 19-20
Vaccination of dogs - see W. Va. Code Art. 19-20A
Hunting - see W. Va. Code Art. 20-2

505.01 CRUELTY TO ANIMALS.

- (a) No person shall intentionally, knowingly or recklessly:
- (1) Mistreat an animal in a cruel manner;
 - (2) Abandon an animal;
 - (3) Withhold,
 - A. Proper sustenance, including food or water;
 - B. Shelter that protects from the elements of weather; or
 - C. Medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
 - (4) Abandon an animal to die;
 - (5) Leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
 - (6) Ride an animal when it is physically unfit;
 - (7) Bait or harass an animal for the purpose of making it perform for a person's amusement;
 - (8) Cruelly chain or tether an animal; or
 - (9) Use, train or possess a domesticated animal for the purpose of seizing, detaining or mistreating any other domesticated animal.

(b) No person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, shall knowingly and willfully administer or cause to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting such animal's performance.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which the conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, "controlled substance" has the same meaning ascribed to it by West Virginia Code 60A-1-101(d).

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. Section 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.
(WVaC 61-8-19; 1987 Code §3-1-1.)

505.02 DEFINITIONS.

As used in this article, the following terms shall have the meanings respectfully indicated:

- (a) "Animal" means any live, vertebrate creature, domestic or wild.
- (b) "Circus" means a commercial variety show featuring animal acts for public entertainment.
- (c) "Humane officer" means any person designated by the State, the County, or the City as a law enforcement officer who is qualified to perform such duties under the laws of this State.
- (d) "Owner" meaning any person, partnership or corporation owning, keeping or harboring one or more animals. An animal shall be deemed to be harbored if it is fed or sheltered for three consecutive days or more.
- (e) "Performing animal exhibition" means any spectacle, display, act or event other than circuses, in which performing animals are used.
- (f) "Pet" means any animal kept for pleasure rather than utility.
- (g) "Public nuisance" means any animal or animals which:
 - (1) Molest passersby or passing vehicles;
 - (2) Attack other animals;
 - (3) Trespass on school grounds;
 - (4) Are repeatedly at large;
 - (5) Damage private or public property;
 - (6) Bark, whine, or howl in an excessive, continuous or untimely fashion.
- (h) "Restraint" means any animal secured by a leash or lead, or within the real property limits of its owner.
- (i) "Vicious" or "dangerous" animal means:
 - (1) Any animal that constitutes a physical threat to human beings or other animals, or

- (2) Any animal which, according to the records of the appropriate authority, has inflicted severe injury on a human being without provocation on public or private property, or
 - (3) Any animal which, according to the records of the appropriate authority, has killed or seriously injured a domestic animal without provocation while off the owner's property, or
 - (4) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting, or
 - (5) Any animal which, when unprovoked, chases or approaches a person upon the streets, sidewalks or any public or private property in a menacing fashion or apparent attitude of attack, or
 - (6) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury, or to otherwise threaten the safety of human beings or domestic animals, or
 - (7) Any animal which, on three separate occasions within a twelve month period has been observed being unrestrained or uncontrolled off its owner's premises by appropriate animal control or police personnel, or has been impounded for being unrestrained or uncontrolled off its owner's premises.
- (j) "Wild animal" means any live monkey or nonhuman primate, raccoon, skunk, fox, poisonous snake, leopard, panther, tiger, lion, lynx, or any other warm-blooded animal which can normally be found in the wild state.
- (k) "Zoological park" means any facility, other than a pet shop or kennel, displaying or exhibiting one or more species of nondomesticated animals operated by a person, partnership, corporation or government agency.
(1987 Code §3-1-2.)

505.03 RESTRAINT.

- (a) All dogs and cats shall be kept under restraint.
- (b) No owner shall fail to exercise proper care and control of his animals to prevent them from becoming a public nuisance.
- (c) Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with another animal except for planned breeding.
- (d) Every vicious animal, as determined by the Municipal Court Judge shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner.
- (e) Dogs and cats shall wear identification tags or collars at all times when off the premises of their owners.
(1987 Code §3-1-3.)

505.04 IMPOUNDMENT AND VIOLATION NOTICE.

- (a) Unrestrained dogs, nuisance animals, and animals that have injured a person or other animal by biting or otherwise, may be taken by the police, animal control officers, or humane officers and impounded in an animal shelter or with a veterinarian and there confined in a humane manner. Such animals may be apprehended and impounded without court action until such time as a hearing may be held within a reasonable time in City court, pursuant to the terms of this section or Section 505.16.
- (b) Impounded dogs and cats shall be kept for not less than five working days,

(c) If by a license tag or other means, the owner of an impounded animal can be identified, the animal control officer shall immediately upon impoundment notify the owner by telephone, mail or posting at the owner's usual place of abode. If the owner of any impounded animal is unknown to such officer, the officer shall post a notice at the front door of the County Courthouse describing the animal and stating the time limit and other requirements for the reclaiming thereof.

(d) An owner reclaiming an impounded cat shall pay a fee of five dollars (\$5.00) plus the prevailing fee for each day the animal has been impounded.

(e) An owner reclaiming an impounded dog shall pay a fee of ten dollars (\$10.00), plus the prevailing fee for each day the animal has been impounded.

(f) Any animal not reclaimed by its owner within seven calendar days shall become the property of the local government authority and shall be placed for adoption in a suitable home or humanely euthanized.

(g) In addition to, or in lieu of, impounding an animal found at large, the animal control officer, humane officer or police officer may issue to the known owner of such animal a notice of article violation. Such notice shall impose upon the owner a penalty of ten dollars (\$10.00) to be paid within seven days in full satisfaction of the assessed penalty. In the event that such penalty is not paid within the time period prescribed, a warrant shall be initiated and the owner shall be punished as provided in Section 505.99.
(1987 Code §3-1-4.)

505.05 EXPOSING ANIMALS TO POISON.

No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be eaten by any animal, provided that a person may expose, on his own property, common rat poison mixed only with vegetable substances.
(1987 Code §3-1-5.)

505.06 KEEPING OF WILD ANIMALS.

(a) No person shall keep or permit to be kept on his premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee. This section shall not be construed to apply to zoological parks, performing animal exhibitions or circuses.

(b) No person shall keep or permit to be kept any wild animal as a pet.

(c) The Municipal Judge shall have the power to release or order the release of any infant wild animal kept under temporary permit which is deemed capable of survival.
(1987 Code §3-1-6.)

505.07 PERFORMING ANIMAL EXHIBITIONS.

(a) No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical electrical or manual devices in a manner which will cause, or is likely to cause, physical injury or suffering.

(b) All equipment used on a performing animal shall fit properly and be in good working condition.
(1987 Code §3-1-7.)

505.08 ANIMAL WASTE.

The owner of every animal shall be responsible for the removal of any excrete deposited by his animal on public walks, recreation areas or private property.
(1987 Code §3-1-8.)

505.09 STERILIZATION.

No unclaimed dog or cat shall be released for adoption without being sterilized, or without written agreement from the adopter guaranteeing that such animal will be sterilized.
(1987 Code §3-1-9.)

505.10 ANIMAL CARE.

(a) No owner shall fail to provide his animals with sufficient good, wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment.

(b) No person shall beat cruelly, ill-treat, torment, overload, overwork, or otherwise abuse an animal or cause, instigate, or permit any dogfight, cockfight, bullfights, or other combat between animals or between an animal and humans.

(c) No owner of an animal shall abandon such animal.

(d) Any person who, as the operator of a motor vehicle, strikes a domestic animal, shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to the local humane society.
(1987 Code §3-1-10.)

505.11 ENFORCEMENT.

The civil and criminal provisions of this article shall be enforced by those persons or agencies designated by Municipal authority. It shall be a violation of this section to interfere with a humane officer in the performance of his duties.
(1987 Code §3-1-11.)

505.12 BIRD SANCTUARY DESIGNATED.

(a) The entire area contained in the corporate limits of the City is hereby designated as a bird sanctuary.

(b) No person shall trap, shoot or molest, or attempt to trap, shoot or molest, in any manner, any bird or wild fowl, or molest or rob bird nests or wild fowl nests; provided, however, that if starlings, pigeons or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the Chief of Police, then such birds may be destroyed under the supervision of the Chief of Police, in such numbers and in such manner as is deemed advisable.

(c) The Chief of Police is directed to place signs at conspicuous places in the area advising the public of such designation.
(1987 Code §3-1-12.)

505.13 KEEPING FOWL.

(a) Fowl at Large. No person owning or having in charge any chickens, geese, ducks or other fowl shall permit such fowl to be at large with the City.

(b) Chicken Coops. No building, coop or enclosure wherein chickens or other fowl are kept shall be erected or maintained within twenty-five feet of any dwelling house in the City.

(c) Any person maintaining such building, coop or enclosure shall remove it at his own expense. (1987 Code §3-1-13.)

505.14 KEEPING HOGS.

No person shall keep or permit to be kept on his premises within the City any hog, shoat or pig. (1987 Code §3-1-14.)

505.15 DOGS.

(a) License. No person shall keep any dog above the age of six months within the City unless such person shall pay an annual license fee of one dollar (\$1.00) for male and spayed female dogs, and two dollars (\$2.00) for unspayed female dogs. Applications for such license shall be made to the County Assessor who shall issue such license. The dog license year shall be from July 1 to the next succeeding June 30.

(b) Noisy Dogs. No person shall keep or harbor upon or about his premises any dog which shall, by barking, howling, or in any other manner, disturb the comfort or quiet of any neighborhood within the City.
(1987 Code §3-1-15.)

505.16 DANGEROUS OR VICIOUS ANIMALS.

(a) Upon complaint sworn by any police officer, the City Court Judge shall determine, after hearing evidence, whether an animal constitutes a dangerous or vicious animal as defined in this Code, and whether a person summoned by the police officer is the owner or keeper of the animal.

(b) The determination as to whether an animal constitutes a dangerous or vicious animal shall be based upon evidence, documents, and testimony presented at the time of the hearing by the owner, witnesses to any incident which may be considered germane to such a determination, Health Department personnel, Animal Control personnel, police or any other person possessing information pertinent to such determination.

(c) In determining whether an animal is to be ruled vicious or dangerous, the City Court Judge shall apply the criteria set forth defining vicious or dangerous animals in Section 505.02.

(d) No animal may be declared dangerous where the basis therefor is a threat, injury or damage sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the animal, or was teasing, tormenting, abusing, or assaulting the animal or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the animal or was committing or attempting to commit a crime.

(e) Upon the determination that an animal is vicious or dangerous, and has not caused serious injury, nor is likely to cause serious injury based upon the evidence, the City Court Judge may order the animal restrained pursuant to this section and Section 505.03, if such is determined adequate to protect the public.

(f) Upon the determination that an animal is vicious or dangerous, and has not caused injury, but the City Court Judge makes a determination that the animal is likely to cause serious injury, the City Court Judge may order the animal seized and destroyed.

(g) Upon the determination that an animal is vicious or dangerous, and has caused serious injury, the City Court Judge shall order the animal seized and destroyed.

(h) Where the animal determined vicious or dangerous is not ordered destroyed, the owner or keeper shall, file with the Police Department, within 10 days of the declaration that it is vicious or dangerous, a written statement with the City Police Department of the location where the animal is housed, and anytime the ownership or location of the animal is changed, the owner or keeper shall notify the Police Department in writing within 24 hours thereof. Any such owner or keeper that fails to comply with the provisions of this subsection shall be fined not less than five hundred dollars (\$500.00).

(i) Where the animal determined vicious or dangerous is not ordered destroyed, the owner or keeper shall, at his own expense, have the licensing number assigned to such animal, or other such number as the city shall determine, tattooed upon such vicious animal by a licensed veterinarian or person trained and licensed as a tattooist. A police officer designated by the City Court Judge may, in his discretion, designate the particular location of said tattoo. Any such owner or keeper that fails to comply within 10 days after ordered to do so shall be fined not less than five hundred dollars (\$500.00).

(j) Where the animal determined vicious or dangerous is not ordered destroyed, the owner or keeper shall, at his own expense, keep the animal securely on his property in such a manner that it cannot go at large, whether by fencing, barrier, or tethering such that its chain or tether cannot reach off the premises, and if taken off premises, the animal must be muzzled and in direct control of the owner or keeper by chain or tether. Any such owner or keeper that fails to comply with the provisions of this subsection shall be fined not less than five hundred dollars (\$500.00).

(k) Any person who shall permit any dangerous or vicious animal owned or kept by him to go at large shall be fined not more than five hundred dollars (\$500.00).

(l) Any person who shall fail to restrain or take other preventative measures with respect to an animal previously declared dangerous or vicious, and the animal thereby causes serious injury, shall be fined not less than two hundred dollars (\$200.00) or more than five hundred dollars (\$500.00).

(m) Any person who shall fail to restrain or take other preventative measures with respect to an animal not previously declared dangerous or vicious, but where he has sufficient information or reason to know or believe the animal is dangerous or vicious as defined in this Code, and the animal thereby causes serious injury, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(n) Serious injury means any physical injury that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.
(1987 Code §3-1-16.)

505.17 CARRIER OR RACING PIGEONS.

(a) Molestation When Banded. No person other than the owner thereof shall shoot, kill, maim, injure, molest, entrap or detain any Antwerp messenger or racing pigeon commonly called "carrier" or "racing pigeon", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. It shall be no defense that any person knowingly committing such prohibited act did not know that the Antwerp or homing pigeon had the name of its owner or initials of the owner or an identification or registration number stamped thereon.

(b) Tampering with Identification Mark. No person other than the owner thereof or his authorized agent shall remove or alter any stamp, leg band, ring or other mark of identification attached to any Antwerp messenger or racing pigeon.

(c) Where Carrier Pigeons May be Kept and by Whom. It shall be lawful for any member of a recognized national pigeon association, which supplies pigeons to the United States armed forces in times of emergency, to keep, house and allow to fly for exercise within the City, any homing or racing pigeons which are suitable and of the type used as messengers in time of war and in civil defense and which are banded with numbered leg bands showing them to be registered with such association; provided, that such pigeons are not kept so as to constitute a nuisance or create a hazard to public health.

Any restrictions placed in plats of subdivisions requiring the approval of the City or any department thereof which are in conflict with this section are hereby declared inoperative to the extent of such conflict.

(1987 Code §3-1-17.)

505.18 HUNTING AND TRAPPING PROHIBITED.

No person shall hunt, trap, kill or attempt to kill any animal or fowl by the use of firearms, bow and arrow, air rifle or any other means within the corporate limits of the Municipality. (1987 Code §3-1-18.)

505.19 CRUELTY TO DOGS AND CATS.

No person shall cruelly, or needlessly beat, torture torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat is his or her own or that of another person. No person shall impound or confine any dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or abandon to die any maimed, sick or diseased dog or cat or be engaged in or employed at dogfighting, or pitting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or receive money for the admission of any person, or use, train or possess a dog or cat for the purpose of seizing, detaining or mistreating any other dog or cat.
(1987 Code §3-1-19.)

505.20 DISPLAY OR EXHIBITION OF FERAL, EXOTIC OR VICIOUS ANIMALS, SNAKES OR BIRDS.

(a) No person shall keep, or permit to be kept, upon his or her premises, or in public, any feral, exotic or vicious animal, snake, or bird for public display or for exhibition purposes. This prohibition applies whether the display or exhibition is for a charge of fee, or for gratuitous purposes.

(b) This prohibition shall not be applied to zoological parks, performing animal exhibitions, circuses, or veterinary clinics that are properly licensed by federal, state or local governmental agencies.

(c) In no event shall any such feral, exotic or vicious animal, snake, or bird be exhibited or displayed in such a manner that anyone other than their handler can pet, fondle, or otherwise come in direct physical contact with such feral, exotic or vicious animal, snake or bird. (1987 Code §3-1-20.)

505.99 PENALTY.

Whoever violates any provision of this article, where no other penalty is provided, shall be fined not more than five hundred (\$500.00). Each day such violation continues shall constitute a separate offense. (1987 Code §3-1-50.)

ARTICLE 509
Disorderly Conduct and Peace Disturbance

509.01	Disorderly conduct.	509.04	Disturbing the peace.
509.02	Loitering on school property.	509.05	Begging prohibited.
509.03	Wearing masks, hoods or face coverings.	509.06	Loitering on public property.
		509.99	Penalty.

CROSS REFERENCES

Authority to maintain order - see W. Va. Code 8-12-5 (19), (44)

Crimes against the peace - see W. Va. Code Art. 61-6

Intoxication or drinking in public places - see GEN. OFF. 521.06

Breach of peace with weapon - see GEN. OFF. 545.02

509.01 DISORDERLY CONDUCT.

(a) No person shall, in a public place, any State or Municipal office or office building or any other property owned, leased, occupied or controlled by the State or Municipality, a mobile home park, a public parking area, a common area of an apartment building or dormitory, or a common area of a privately owned commercial shopping center, mall or other group of commercial retail establishments, disturb the peace of others by violent, profane, indecent or boisterous conduct or language or by the making of unreasonably loud noise that is intended to cause annoyance or alarm to another person, and who persists in such conduct after being requested to desist by a law-enforcement officer acting in his lawful capacity: provided, that nothing in this subsection should be construed as a deterrence to the lawful and orderly public right to demonstrate in support or protest of public policy issues.

(b) For purposes of this section:

(1) "Mobile home park" means a privately-owned residential housing area or subdivision wherein the dwelling units are comprised mainly of mobile homes and wherein the occupants of such dwelling units share common elements for purposes of ingress and egress, parking, recreation and other like residential purposes.

(2) "Mobile home" means a moveable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:

A. Units containing parts that may be folded, collapsed or telescoped when being towed and that may be expanded to provide additional cubic capacity, and

- B. Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.
- (3) "Public parking area" means an area, whether publicly or privately owned or maintained, open to the use of the public for parking motor vehicles. (WVaC 61-6-1b)

509.02 LOITERING ON SCHOOL PROPERTY.

No person, not a student in regular attendance, shall loiter in or about any school, school building or school grounds in violation of any posted rules or regulations governing the use of any such school without written permission from the principal. (WVaC 61-6-14a)

509.03 WEARING MASKS, HOODS OR FACE COVERINGS.

(a) Except as otherwise provided in this section, no person, whether in a motor vehicle or otherwise, while wearing any mask, hood or device whereby any portion of the face is so covered as to conceal the identity of the wearer, shall:

- (1) Come into or appear upon any walk, alley, street, road, highway or other thoroughfare dedicated to public use;
 - (2) Come into or appear in any trading area, concourse, waiting room, lobby or foyer open to, used by or frequented by the general public;
 - (3) Come into or appear upon or within any of the grounds or buildings owned, leased, maintained or operated by the State or Municipality;
 - (4) Ask, request, or demand entrance or admission to the premises, enclosure, dwelling or place of business of any other person within this Municipality; or
 - (5) Attend or participate in any meeting upon private property of another unless written permission for such meeting has first been obtained from the owner or occupant thereof.
- (b) The provisions of this section do not apply to any person:
- (1) Under sixteen years of age;
 - (2) Wearing a traditional holiday costume;
 - (3) Engaged in a trade or employment where a mask, hood or device is worn for the purpose of ensuring the physical safety of the wearer;
 - (4) Using a mask, hood or device in theatrical productions, including use in mardi gras celebrations or similar masquerade balls;
 - (5) Wearing a mask, hood or device prescribed for civil defense drills, exercises or emergencies; or
 - (6) Wearing a mask, hood or device for the sole purpose of protection from the elements or while participating in a winter sport.
- (WVaC 61-6-22)

509.04 DISTURBING THE PEACE.

No person shall:

- (a) On any street, highway, public building, in or on a public or private conveyance, or public place, engage in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed.
- (b) Willfully, or being intoxicated, whether willfully or not, disrupt any meeting of the governing body of any political subdivision of this State or a division or agency thereof, or of any school, literary society or place of religious worship, or any other meeting open to the public, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, such disruption is directed.

- (c) Engage in fighting, or threaten to harm persons or property unlawfully.
- (d) Make offensively coarse utterance, gesture or display, or communicate unwarranted and grossly abusive language to any person, which by its very utterance or usage inflicts injury or tends to incite an immediate breach of the peace.
- (e) Insult, taunt or challenge another under circumstances in which such conduct is likely to provoke a violent response.
- (f) Hinder or prevent the movement of persons or vehicles on a public street, road, highway right of way or to, from, within or upon public or private property, so as to interfere with the rights of others, by any act which serves no lawful and reasonable purpose.
- (g) Create a condition which presents a risk of physical harm to persons or property.
- (h) Urinate or defecate in any public place or upon the property of any other person, except this section shall not apply to the use of restrooms and/or bathrooms.

Nothing described herein shall be interpreted or construed to prevent any constitutionally protected activity including but not necessarily limited to exercise of one's constitutionally guaranteed rights of freedom of speech or assembly. No person may be convicted under this section when his sole intent for engaging in the activities for which he was arrested was to exercise one or more of the rights guaranteed to him under the Constitution of the United States or the State Constitution or to exercise any other rights guaranteed to that person by law.

509.05 BEGGING PROHIBITED.

No person shall beg for money, goods or services within the Municipality.
(1987 Code 19A-1-3)

509.06 LOITERING ON PUBLIC PROPERTY.

(a) Definitions. "Loitering" means remaining idle in essentially one location and includes the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; to stand around and also includes the colloquial expression "hanging around". "Public place" means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the use of the public. It includes the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

(b) No person shall loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to:

- (1) Obstruct any public street, public highway, public sidewalk, public parking lot or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.
- (2) Commit in or upon any public street, public highway, public sidewalk, public parking lot or any other public place or building any act or thing which is an obstruction or interference with the free and uninterrupted use of property or with any business lawfully conducted by anyone in, upon, facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto.

(c) When any person causes or commits any of the conditions enumerated in subsection (b) herein, a law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of the section.

(d) No person shall loiter or prowl in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity, or circumstances which justify an articulable suspicion that the person may be engaged in or about to engage in a crime. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a law enforcement officer, refuses to identify himself or manifestly endeavors to conceal himself or any object.

(e) When any person causes or commits any of the conditions enumerated in subsection (d) herein, unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under subsection (d) hereof, afford the person an opportunity to dispel any alarm by identifying himself and satisfactorily explaining his presence as being for no illegal purpose. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with the preceding sentence, or if it appears at the trial that the explanation given by the accused was true and, if believed by the law enforcement officer at the time would have dispelled alarm.

(1987 Code 19A-1-4)

509.99 PENALTY.

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

(a) Whoever violates Section 509.01 shall be fined not more than one hundred dollars (\$100.00).

(WVaC 61-6-16)

(b) Whoever violates Section 509.02 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.

(WVaC 61-6-14a)

**ARTICLE 511
Fair Housing**

511.01	Designation of policy.	511.06	Scope.
511.02	Definitions.	511.07	Other legal action.
511.03	Unlawful housing practices.	511.08	Severability.
511.04	Fair Housing Board.	511.99	Penalty.
511.05	Procedures and enforcement.		

CROSS REFERENCES

Fair housing - see W. Va. Code Art. 5-11A

511.01 DESIGNATION OF POLICY.

It is hereby designated to be the continuing policy of the City of Glen Dale to do all things necessary and proper to secure for all its citizens their right to equal housing opportunities regardless of their race, color, creed, sex, marital status, religious belief, national origin or handicap. (Ord. 4-27-81.)

511.02 DEFINITIONS.

As used in this article, the following terms shall have these meanings:

- (a) "Real Estate Agent" includes any real estate broker, real estate salesman or an agent thereof, or any other person, partnership, association or corporation who for consideration sells, purchases, exchanges, rents, negotiates, offers, or attempts to negotiate the sale, purchase, exchange or rental of real property or holds himself out as engaged in the business of selling, purchasing, exchanging, renting or otherwise transferring any interest in real property.
- (b) "Board" means the Fair Housing Board created by this article.
- (c) The terms "discrimination", "discriminating" or "discriminate" means to render any differences in treatment to any person in the sale, lease rental or financing of a dwelling or housing unit because of a person's race, color, creed, sex, marital status, religious belief, national origin or handicap.
- (d) "Housing" includes any building, facility or structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more persons, groups or families and any vacant land offered for sale or lease for the construction or location thereof of such building, facility or structure.

- (e) "Lending institution" means any bank, building and loan association, savings and loan association, insurance company or other persons whose business consists in whole or in part in the lending of money or guaranteeing loans.
- (f) "Person" means one or more individuals, corporations, partnerships, associations, firms or enterprises, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.
(Ord. 4-27-81.)

511.03 UNLAWFUL HOUSING PRACTICES.

It shall be an unlawful housing practice and a violation of this article:

- (a) For any person or real estate agent:
 - (1) To discriminate against any person in the selling, leasing, subleasing, renting, assigning or otherwise transferring of any interest in housing.
 - (2) To discriminate against any person by refusing to negotiate, refusing to transmit a bona fide offer, making false representations on the availability of the housing unit for inspection, sale or rental, or withdrawing from the market a housing unit which is for sale, lease, sublease, or rental.
 - (3) To include in the terms, conditions, or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing, any clause, condition or restriction, discriminating against any person in the use or occupancy of such housing.
 - (4) To discriminate in the furnishing of any facilities, repairs, improvements or services or in the terms, conditions, privileges or tenure of occupancy of any person.
- (b) For any lending institution:
 - (1) To discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making available funds for purchasing, constructing, improving, altering, repairing, rehabilitating or maintaining any housing or to discriminate against in the fixing of the amount, interest rate, duration, or other terms, conditions, or provisions of any such financial assistance.
 - (2) To discriminate in the lending of money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making funds available on the basis of the geographic location.
- (c) For any person, real estate agent, or lending institution with respect to any prohibited act specified in this article, to publish, to circulate or cause to be published or circulated, any notice, statement, listing or advertisement, or to announce a policy or to make any record in connection with the prospective sale, lease, sublease, rental or financing of any housing which indicates reliance, determination or decision based on race, color, creed, sex, marital status, religious belief, national origin or handicap.
- (d) For any person or real estate agent to assist in, compel, or coerce the doing of any act declared to be an unlawful housing practice under this article, or to obstruct or prevent endorsement or compliance with provisions of this article, or to attempt directly or indirectly to commit any act declared by this article to be an unlawful housing practice.

- (e) For any person, real estate agent, or lending institution:
- (1) To induce or attempt to induce the sale, transfer of interest, or listing for sale of any housing by making representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, color, creed, sex, marital status, religious belief, national origin or handicap by direct or indirect methods.
 - (2) To make any representation to a prospective purchaser or lessee that any housing in a particular block, neighborhood or area may undergo, is undergoing or has undergone a change with respect to race, color, creed, sex, marital status, religion, national origin or handicap of such block, neighborhood or area.
 - (3) To induce or attempt to induce the sale or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, color, creed, sex, marital status, religion, national origin, or handicap in the block, neighborhood, or area will or may result in:
 - A. The lowering of property values.
 - B. A change in the racial, color, religious, nationality or other ethnic composition of the block, neighborhood or area in which the property is located.
 - C. An increase in criminal or antisocial behavior in the area.
 - D. A decline in the quality of the schools serving the area.
- (f) For any person or real estate agent to cause or coerce or attempt to cause or coerce retaliation against any person because such person has lawfully opposed any act or failure to act that is a violation of this article or has, in good faith, filed a complaint, testified, participated or assisted in any way in any proceeding under this article or prevent any person from complying with this article.
- (g) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting housing or discriminate against a person in the terms or conditions of such access, membership, or participation.
- (h) To do any other thing or engage in conduct which would otherwise make unavailable equal housing opportunities.
(Ord. 4-27-81.)

511.04 FAIR HOUSING BOARD.

(a) There is hereby created the Fair Housing Board to consist of three (3) members who shall be qualified-electors of the City and shall not hold any elected public office at the municipal, county, state, or federal level at any time while a member of the Board and shall not be employed by the City of Glen Dale, but may be employed by the county, state, or federal government. Any duly appointed Board member who is a candidate for any public office shall be automatically disqualified from further membership on the Board. Nothing shall prohibit the Board from consulting and meeting with real estate agents or representatives of lending institutions in matters regarding educational or other programs to further the purpose of this article.

(b) The Board members shall be appointed by the Mayor. Of the members first appointed, one shall hold office for a term of one (1) year; one for a term of two (2) years; and the other for a term of three (3) years; and their successors shall be appointed for terms of three (3) years. The Mayor shall fill all vacancies by appointment for the remainder of the unexpired term. The Mayor shall be an ex-officio member of the Board. After being duly constituted, a chairman and vice-chairman shall be chosen by a majority vote of the Board.

(c) The Secretary of the Board shall be appointed by the Mayor and may be an employee of the City of Glen Dale.

(d) The Mayor may recommend the removal of any member of the Board for neglect of duty or malfeasance in office to the City Council. The City Council may remove a member of the Board from office by an affirmative vote of at least three-quarters (3/4) of the Council only after having first given to such member a written copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense; and any such removal shall be final.

(e) Two members of the Board shall constitute a quorum for the purpose of conducting the business thereof. A vacancy on the Board shall not impair the right of the other members to exercise all the power of the Board.

(f) Each member of the Board shall serve without salary, but shall be paid necessary and actual expenses expended in performing the business of the Board.

(g) The Board is charged with the following duties to implement the stated policy of this article:

- (1) To investigate all complaints of unlawful housing practices which are filed with it.
- (2) To initiate complaints of unlawful housing practices.
- (3) To endeavor by conciliation, to resolve such complaints.
- (4) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the Board.
- (5) To render at least once a year to the Mayor and to the City Council a full written report of all its activities and recommendations.
- (6) To recommend to the Mayor, when it deems necessary, educational and other programs designed to promote the purpose stated in this article.
- (7) To adopt rules and procedures for the conduct of its business.
- (8) To do such other acts that are necessary and proper in order to perform those duties with which it is charged under the terms of this article.

(h) The Mayor shall be responsible for the administration of this article.
(Ord. 4-27-81.)

511.05 PROCEDURES AND ENFORCEMENT.

(a) Any person subjected to an unlawful housing practice may file within 360 days of the alleged violation with the Board a complaint in writing, sworn to or affirmed, which shall state: the name and address of the person aggrieved; the name and address of the person against whom the complaint is filed; a description and the address of the dwelling, which involves the alleged discriminatory housing practice; a concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice, and such other information as may be required by the Board. The complaint may be reasonably and fairly amended. The Board may also corroborate or initiate complaints.

(b) Upon the filing of a complaint the Secretary of the Board shall make such investigation as he deems appropriate to ascertain facts and issues. Said investigation shall be conducted within fourteen (14) business days after the filing of the complaint. The investigation may be extended when deemed necessary by the Chairman of the Fair Housing Board. If the Secretary shall determine that there are reasonable grounds to believe a violation has occurred, he shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done during such initial conferences shall be made public by any member of the Board or its staff unless the parties agree thereto in writing.

(c) The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any part that the law has been violated. Consent agreements shall be signed on behalf of the Board by its chairman.

(d) The Board is authorized to seek the cooperation and aid of the West Virginia Real Estate Commission, West Virginia Human Rights Commission or the U. S. Department of Housing and Urban Development and any other person or group regarding any matter before the Board.

(e) If the Secretary determines that the complaint lacks reasonable grounds upon which to base a violation of this article, he shall so inform the Board and the Board may in its discretion dismiss such complaint or order such further investigation as may be necessary; provided, that the Board shall not discuss such complaint without first affording either party an opportunity to appear before the Board.

(f) If the Secretary, with respect to a matter which involves a violation of this article, fails to conciliate a complaint after the parties have in good faith attempted such conciliation, fails to effect an informal conciliation agreement or a formal consent agreement or determines that a complaint is not susceptible of conciliation, he shall so notify the Board and the Board shall thereafter schedule a public hearing to determine whether a violation of this article has been committed. The Board shall serve upon the respondent a written statement of charges and a summons and shall serve upon all interested parties a notice of the time and place of the hearing. The respondent or his authorized counsel may file and amend such statements with the Board prior to the hearing date as it deems necessary in support of its position. The hearing shall be opened to the public. The hearing shall be held not less than 15 calendar days nor more than 30 calendar days after service of the statement of charges and summons. The summons so issued must be signed by two members of the Board and the issuance of such summons shall require the

attendance of named persons and the production of relevant documents and records. The failure to comply with a summons shall constitute a violation of this article. The interested parties may, at their option, appear before the Board in person or by a duly authorized representative and may have the assistance of an attorney. The parties may present testimony and evidence, and the right to cross examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation. The Secretary shall keep a full record of the hearing, which record shall be public and open to inspection by any person, and upon request by any principal party to the proceeding, the Board shall furnish such party a copy of the hearing record, at such cost as the Board deems appropriate.

(g) If at the conclusion of the hearing the Board shall determine upon the preponderance of the evidence that the person complained against has violated this article, the Board shall, after consultation with the City Attorney in executive session, state its findings to and cause the City Attorney to prepare and issue an order under Board directive requiring the person complained against to cease and desist from such unlawful conduct and to take such affirmative action as will effectuate the purpose of this article, with notice that if the Board upon investigation by the Secretary determines that the person complained against has not after fifteen (15) calendar days following service of the Board's order complied with the order, the Board will recertify the matter to the City Attorney for enforcement. The City Attorney shall seek compliance by appropriate civil action brought in the name of the Fair Housing Board of the City of Glen Dale before the Circuit Court of Marshall County.

(h) If at the conclusion of the hearing the Board shall determine upon the preponderance of the evidence of the record that the person complained against has not violated this article, the Board shall so state and publish its findings and issue its orders dismissing the complaint. (Ord. 4-27-81.)

511.06 SCOPE.

The provision of this article shall apply to all housing located within territorial limits of the City of Glen Dale, State of West Virginia.
(Ord. 4-27-81.)

511.07 OTHER LEGAL ACTION.

Nothing contained in this section shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing any complaint with any other agency or court of law or equity.
(Ord. 4-27-81.)

511.08 SEVERABILITY.

Sections and subsections of this article and the several parts and provisions thereof are hereby declared to be independent sections, subsections, parts and provisions and the holding of any such section, subsection, part or provision thereof to be unconstitutional, void or ineffective for any cause, shall not affect nor render invalid any other such section, subsections, part or provision thereof.
(Ord. 4-27-81.)

511.99 PENALTY.

In any proceeding, where the court determines that there has been a violation of this article, the Court shall award compensatory damages and, where appropriate, punitive damages of not more than one thousand dollars (\$1,000) along with attorney fees and court costs. The court may also order such other relief as it deems necessary or appropriate which may include, but is not limited to, issuance of any permanent or temporary injunction, temporary restraining order or other order.

(Ord. 4-27-81.)

ARTICLE 513
Gambling

- | | |
|---|---|
| <p>513.01 Keeping or exhibiting gambling apparatus.</p> <p>513.02 Permitting gambling apparatus on premises.</p> <p>513.03 Acting as lookout or guard for keeper of gambling apparatus.</p> <p>513.04 Playing on gambling apparatus; hotels, public places.</p> <p>513.05 Making wager for value or furnishing money to another for wager.</p> | <p>513.06 Permitting gambling at public places.</p> <p>513.07 Cheating or fraudulent actions while gambling or making a wager.</p> <p>513.08 Poolrooms and pool tickets.</p> <p>513.09 Lotteries and raffles.</p> <p>513.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law

Gambling at fairs prohibited - see W. Va. Code
19-7-8

Pari-mutual system of wagering at race track permitted -
see W. Va. Code 19-23-9

Gaming contracts - see W. Va. Code Art. 55-9

Crimes against public policy - see W. Va. Code Art. 61-10

513.01 KEEPING OR EXHIBITING GAMBLING APPARATUS.

No person shall keep or exhibit a gaming table, commonly called an A.B.C. or E.O. table, faro bank, keno table, or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine, or any other gaming table or device of like kind, under any denomination or which has no name, whether the game, table, bank, machine or device is played with cards, dice or otherwise, or be a partner, or concerned in interest, in keeping or exhibiting such table, bank, machine or gaming device of any character. Any such table, faro bank, machine or gaming device, and all money staked or exhibited to allure persons to bet at such table or upon such gaming device, may be seized by order of the Police Court and the money so seized shall be forfeited to the Municipality and paid into the Municipal Treasury and the table, faro bank, machine or gaming device shall be completely destroyed. However, the provisions of this section shall not extend to coin-operated nonpayout machines with free play features or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value or services for each coin deposited therein and in which there is no element of chance.

(WVaC 61-10-1)

513.02 PERMITTING GAMBLING APPARATUS ON PREMISES.

No person shall knowingly permit a gaming table, bank or device, as mentioned in Section 513.01, to be kept or exhibited on any premises in his occupation.
(WVaC 61-10-2)

513.03 ACTING AS LOOKOUT OR GUARD FOR KEEPER OF GAMBLING APPARATUS.

No person shall act as doorkeeper, guard or watch, or employ another person to act as such, for a keeper or exhibitor of any gaming table, bank or device as mentioned in Section 513.01, nor resist, nor by any means or device, prevent, hinder or delay the lawful arrest of such keeper or exhibitor, or the seizure of the table, bank or device, or money exhibited or staked thereat, nor unlawfully take the same from the person seizing it.
(WVaC 61-10-3)

513.04 PLAYING ON GAMBLING APPARATUS; HOTELS, PUBLIC PLACES.

No person shall bet or play at any gaming table, bank or device as mentioned in Section 513.01, or, at any hotel or tavern, other public place or place of public resort, play at any game except bowling, chess or backgammon, draughts or a licensed game, or bet on the side of those who play at any game, whether or not the game is permitted or licensed.
(WVaC 61-10-4)

513.05 MAKING WAGER FOR VALUE OR FURNISHING MONEY TO ANOTHER FOR WAGER.

No person shall, at any place, public or private, bet or wage money or other thing of value on any game of chance, or knowingly furnish any money or other thing of value to any other person to bet or wage on any such game.
(WVaC 61-10-5)

513.06 PERMITTING GAMBLING AT PUBLIC PLACES.

No keeper of a hotel, tavern or other public place shall permit unlawful gaming at his house, or at any outhouse, booth, arbor or other place appurtenant thereto.
(WVaC 61-10-6)

513.07 CHEATING OR FRAUDULENT ACTIONS WHILE GAMBLING OR MAKING A WAGER.

No person playing at any game or making a wager, or having a share in any stake or wager, or betting on the hands or sides of others playing at any game or making a wager, shall cheat, or by fraudulent means win or acquire for himself, or another, money or any other valuable thing.
(WVaC 61-10-9)

513.08 POOLROOMS AND POOL TICKETS.

"Poolroom", wherever used in this section, means any room where any pool ticket, chance voucher or certificate is sold entitling or purporting to entitle the holder or promisee thereof, or any other person, to money or other thing of value, contingent upon the result of any horse race, prizefight, game of chance, game of skill or science or other sport or contest. No person shall set up or promote, or be connected with or interested in the management or operation of any poolroom. The buying, selling or transferring of tickets or chances in any lottery is hereby prohibited.

(WVaC 61-10-10)

513.09 LOTTERIES AND RAFFLES.

Except as otherwise provided by law, no person shall set up, promote or be concerned in managing or drawing a lottery or raffle for money or other thing of value; knowingly permit such lottery in any house under his control; knowingly permit money or other property to be raffled for in such house or to be won therein by throwing or using dice or by any other game of chance; knowingly permit the sale in such house of any chance or ticket, or share of a ticket in a lottery, or any writing, certificate, bill, token or other device purporting or intended to guarantee or assure to any person or to entitle him to a prize, or a share of or interest in a prize to be drawn in a lottery. No person shall for himself or any other person, buy, sell, transfer or have in his possession for the purpose of sale or with intent to exchange, negotiate or transfer, or aid in selling, exchanging, negotiating or transferring a chance or ticket, or a share of a ticket, in a lottery or any such writing, certificate, bill, token or device. However, this section shall not be deemed to apply to that certain type or form of lottery or raffle designated and familiarly known as "policy" or "numbers".

(WVaC 61-10-11)

513.99 PENALTY.

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

- (a) Whoever violates Section 513.04 or 513.06 shall be fined not more than one hundred dollars (\$100.00).
- (b) Whoever violates Section 513.05 shall be fined not more than three hundred dollars (\$300.00).

ARTICLE 517
Indecency and Obscenity

- | | |
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| <p>517.01 Operating a place for or permitting or engaging in prostitution, lewdness or assignation.</p> <p>517.02 Detention of person in place of prostitution.</p> <p>517.03 Pandering.</p> <p>517.04 Pimping.</p> <p>517.05 Profane swearing and drunkenness.</p> | <p>517.06 Obscene or harassing telephone calls.</p> <p>517.07 Indecent exposure.</p> <p>517.08 Invasion of privacy by looking.</p> <p>517.09 Preparation, distribution or exhibition of obscene matter to minors.</p> <p>517.10 Sale or display of obscene matter.</p> <p>517.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to prohibit distribution of obscene literature - see W. Va. Code 8-12-5(17)
 Authority to suppress houses of ill fame - see W. Va. Code 8-12-5(18)
 Authority to prevent indecent practices - see W. Va. Code 8-12-5(19)
 Equitable remedies - see W. Va. Code Art. 61-9

517.01 OPERATING A PLACE FOR OR PERMITTING OR ENGAGING IN PROSTITUTION, LEWDNESS OR ASSIGNATION.

(a) No person shall keep, set up, maintain or operate any house, place, building, hotel, tourist camp, other structure or part thereof, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or own any place, house, hotel, tourist camp, other structure or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness or assignation, or let, sublet or rent any such place, premises or conveyance to another with knowledge or good reason to know of the intention of the lessee or rentee to use such place, premises or conveyance for prostitution, lewdness or assignation; or offer, or offer to secure another for the purpose of prostitution or for any other lewd or indecent act; or receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp or other structure, or vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation, or permit any person to remain there for such purpose; or for another or others, direct, take or transport, or offer or agree to take or transport, or aid or assist in transporting any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or aid, abet or participate in the doing of any acts herein prohibited. Whoever violates this subsection (a) shall, for a first offense, be guilty of a misdemeanor.

(b) No person shall engage in prostitution, lewdness or assignation, or solicit, induce, entice or procure another to commit an act of prostitution, lewdness or assignation; or reside in, enter or remain in any house, place, building, hotel, tourist camp or other structure, or enter or remain in any vehicle, trailer or other conveyance for the purpose of prostitution, lewdness or assignation; or aid, abet or participate in the doing of any of the acts herein prohibited.

Whoever violates this subsection (b) shall, for a first or second offense, be guilty of a misdemeanor.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator or any person benefitting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting or renting any house, place, building, hotel, tourist camp or other structure which is used for the purpose of prostitution, lewdness or assignation, shall be void from and after the date any person who is a party to such an agreement shall be convicted of an offense hereunder. "Tourist camp" includes any temporary or permanent buildings, tents, cabins or structures, or trailers or other vehicles which are maintained, offered or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp or other structure, and of the person or persons who reside in or frequent them, and of the defendant or defendants, shall be admissible in evidence in support of the charge.

(WVaC 61-8-5)

517.02 DETENTION OF PERSON IN PLACE OF PROSTITUTION.

(a) No person shall by any means keep, hold, detain or restrain any person in a house of prostitution or other place where prostitution is practiced or allowed; shall, directly or indirectly, keep, hold, detain or restrain or attempt to keep, hold, detain or restrain, in any house of prostitution or other place where prostitution is practiced or allowed, any person by any means, for the purpose of compelling such person, directly or indirectly, to pay, liquidate or cancel any debt, dues or obligations incurred or said to have been incurred by such person.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor if the person so kept, held, detained or restrained under this section is not a minor.

(WVaC 61-8-6)

517.03 PANDERING.

(a) No person shall procure an inmate for a house of prostitution, or by promises, threats, violence or by any device or scheme, cause, induce, persuade or encourage a person to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a person. No person shall, by promises, threats, violence or any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or shall, by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procure any person to become an inmate of a house of ill fame, to enter any place in which prostitution is encouraged or allowed within this Municipality, or to come into or leave this Municipality for the purpose of prostitution, or shall procure any person to become an inmate of a house of ill fame within this Municipality or to come into or leave this Municipality for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any person to become an inmate of a house of ill fame within this Municipality, or to come into or leave this Municipality for the purpose of prostitution.

It shall not be a defense to prosecution for any of the acts prohibited in this section that any part of such act or acts shall have been committed outside of this Municipality, and the offense shall in such case be deemed and alleged to have been committed and the offender tried and punished in the municipality or county in which the prostitution was intended to be practiced, or in which the offense was consummated, or any overt act in furtherance of the offense was committed.

Any such person shall be a competent witness in any prosecution under this section to testify for or against the accused as to any transaction, or as to conversation with the accused, or by the accused with another person or persons in his or her presence, notwithstanding his or her having married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution. The act or state of marriage shall not be a defense to any violation of this section.

(b) Whoever violates this section is guilty of a misdemeanor for the first offense unless the inmate referred to in this section is a minor.
(WVaC 61-8-7)

517.04 PIMPING.

(a) No person knowing another person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of the prostitution of such prostitute, or from money loaned or advanced to or charged against such prostitution by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall tout or receive compensation for touting for such prostitution. A prostitute shall be a competent witness in any prosecution hereunder to testify for or against the accused as to any transaction or conversation with the accused, or by the accused with another person or persons in the presence of the prostitute, even if the prostitute may have married the accused before or after the violation of any of the provisions of this section, whether called as a witness during the existence of the marriage or after its dissolution.

(b) Whoever violates this section shall, for a first offense, be guilty of a misdemeanor unless the prostitute referred to in this section is a minor.
(WVaC 61-8-8)

517.05 PROFANE SWEARING AND DRUNKENNESS.

(EDITOR'S NOTE: Former West Virginia Code 61-8-15 upon which Section 517.05 was based was repealed by Senate Bill 457, passed March 13, 2010.)

517.06 OBSCENE OR HARASSING TELEPHONE CALLS.

- (a) No person with intent to harass or abuse another by means of telephone shall:
- (1) Make any comment, request, suggestion or proposal which is obscene; or
 - (2) Make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to harass any person at the called number; or
 - (3) Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or
 - (4) Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or
 - (5) Threaten to commit a crime against any person or property.

(b) No person shall knowingly permit any telephone under his control to be used for any purpose prohibited by this section.

(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.
(WVaC 61-8-16)

517.07 INDECENT EXPOSURE.

No person shall intentionally expose his or her sex organs or anus or the sex organs or anus of another person, or intentionally cause such exposure by another or engage in any overt act of sexual gratification, under circumstances in which the person knows that the conduct is likely to cause affront or alarm; provided, that it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.
(WVaC 61-8-9)

517.08 INVASION OF PRIVACY BY LOOKING.

No person shall unlawfully enter upon the property of another or secretly or furtively peep through or attempt to peep into, through, or spy through a window, door or other aperture of any building, structure or other enclosure of any nature occupied by or intended for occupancy as a dwelling or dormitory, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary.

**517.09 PREPARATION, DISTRIBUTION OR EXHIBITION OF
OBSCENE MATTER TO MINORS.**

(a) Definitions of terms used in this section, and any variations thereof required by the context, shall have the meaning ascribed to them as follows:

- (1) "Distribute" means to transfer possession of, whether with or without consideration.
- (2) "Employee" means any individual who renders personal services in the course of a business, who receives compensation therefor at a fixed rate and who has no financial interest in the ownership or operation of the business other than his salary or wages.
- (3) "Exhibit" means to display or offer for viewing, whether with or without consideration.
- (4) "Knowingly" means to display or offer for viewing, whether with or without consideration.
- (5) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or any statue or other figure, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (6) "Minor" means any individual under the age of eighteen years.
- (7) "Obscene matter" means to the average individual, applying contemporary State standards, matter which:
 - A. Considered as a whole, appeals to the prurient interests;
 - B. Depicts or describes in a patently offensive manner ultimate sexual acts, both normal and perverted, actual or simulated, masturbation, sodomy, fellatio, cunnilingus, bestiality, sadism, excretory functions or lewd exhibition of the genitals; and
 - C. Considered as a whole, lacks serious literary, artistic, political or scientific value.
- (8) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (9) "Prepare" means to produce, publish or print.
- (10) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window showcase, display case or similar public place, so that the material within the meaning of "obscene matter" is easily visible from a public thoroughfare, from the property of others or from commercial or business premises generally open to minors at the time of such placing.

(b) No person shall knowingly send or cause to be sent or bring or cause to be brought into this Municipality any obscene matter for distribution, exhibition or public display to a minor, or in this Municipality prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or offer to prepare for, distribute to, exhibit to or publicly display to a minor any obscene matter, or have in his possession with the intent to distribute, exhibit or make a public display of, any obscene matter to a minor.

(c) No employees shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher or when such employee distributes, prepares or exhibits obscene matter while acting within the scope of his employment.

(d) Any person who distributes or exhibits obscene matter, or possesses obscene matter with the intent to distribute or exhibit the same in the course of his business, is presumed to do so with knowledge of its content or character.

(e) No person shall be guilty of distributing or exhibiting obscene matter to a minor when such person has reasonable cause to believe that the minor involved was eighteen years of age or more and such minor exhibited to such person a driver's license, draft card or other official or apparently official document purporting to establish that such minor was eighteen years of age or more.

(f) No person who, with knowledge that a person is a minor under eighteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under eighteen years of age, shall hire, employ or use such minor to do or assist in doing any of the acts described in subsection (a)(7)B. hereof.
(WVaC Art. 61-8A)

517.10 SALE OR DISPLAY OF OBSCENE MATTER.

(a) Definitions. For the purposes of this section:

- (1) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.
- (2) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
- (3) "Individual" means any human being regardless of age.
- (4) "Obscene" means matter which the average individual applying contemporary community standards would find
 - A. Taken as a whole, appeals to the prurient interest;
 - B. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and
 - C. The matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:
 1. Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of the genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
 2. Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.
- (5) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

- (6) "Prepare" means to produce, publish or print.
- (7) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display sack, window, showcase, display case or similar public places so that material can be purchased or viewed by individuals.

(b) Individual Relief. The circuit court shall have jurisdiction to issue an injunction to enforce the purposes of this section upon petition by the attorney for the Municipality or a representative thereof or any citizen of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

(c) Activities Prohibited. No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of any obscene matter to any individual.

(d) Employees Not Prosecuted. No employee shall be guilty of a violation of this section when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

(e) Exceptions. Nothing in this section shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States. (WVaC 8-12-5(b))

517.99 PENALTY.

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

- (a) Whoever violates Section 517.01(a) shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (b) Whoever violates Section 517.01(b) shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both, and for a second offense shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned not more than thirty days, or both.
- (c)
 - (1) Except as provided in subsection (c)(2), any person who violates the provisions of Section 517.07 shall be confined in jail not more than thirty days, or fined not more than two hundred fifty dollars (\$250.00) or both.
 - (2) Any person who violates the provisions of Section 517.07 by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, shall be fined not more than five hundred dollars (\$500.00), or confined in jail not more than thirty days, or both. For a second offense, the person shall be fined not more than one thousand dollars (\$1,000) and confined in jail for thirty days. For a third or subsequent offense, the person is guilty of a felony and shall be prosecuted under appropriate State law.
- (d) Whoever violates Section 517.10 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both, for a first offense. For a second or subsequent offense such person shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both.

ARTICLE 521
Liquor Control

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| <p>521.01 Definitions.</p> <p>521.02 Article not applicable to certain uses by physicians, druggists and others.</p> <p>521.03 Prohibited acts generally.</p> <p>521.04 Unlawful sale or possession by alcoholic liquor licensee.</p> <p>521.05 Unlawful purchase of alcoholic liquors from State agency.</p> <p>521.06 Intoxication or drinking in public places; illegal possession.</p> | <p>521.07 Acts prohibited by non-intoxicating beer licensee.</p> <p>521.08 Unlawful purchase of non-intoxicating beer.</p> <p>521.09 Acts prohibited by private club licensee.</p> <p>521.10 Unlawful purchase from private club.</p> <p>521.11 Acts prohibited by wine dealers.</p> <p>521.12 Unlawful purchase of wine.</p> <p>521.13 Unlawful purchase from retail liquor licensee.</p> <p>521.99 Penalty.</p> |
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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, unless the context clearly indicates otherwise, the following definitions shall apply:

- (a) "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.
- (b) "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.
- (c) "Intoxicated" means having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.
- (d) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, including, among others, a distiller, rectifier, wine maker and brewer.
(WVaC 60-1-5)

- (e) (1) "Nonintoxicating beer" means all 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 containing at least one-half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word "liquor" as used in this article shall not be construed to 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 fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one-half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight. (WVaC 11-16-3)
- (f) "Person" means an individual, firm, partnership, limited partnership, corporation or voluntary association.
- (g) "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. "Public place" does 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 West Virginia Code Chapter 60 or the Codified Ordinances to sell alcoholic liquors for consumption on the premises.
- (h) "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and includes all sales made by any principal, proprietor, agent or employee.
- (i) "Selling" includes the solicitation or receipt of orders, possession for sale, and possession with intent to sell.
- (j) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits or other agricultural products, containing sugar. (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 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 State 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.
(WVaC 60-6-7)
- (h) 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.
- (i) Whoever violates subsection (a) to (g) hereof is guilty of a misdemeanor for a first offense.

521.04 UNLAWFUL SALE OR POSSESSION BY ALCOHOLIC LIQUOR LICENSEE.

No person licensed under West Virginia Code Chapter 60 shall:

- (a) Sell alcoholic liquors of a kind other than that which is permissible under West Virginia Code Chapter 60;
 - (b) Sell beer to which wine, spirits or alcohol has been added;
 - (c) Sell wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture thereof under regulations of the West Virginia Alcohol Beverage Control Commissioner;
(WVaC 60-6-8)
 - (d) (1) Sell 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)

- (e) Keep on the premises covered by his license any alcoholic liquor other than that which is authorized by West Virginia Code Chapter 60.
(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.

No person shall:

- (a) Appear in a public place in an intoxicated condition;
- (b) Drink alcoholic liquor or nonintoxicating beer or have an open container of alcoholic liquor or nonintoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane, recreation area, public shopping area or other public place;
- (c) Drink alcoholic liquor or nonintoxicating beer in a motor vehicle on any highway, street, alley or in a public garage. No person shall possess an open container of nonintoxicating beer or alcoholic liquor in a motor vehicle except in a place which can be reached only by leaving the vehicle;
- (d) Tender a drink of alcoholic liquor to another person in a public place;
- (e) 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;
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of West Virginia Code Chapter 60.

Whoever violates subsection (e) or (f) hereof is guilty of a misdemeanor for a first offense.
(WVaC 60-6-9)

521.07 ACTS PROHIBITED BY NONINTOXICATING BEER LICENSEE.

(a) No licensee under West Virginia Code Article 11-16, his, her, its or their servants, agents or employees shall sell, give or dispense, and no individual shall drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday, 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;

(b) No licensee, his, her, its or their servants, agents or employees shall 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;

(c) No licensee, his, her, its or their servants, agents or employees, shall sell, furnish or give any nonintoxicating beer as defined in this article to any person who is less than twenty-one years of age;

(d) No distributor shall sell or offer to sell, and no retailer shall purchase or receive, any nonintoxicating beer as defined in this article, except for cash; and no right of action shall exist to collect any claims for credit extended contrary to the provisions of this subsection. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor;

(e) No brewer or distributor or brewpub or his, her, its or their agents, shall transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;

(f) No brewer or distributor shall give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or offer any prize, premium, gift or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: provided that a distributor may offer, for sale or rent, tanks of carbonic gas. Nothing herein contained shall prohibit a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any such events: provided however that no such event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the nonintoxicating Beer Commissioner.

(g) No licensee shall permit in his premises any lewd, immoral or improper entertainment, conduct or practice;

(h) No licensee except the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, or a holder of a license for a private wine restaurant issued under the provisions of West Virginia Code Article 60-8, shall possess a Federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(i) No licensee shall obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times: provided, that provisions of this subsection shall not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of West Virginia Code Article 60-7, or the premises of a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8;

(j) No licensee shall manufacture, import, sell, trade, barter, possess or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: provided, that the prohibition contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of West Virginia Code Article 60-7, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of West Virginia Code Article 60-8, insofar as such private wine restaurant is authorized to serve wine;

(k) No retail licensee shall 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;

(l) No licensee shall permit loud, boisterous or disorderly conduct of any kind upon his or her premises or permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located: provided, that no licensee shall have in connection with his or her place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

(m) No person whose license has been revoked, shall obtain employment with any retailer within the period of one year from the date of such revocation, and no retailer shall employ knowingly any such person within such time;

(n) No distributor shall sell, possess for sale, transport or distribute nonintoxicating beer except in the original container;

(o) No licensee shall 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;

(p) No Class B retailer shall permit the consumption of nonintoxicating beer upon his licensed premises;

(q) No Class A licensee, his, her, its or their servants, agents or employees, or any licensee by or through such servants, agents or employees, shall allow 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 subsection shall not apply where such person under the age of eighteen years is in or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises;

(r) No distributor shall sell, offer for sale, distribute or deliver any nonintoxicating beer outside the territory assigned to such distributor by the brewer or manufacturer of such nonintoxicating beer or sell, offer for sale, distribute or deliver any such nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of such nonintoxicating beer: provided, that nothing herein shall be deemed 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; and

(s) No licensee or any agent, servant or employee of any such licensee shall knowingly violate any rule or regulation lawfully promulgated by the Commissioner.

(t) Any person who violates any provision of this section, or any rule, regulation or order lawfully promulgated by the Commissioner, or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be punished as provided in Section 521.99.

(u) Nothing in this section nor any rule or regulation of the Commissioner shall prevent or be deemed to prohibit any licensee from employing any person who is at least eighteen years of age to serve in such 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 recreation 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 such person's duties shall not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such 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) No person licensed under West Virginia Code Article 60-7, or his agent, employee or member thereof, on such licensee's premises shall:

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
- (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;
- (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 deemed 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 1:00 p.m. on Sunday;
- (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 eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;
- B. Employ any person who is between the ages of eighteen and twenty-one 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 or give nonintoxicating beer, wine or alcoholic liquors to any person; or
- (11) Violate any reasonable rule or regulation of the Alcohol Beverage Control Commissioner.

(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.
(WVaC 60-7-12)

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 mental incompetent 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;
- (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 Alcohol Beverage Commissioner shall promulgate rules necessary to carry out the provision of this subsection;
- (f) For a person to violate any reasonable rule promulgated by the Alcohol Beverage Control 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 or delivery of wine under the provisions of 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 such person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: provided, however, that the authorization to employ such persons, under the age of eighteen years shall be clearly indicated on the licensee's license.
(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 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 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)

521.99 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 Section 521.06(a) shall be sentenced in accordance with the following options:

(1) Upon first offense, a fine of not more than one hundred dollars (\$100.00). If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judge 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 more than one hundred dollars (\$100.00) and not more than thirty 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 more than one hundred dollars (\$100.00) and not less than five nor more than thirty days in jail or a fine of not 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 shall be considered evidence of alcoholism: provided, however that 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. A person charged with a violation of Section 521.06(a) 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 27-6A.

- (d) Whoever violates Section 521.06(b) shall be fined not more than one hundred dollars (\$100.00); upon a second or subsequent violation shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than 30 days or both.
- (e) Whoever violates Section 521.06(c) shall be fined not more than one hundred dollars (\$100.00), or confined in jail not more than thirty days, or both.
(WVaC 60-6-9)
- (f) Whoever violates Section 521.06(d) or (e) is guilty of a misdemeanor for a first offense and shall be fined not more than five hundred dollars (\$500.00).
(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)

ARTICLE 525
Minors

525.01 Contributing to delinquency or neglect of minor. 525.02 Cruelty to children. 525.03 Parental liability for acts of children.	525.04 Abandoned airtight containers. 525.05 Tobacco usage restrictions. 525.06 Curfew. 525.99 Penalty.
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CROSS REFERENCES

See sectional histories for similar State law
Delinquent child defined - see W. Va. Code 49-1-4
Jurisdiction of municipal court - see W. Va. Code
49-5-1(b)
Contributing to delinquency of minor - see W. Va. Code
49-7-7 et seq.

525.01 CONTRIBUTING TO DELINQUENCY OR NEGLECT OF MINOR.

No person shall by any act or omission contribute to, encourage or tend to cause the delinquency or neglect of any child, including, but not limited to, aiding or encouraging any such child to habitually or continually refuse to respond, without just cause, to the lawful supervision of such child's parent, guardian or custodian or to be habitually absent from school without just cause.

(WVaC 49-7-7)

525.02 CRUELTY TO CHILDREN.

No person shall cruelly ill treat, abuse or inflict unnecessary cruel punishment upon, any infant or minor child, and no person, having the care, custody or control of any minor child, shall willfully abandon or neglect the minor child.

In addition to any penalty provided under this section and any restitution which may be ordered by the court, the court may order any person convicted under the provisions of this section to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(WVaC 61-8-24)

525.03 PARENTAL LIABILITY FOR ACTS OF CHILDREN.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed that specified in West Virginia Code 55-7A-2 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

- (a) The malicious and willful injury to the person of another; or
- (b) The malicious and willful injury or damage to the property of another, whether the property be real, personal, or mixed; or
- (c) The malicious and willful setting fire to a forest or wooded area belonging to another; or
- (d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" means the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this section shall include, but are not limited to, the State, any municipal corporation, county commission and board of education, or other political subdivision of this State or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages, based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this section.

(WVaC 55-7A-2)

525.04 ABANDONED AIRTIGHT CONTAINERS.

No person shall abandon any refrigerator or food freezer appliance or other airtight appliance having a height or length of greater than two feet without first removing all entry doors therefrom. (WVaC 61-2-26)

525.05 TOBACCO USAGE RESTRICTIONS.

(a) Sale or Gift of Tobacco to Persons Under Eighteen. No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

- (1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product; or
- (2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form.

(b) Any firm or corporation that violates any provision of subsection (a)(1) or (2) hereof and any individual who violates any provision of subsection (a)(1) hereof shall be fined fifty dollars (\$50.00) for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: at least two hundred fifty dollars (\$250.00) but not more than five hundred dollars (\$500.00) for the second offense, if it occurs within two years of the first conviction; at least five hundred dollars (\$500.00) but not more than seven hundred fifty dollars (\$750.00) for the third offense, if it occurs within two years of the first conviction; and at least one thousand dollars (\$1,000) but not more than five thousand dollars (\$5,000) for any subsequent offense, if the subsequent offense occurs within five years of the first conviction.

(c) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form, for the first offense shall be fined not more than one hundred dollars (\$100.00); upon conviction thereof for a second or subsequent offense shall be fined not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

(d) Any employer who discovers that his or her employee has sold or furnished tobacco products to minors may dismiss such employee for cause. Any such discharge shall be considered as "gross misconduct" for the purposes of determining the discharged employee's eligibility for unemployment benefits in accordance with the provisions of West Virginia Code 21a-6-3 if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.
(WVaC 16-9A-2)

(e) Use or Possession of Tobacco by Persons Under the Age of Eighteen Years. No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; or, any pipe, snuff, chewing tobacco or tobacco product; provided, that minors participating in the inspection of locations where tobacco products are sold or distributed pursuant to West Virginia Code 16-9A-7 shall not be deemed to violate the provisions of this subsection (e). Any person violating the provisions of this subsection (e) shall for the first violation be fined fifty dollars (\$50.00) and be required to serve eight hours of community service; for a second violation, the person shall be fined one hundred dollars (\$100.00) and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined two hundred dollars (\$200.00) and be required to serve twenty-four hours of community service.
(WVaC 16-9A-3)

525.06 CURFEW.

(a) Definitions.

- (1) "City" means the City of Glen Dale.
- (2) "Minor" means any person under the age of eighteen years.
- (3) "Parent" means the natural or adoptive parent of a minor.
- (4) "Guardian" means any person other than a parent, who has legal guardianship of a minor.
- (5) "Custodian" means any person over the age of eighteen years, who is in loco parentis to a juvenile, so designated by a minor's parent or guardian.
- (6) "Public place" means any street, alley, highway, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose. A "public place" shall include but not be limited to any store, shop, restaurant, tavern, bowling alley, café, theater, drugstore, poolroom, shopping center and any other place devoted to amusement or entertainment of the general public. It shall also include the front or immediate area of the above.

(b) Curfew, Effective Hours and Age Limits. It shall be unlawful for any person under the age of sixteen years to be or remain upon any of the public streets, vacant lots or public highways of the City, or to loiter or linger within or about any public or private building in the City adjacent to such streets, vacant lots or public highways after the hour of 9:00 p.m. and before the hour of 5:00 a.m. unless accompanied by some person of mature years.

(c) Responsibility of Owners of Public Places. No person, firm or corporation operating or having charge of any public place shall knowingly permit the presence of minors under the age of sixteen years between the hours so specified in subsection (b) hereof.

(d) Responsibility of Parents. No parent, guardian or custodian of any minor under the age of sixteen years shall permit or by inefficient control shall allow such person to be on the streets or sidewalks or on or in any public places within the City as prohibited in subsection (b) between the hours so specified in subsection (b) above. However, the provisions of this section do not apply to a parent, guardian or custodian who has made a missing person notification to the Police Department.

(e) Special Functions. Any minor attending a special function or entertainment of any church, school, club or other adult-supervised organization or event, including one-half hour before and after for travel, that requires such minor to be out at a later hour than that called for in subsection (b) shall be exempt from the provisions of subsection (b) hereof.

(1987 Code 19E-1-5)

525.99 PENALTY.

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

(a) Whoever violates Section 525.04 shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

(b) Any minor who violates Section 525.06 shall be dealt with in accordance with Juvenile Court Law and Procedure. Any parent, guardian, custodian or other adult who violates Section 525.06 shall be fined not more than five hundred dollars (\$500.00). (1987 Code 19E 1 6)

ARTICLE 527
Noise Control

527.01 Noise prohibited.
527.02 Specific noises.

**527.03 Vehicles with sound
amplifying equipment.**
527.99 Penalty.

CROSS REFERENCES

Disturbing the peace - see GEN. OFF. 509.04

527.01 NOISE PROHIBITED.

No person shall make, continue or cause to be made or continued, any loud, unnecessary or unusual noise or noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City.
(1987 Code 16-1-1)

527.02 SPECIFIC NOISES.

The following acts are declared to be loud, disturbing and unnecessary noises in violation of Section 527.01, but such enumeration shall not be deemed to be exclusive, namely:

- (a) Horns, Signaling Devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.
- (b) Yelling, Shouting. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity.
- (c) Animals, Birds. The keeping of any animal, fowl or bird which, by causing frequent or long continued noise, shall disturb the comfort or repose of any persons in the vicinity.
- (d) Defect in Vehicle or Load. The use of any automobile, motorcycle or other vehicle so out of repair, so loaded or in such manner as to create loud and unnecessary grating, grinding, rattling or other noise.

- (e) Excessive Noise Near Schools, Courts, Churches, Hospitals, Etc. The creation of any excessive noise on any street, sidewalk or other public place adjacent to any school, institution of learning, church or court while the same is in use, or adjacent to any nursing home or hospital, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys patients in the nursing home or hospital; provided, that adequate signs are displayed conspicuously on such streets indicating that the same in a school, nursing home, hospital or court street.
- (f) Drums. The use of any drum or other instrument or device for the purpose of attracting attention, by the creation of noise, to any performance, show or sale.
- (g) Radios, TVs, Phonographs. The using, operating or permitting to be played, used or operated, of any radio or television receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner so as to disturb the peace, quiet, and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the persons who are in the room, vehicle or chamber in which such machine or device is operated and who voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. to 7:00 a.m. in such manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- (h) Loudspeakers, Amplifiers, etc. for Advertising. The using, operating or permitting to be played, used or operated of any radio or television receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure, where such sound is audible for a distance of more than fifty feet from the building, structure or vehicle in which it is located.
- (i) Exhausts. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom,
- (j) Model Airplanes. The use of any gasoline, alcohol, diesel or other internal combustion engine-propelled, radio controlled airplane without a muffler which will effectively prevent loud noises therefrom; provided, that any such airplane with a thirty-five cubic centimeter engine or less shall not be subject to the provisions of this section.
- (k) Band Practice. Except in a lawfully constituted or organized parade or assembly, musical practice by a band which produces unreasonable noise.
(1987 Code 16-1-2)

527.03 VEHICLES WITH SOUND AMPLIFYING EQUIPMENT.

(a) Definitions. For the purpose of this section, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) "Sound amplifying equipment" means any machine or device for the amplification of the human voice, music or any other sound. "Sound amplifying equipment", as used herein, shall not be construed as including standard automobile radios when used and heard by occupants of the vehicles in which they are installed, warning devices on authorized emergency vehicles, horns or other warning devices on other vehicles used only for traffic safety purposes.

- (2) "Sound truck" means any motor vehicle, animal-drawn vehicle, boat, or raft having mounted thereon, or attached thereto, any sound amplifying equipment.

(b) Exclusions. The provisions of this section shall not apply in using any of the sound equipment mentioned and described herein where such equipment is used for civil defense, used in the event of a disaster or other emergency, or used by any governmental agency or at any public meeting.

(c) License to Operate. No person shall operate or cause to be operated any sound truck within the City, with sound amplifying equipment in operation, unless a license has been obtained from the City therefor. The annual fee for such license shall be twenty-five dollars (\$25.00) and such licenses shall be issued on an annual basis only for a period beginning on July 1 of each year and ending on June 30 of the following year.

(d) Application for License. Applications for the issuance of the license required by this section shall be filed with the City Clerk in duplicate and in writing and shall state the following information:

- (1) Name and address of applicant.
- (2) Address of the place of business of the applicant.
- (3) License number and motor number of the sound truck to be used by the applicant.
- (4) Name and address of the owner of the sound truck.
- (5) Name and address of the person having direct charge of the sound truck.
- (6) Names and addresses of all persons who will use or operate the sound truck.
- (7) The purpose for which the sound truck will be used.
- (8) A general statement as to the sections of the City in which the sound truck will be used.
- (9) The proposed hours of operation of the sound truck.
- (10) The number of days of proposed operation of the sound truck.
- (11) A general description of the sound amplifying equipment which is to be used.
- (12) The maximum sound-producing power of the sound amplifying equipment to be used in or on the sound truck. The following information shall be stated:
 - A. The wattage to be used;
 - B. The volume in decibels of the sound which will be produced;
 - C. The approximate maximum distance for which sound will be thrown from the sound truck.
- (13) Such other information as the City Clerk may reasonably require.

(e) Issuance of License. The City Clerk shall submit each application provided for by this section to Council for its approval or disapproval. In the event that Council approves an application, the City Clerk shall issue a license upon payment of the required fee by the applicant.

In granting or approving of such license, Council may place such limitations upon the use of the sound truck for which the license application is made as Council may deem reasonable or proper.

(f) Sound Truck; Display to Police Officers. A licensee under this section shall keep such license in the sound truck at all times when it is in operation. The license shall be promptly displayed and shown to any police officer of the City upon request.

(g) Regulations for Use. Any sound truck licensed by the City as provided by this section, with its sound amplifying equipment in operation, shall be subject to the following regulations:

- (1) Permitted sounds. The only sounds permitted shall be music or human speech.
- (2) Hours of operation. Operations shall be permitted for only five hours each day, except on Sundays and legal holidays, when no operations shall be authorized. The permitted five hours of operation each day shall be between the hours of 10:00 a.m. and 9:00 p.m.
- (3) Minimum speed of vehicle. Sound amplifying equipment shall not be operated unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten miles per hour except when such truck is stopped or impeded by traffic. Where stopped by traffic, the sound amplifying equipment shall not be operated for longer than one minute at each such stop.
- (4) Operation near hospitals, schools, churches, etc. Sound shall not be issued within 300 feet of hospitals, nursing homes, schools, churches and public buildings.
- (5) Indecent sounds. The human speech and music amplified shall not be profane, lewd, indecent or slanderous.
- (6) Sound control. The volume of sound shall be controlled so that it will not be audible for a distance in excess of 100 feet for the sound truck and so that such volume is not unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility.
- (7) Maximum wattage. No sound amplifying equipment shall be operated with an excess of fifteen watts of power in the last stage of amplification.
- (8) Other regulations. Such other regulations as Council shall require shall be a condition to the issuance of such license.
(1987 Code 16-1-3)

527.99 PENALTY.

Whoever violates any provision of this article shall be punished by a fine of not more than five hundred dollars (\$500.00).

(1987 Code 16-1-9)

ARTICLE 529
Offenses Relating to Persons

<p>529.01 Assault and battery.</p> <p>529.02 Assault and battery on school employees.</p> <p>529.021 Assault and battery on governmental representatives, health care providers, and emergency medical service personnel.</p>	<p>529.03 Controlled substances.</p> <p>529.04 Breathing, inhaling, or drinking certain intoxicating compounds.</p> <p>529.05 Molesting persons.</p> <p>529.06 Expectoration in public places.</p> <p>529.99 Penalty.</p>
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CROSS REFERENCES

Uniform Controlled Substances Act - see W. Va. Code
Ch. 60A
State law provisions - see W. Va. Code Art. 61-2
Harassing telephone calls - see GEN. OFF. 517.06
Intoxication or drinking in public places - see GEN.
OFF. 521.06

529.01 ASSAULT AND BATTERY.

(a) Assault. No person shall unlawfully attempt to commit a violent injury to the person of another or unlawfully commit an act which places another in reasonable apprehension of immediately receiving a violent injury.

(b) Battery. No person shall unlawfully and intentionally make physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally cause physical harm to another person.
(WVaC 61-2-9)

529.02 ASSAULT AND BATTERY ON SCHOOL EMPLOYEES.

(a) No person shall commit an assault:

(1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or

- (2) By unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.
- (b) No person shall commit a battery:
- (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a; or
- (2) By unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to West Virginia Code 18A-5-1 or 1a.
- (c) For the purposes of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a "school employee" includes a student teacher. (WVaC 61-2-15)

529.021 ASSAULT AND BATTERY ON GOVERNMENTAL REPRESENTATIVES, HEALTH CARE PROVIDERS, AND EMERGENCY MEDICAL SERVICE PERSONNEL.

- (a) Definitions. For purposes of this section:
- (1) "Government representative" means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.
- (2) "Health care worker" means any nurse, nurse practitioner, physician, physician assistant or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician's office, clinic or outpatient treatment facility.
- (3) "Emergency service personnel" means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.
- (b) Battery. No person shall unlawfully, knowingly and intentionally make physical contact of an insulting or provoking nature with a government representative, health care worker or emergency service personnel acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity. Whoever violates this subsection (b) is guilty of a misdemeanor for a first offense.

(c) **Assault.** No person shall unlawfully attempt to commit a violent injury to the person of a government representative, health care worker or emergency service personnel acting in his or her official capacity, or unlawfully commit an act which places that person acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury. (WVaC 61-10-2(b))

529.03 CONTROLLED SUBSTANCES.

(a) Except as authorized by West Virginia Code Chapter 60A, no person shall manufacture, deliver or possess with intent to manufacture or deliver, a controlled substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(b) Except as authorized by West Virginia Code Chapter 60A, no person shall create, deliver or possess with intent to deliver a counterfeit substance classified in Schedule V under West Virginia Code 60A-2-211 or 60A-2-212.

(c) No person shall knowingly or intentionally possess a controlled substance as defined in West Virginia Code 60A-1-101 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by West Virginia Code Chapter 60A. (WVaC 60A-4-401)

(d) No person shall knowingly or intentionally:

- (1) Create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
- (2) Create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance or the container or label of a counterfeit substance or an imitation controlled substance. The provisions of subsection (d)(1) hereof shall not apply to a practitioner who administers or dispenses a placebo. (WVaC 60A-4-401)

529.04 BREATHING, INHALING, OR DRINKING CERTAIN INTOXICATING COMPOUNDS.

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl "cellosolve" acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichloroethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property or releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

- (b) This section does not apply to:
- (1) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or
 - (2) To any alcoholic liquor or nonintoxicating beer as defined in West Virginia Code 60-1-5.
(WVaC 61-8-11)

529.05 MOLESTING PERSONS.

No person shall follow, pursue, lay hands on or otherwise molest or insult any person, male or female, within the City.
(1987 Code 19B-1-3)

529.06 EXPECTORATION IN PUBLIC PLACES.

No person shall expectorate on the floor of any public conveyance, on the floor of any theater or other public building, on any sidewalk or in any other public place.
(1987 Code 19B-1-4)

529.99 PENALTY.

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

Whoever violates Section 529.01(a), 529.02(a) or 529.04 shall be fined not more than one hundred dollars (\$100.00) or imprisoned not more than thirty days, or both.

ARTICLE 533
Offenses Relating to Property

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| <p>533.01 Shoplifting.</p> <p>533.02 Trespass.</p> <p>533.03 Petit larceny.</p> <p>533.04 Dealing with stolen goods.</p> <p>533.05 Injury or destruction of property or monuments.</p> <p>533.06 Tampering with and theft of utilities; CATV.</p> <p>533.07 Littering and deposit of garbage, rubbish, junk, etc.</p> | <p>533.08 Barricades and warning lights; abandoned excavations.</p> <p>533.09 Unauthorized use of dumpsters.</p> <p>533.10 Fraudulently obtaining food or lodging.</p> <p>533.11 Admission to shows without payment.</p> <p>533.12 Posting handbills; defacement.</p> <p>533.99 Penalty.</p> |
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CROSS REFERENCES

See sectional histories for similar State law
 Authority to regulate advertising - see W. Va. Code
 8-12-5(31)
 State law provisions - see W. Va. Code Art. 61-3

533.01 SHOPLIFTING.

(a) General Definitions.

- (1) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.
- (2) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.
- (3) "Merchant" means an owner or operator of any mercantile establishment, and includes the merchant's employees, servants, security agents or other agents.
- (4) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.
- (5) "Merchandise" means any goods, foodstuffs, wares or personal property or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

- (6) "Value of the merchandise" means the merchant's stated price of the merchandise, or in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in subsection (b) hereof, the difference between the merchant's stated price of the merchandise and the altered price.
(WVaC 61-3A-6)

(b) Shoplifting Defined.

- (1) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
- A. Conceals the merchandise upon his or her person or in another manner; or
 - B. Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or
 - C. Alters, transfers or removes any price marking affixed to the merchandise; or
 - D. Transfers the merchandise from one container to another; or
 - E. Causes cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
 - F. Removes a shopping cart from the premises of the mercantile establishment.
 - G. Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.
- (2) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.
(WVaC 61-3A-1)

(c) Breach of Peace; Detention. An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

(WVaC 61-3A-4)

(d) Evidence.

- (1) Evidence of stated price or ownership of merchandise may include, but is not limited to:
- A. The actual merchandise alleged to have been shoplifted; or

- B. The unaltered content of the price tag or marking from such merchandise; or
 - C. Properly identified photographs of such merchandise.
- (2) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.
(WvaC 61-3A-2)
- (e) Civil Liability.
- (1) General rule. Any person who commits any of the acts described in this section shall be civilly liable:
- A. To restore the merchandise to the mercantile establishment; and
 - B. If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and
 - C. For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and
 - D. In all cases, for a penalty to be paid to the mercantile establishment in the amount of fifty dollars (\$50.00) or double the value of the merchandise whichever is higher.
- (2) Costs and attorneys' fees. A merchant who is a prevailing party under this section is entitled to costs.
- (3) Effect of conviction. A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by subsection (f) hereof is not entitled to recover the penalty imposed by this section.
- (4) Right to demand payment. The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit such damages or penalty prior to the commencement of any legal action.

(WvaC 61-3A-5)
- (f) Penalty. A person convicted of shoplifting shall be punished as follows:
- (1) First offense conviction. Upon a first shoplifting conviction:
- A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not more than two hundred fifty dollars (\$250.00).
 - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.

- (2) Second offense conviction. Upon a second shoplifting conviction:
 - A. When the value of the merchandise is less than or equal to five hundred dollars (\$500.00) the defendant shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) and such fine shall not be suspended; or the defendant shall be confined in jail not more than thirty days, or both.
 - B. When the value of the merchandise exceeds five hundred dollars (\$500.00), the defendant shall be fined not less than five hundred dollars (\$500.00) and shall be confined in jail not more than thirty days.
- (3) Mandatory penalty. In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars (\$50.00), or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.
- (4) Prior convictions. In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.
(WVaC 61-3A-3)

533.02 TRESPASS.

- (a) Definitions. As used in this section:
 - (1) "Structure" means any building of any kind either temporary or permanent, which has a roof over it, together with the curtilage thereof.
 - (2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.
 - (3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.
 - (4) "Posted land" means that land upon which reasonably maintained signs are placed not more than 500 feet apart along and at each corner of the boundaries of the land upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this section pertaining to trespass on enclosed lands.

- (5) "Cultivated land" means that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.
- (6) "Fenced land" means that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this section it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this section.
- (7) Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this section, shall be considered as enclosed and posted.
- (8) "Trespass" means the willful unauthorized entry upon, in or under the property of another, but shall not include the following:
- A. Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.
 - B. The exercise of rights in, under or upon property by virtue of rights of way or easements by a public utility or other person owning such right of way or easement whether by written or prescriptive right.
 - C. Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.
 - D. Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.
 - E. Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.
- (WVaC 61-3B-1)

(b) Trespass in Structure or Conveyance. Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be fined not more than one hundred dollars (\$100.00). If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in such structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be subject to the penalty provided in Section 501.99(a).

(WVaC 61-3B-2)

(c) Trespass on Property Other than Structure or Conveyance.

(1) Whoever knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be fined as follows:

A. First Offense Conviction. Upon a first trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$100.00 nor more than \$500.00.

B. Second Offense Conviction. Upon a second trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$500.00 nor more than \$1,000.

C. Third Offense Conviction. Upon a third and subsequent trespassing conviction pursuant to subsection (a), the person shall be fined not less than \$1,000 nor more than \$1,500.

(2) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be subject to the penalty provided in Section 501.99(a).

(3) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwithstanding the provisions of West Virginia Code 61-7-1, be imprisoned not more than thirty days, or fined not more than one hundred dollars (\$100.00), or both.

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

(WVaC 61-3B-3)

533.03 PETIT LARCENY.

No person shall commit petit larceny as defined in West Virginia Code 61-3-13 within the City.

533.04 DEALING WITH STOLEN GOODS.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, any stolen goods or other thing of value which he knows or has reason to believe has been stolen, he shall be deemed guilty of the larceny thereof, and may be prosecuted although the principal offender is not convicted.

(WVaC 61-3-18)

533.05 INJURY OR DESTRUCTION OF PROPERTY OR MONUMENTS.

(a) No person shall unlawfully, but not feloniously, take and carry away or destroy, tamper with, injure or deface any property, real or personal, not his own.

(b) No person shall break down, destroy, injure, deface or remove any monument erected for the purpose of designating the boundaries of the Municipality, tract or lot of land, or any tree marked for that purpose.

(WVaC 61-3-30)

533.06 TAMPERING WITH AND THEFT OF UTILITIES; CATV.

(a) No person with intent to injure or defraud shall procure, make or cause to be made, any pipe, tube, wire or other conductor of gas, water or electric energy, and connect the same, or cause it to be connected, with any main, service pipe or other pipe for conducting or supplying gas, or water or any wires or other conductor of electric energy, in such manner as to supply gas, water or electric energy to any lamp, motor, burner, orifice or any other device, by or at which gas, water or electric energy is consumed, around or without passing through the meter provided for measuring and registering the quantity of gas, water or electric energy consumed, or in any other manner so as to evade payment therefor, and no person, with like intent, shall injure or alter any gas, water or electric meter, or obstruct its action.

(WVaC 61-3-44)

(b) No person with intent to injure or defraud shall connect, or cause to be connected, any pipe, tube, wire, electrical conductor or other instrument with any main, service pipe or other pipe or conduit or flume for conducting water, or with any main, service pipe or other pipe or conduit for conducting gas, or with any main, service wire or other electric conductor used for the purpose of conducting electric energy for light, heat or motive services, for the purpose of taking therefrom water, gas or electric energy, without the knowledge of the owner thereof and with intent to evade payment therefor. (WVaC 61-3-45)

(c) No person shall make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a CATV system within the Municipality for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission, without payment for the service.

(d) No person, without the consent of the owner, shall willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

533.07 LITTERING AND DEPOSIT OF GARBAGE, RUBBISH, JUNK, ETC.

(a) No person shall, without lawful authority, place or dispose of in any manner, upon any public property or upon the premises of another, any paper, trash, garbage, waste, rubbish, refuse, junk or any substance or material which is or may become noxious, offensive, injurious or dangerous to the public health, comfort or safety.

(b) No person shall cause or allow trash, garbage, waste, rubbish, refuse or any other noxious or offensive materials or substances to be collected or remain in any place to the damage or prejudice of others or of the public, or unlawfully obstruct, impede, divert, corrupt or render unwholesome or impure, any natural watercourse.

533.08 BARRICADES AND WARNING LIGHTS; ABANDONED EXCAVATIONS.

(a) No person shall abandon or knowingly permit to remain on public or private property, any excavation, well, cesspool or structure which is in the process of construction, reconstruction, repair or alteration unless the same is adequately protected by suitable barricades and guarded by warning devices or lights at night so that the condition will not reasonably prove dangerous to life or limb.

(b) No person shall destroy, remove, damage or extinguish any barricade or warning light that is placed for the protection of the public so as to prevent injury to life or limb.

(c) Any owner or agent in control of a premises upon which a basement, cellar, well or cistern has been abandoned due to demolition, failure to build or any other reason shall cause the same to be filled to the ground surface with rock, gravel, earth or other suitable material.

533.09 UNAUTHORIZED USE OF DUMPSTERS.

No person without authorization shall dump garbage or trash, or assist in the unauthorized dumping of garbage or trash, in a dumpster or other solid waste container which is located on the property of another person and leased or otherwise owned or maintained by another person. The act of throwing isolated objects into a dumpster or other solid waste container in the prevention or elimination of litter is specifically excepted from any penalties under this section.
(WVaC 61-3-53)

533.10 FRAUDULENTLY OBTAINING FOOD OR LODGING.

Every person who shall, at any hotel, inn, eating, lodging or boardinghouse or restaurant, receive or cause to be furnished any food or accommodation, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse or restaurant, and any person who obtains credit at any hotel, inn, eating, lodging or boardinghouse or restaurant, by the use of any false pretense or device, or by depositing in such hotel, inn, eating, lodging or boardinghouse or restaurant, any baggage or property of less value than the amount of such credit, or of the bill by such person incurred, with such fraudulent intent, and any person who, after obtaining credit or accommodation at any hotel, inn, eating, lodging or boardinghouse or restaurant, absconds from such hotel, inn, eating, lodging or boardinghouse or restaurant, or removes or attempts to remove therefrom any baggage or personal property of any kind subject to the lien provided for in West Virginia Code 38-11-5, with intent to defraud the owner or keeper of such hotel, inn, eating, lodging or boardinghouse or restaurant, without first having paid, satisfied or arranged all claims or bills for lodging, entertainment or accommodation, shall be subject to the penalty provided in Section 501.99(a).

(1987 Code 19C-1-6)

533.11 ADMISSION TO SHOWS WITHOUT PAYMENT.

No person shall enter any hall, building or enclosed ground in the City in which any fair, show, entertainment or exhibition of any kind is being held, for which an admission price is charged, without paying such admission or without the consent or permission of the owner or person in charge of such show or entertainment.

(1987 Code 19C-1-7)

533.12 POSTING HANDBILLS; DEFACEMENT.

(a) No person shall post or place any handbill, notice or advertisement on any property, public or private, without first having obtained permission therefor from the owner of such private property, or the person in charge of such public property.

(b) No person shall attach any sign upon any utility pole of any public service corporation in the City.

(c) No person shall tear, cut or deface any handbill, notice or advertisement which has been posted or placed on any property without the permission of the owner or person in charge of such property.

(1987 Code 19C-1-8)

533.99 PENALTY.

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

(a) Whoever violates Section 533.05(b) shall be fined not more than two hundred dollars (\$200.00) or imprisoned not more than thirty days, or both.

(b) Any person convicted of a violation of Section 533.09 shall be subject to the following penalties:

(1) Upon a first conviction, the defendant shall be fined not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).

(2) Upon a second conviction, the defendant shall be fined not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(3) Upon any subsequent conviction in excess of a second conviction, the defendant shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) or imprisoned not more than thirty days, or both.

Notwithstanding the provisions of West Virginia Code 61-11A-4 or West Virginia Code 50-3-2a, the magistrate or court may order restitution not to exceed the value of unauthorized solid waste services received. (WVaC 61-5-33)

**ARTICLE 541
Railroads**

541.01 Obstructing railroad crossings.
541.02 Trespassing.

541.03 Speed limit.
541.04 Maintenance; drainage.
541.99 Penalty.

CROSS REFERENCES

Authority to eliminate grade crossings - see W. Va.
Code 17-10-7

Grant of right of way - see W. Va. Code 31-2-13

Stopping at grade crossing - see TRAF. 343.01 et seq.

541.01 OBSTRUCTING RAILROAD CROSSINGS.

(a) Definitions. As used in this section:

- (1) "Carrier," "railroad" or "railroad company" means a common carrier by railroad.
- (2) "Train" or "trains" means engines, cars and any type of railroad equipment or rolling stock, or any part thereof, capable of blocking any crossing of a railroad track or tracks and any public street, road or highway.

(b) Blocking of Crossing Prohibited: Time Limit.

- (1) No railroad company, except in an emergency, shall order, allow or permit the operation of or operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway for a period longer than ten minutes. This subsection does not apply to an obstruction of any such street, road or highway caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad, but does apply to all other obstructions as aforesaid, including, but not limited to, those caused by a stopped train or a train engaged in switching, loading or unloading operations.
- (2) Upon receiving notification from a law-enforcement officer, member of a fire department, operator of an emergency medical vehicle, or a member of an emergency services provider that emergency circumstances require the immediate clearing of a public highway railroad grade crossing, the members of the train crew of the train, railroad car or equipment, or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances by the train crew or dispatcher, the railroad shall immediately clear the crossing, consistent with the safe operation of the train.

(c) Responsibility of Railroad Company. The railroad company shall be solely responsible for the acts of its agents and employees in violating any provision of this section.

(d) Presumption. There shall be a rebuttable presumption that a train is operated by the carrier whose marks, numbers, signs and symbols of identification appear on the engine or caboose of such train.

(e) Service of Process. Process issuing for a violation of this section may be served upon the engineer or conductor of the train causing a violation of the provisions of this section or any other officer, agent or attorney-in-fact of the railroad company authorized by law to receive service of summons or other process issuing against such railroad company.
(WVaC Art. 31-2A)

541.02 TRESPASSING.

No person not a passenger or employee, shall be found trespassing upon any railroad or traction car or train of any railroad, by jumping on or off any car or train in motion, on its arrival at or departure from any station or depot of such railroad, or on the passage of any such car or train over any part of such railroad; nor shall any person drive any horse or any horse-drawn or motor-driven vehicle across or upon any railroad track or bridge, except at public or private crossings.

(WVaC 61-3-43)

541.03 SPEED LIMIT.

No railroad company, by or through its agents, servants or employees shall draw, propel or operate, or cause to be drawn, propelled or operated any of its trains, cars or engines at a greater rate of speed than twenty miles per hour within the City.

(1987 Code 19G-1-3)

541.04 MAINTENANCE; DRAINAGE.

(a) General Maintenance. Every railroad company operating within the City shall lay and keep its tracks so that the rails thereof shall be on a level, as nearly as possible, with the surface or plane of the street or crossing. Every such company shall ballast and plank the space between the rails in a substantial and proper manner, and shall, for the space of two feet immediately on the outside of such rails, pave the street or crossing and shall keep and maintain such spaces paved or planked.

(b) Right of Way Drainage. Every railroad company operating within the City shall keep and maintain along and under its tracks, properly constructed sewers and drains, through which all water that may collect at and along its roadway may readily flow and pass.

(1987 Code 19G-1-4)

541.99 PENALTY.

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

(a) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(1) shall be fined not less than one hundred fifty dollars (\$150.00); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two hundred fifty dollars (\$250.00); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than three hundred fifty dollars (\$350.00).

- (b) Any railroad company, carrier or railroad violating the provisions of Section 541.01(b)(2) shall be fined not less than one thousand dollars (\$1,000); upon a second conviction occurring at the same crossing within one year thereafter, shall be fined not less than two thousand five hundred dollars (\$2,500); and upon a third or subsequent conviction occurring at the same crossing within one year after the first conviction, shall be fined not less than five thousand dollars (\$5,000).
(WVaC 31-2A-6)
- (c) Whoever violates Section 541.02 shall be fined not more than twenty-five dollars (\$25.00) or imprisoned not more than thirty days, or both.

ARTICLE 545
Weapons and Explosives

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| <p>545.01 Definitions.</p> <p>545.02 Carrying concealed deadly weapons without license.</p> <p>545.03 Exceptions as to prohibitions against carrying concealed deadly weapons.</p> <p>545.04 Persons prohibited from possession of firearms.</p> <p>545.05 Possession of deadly weapons by minors prohibited.</p> <p>545.06 Possession of machine guns.</p> <p>545.07 Display or sale of deadly weapons.</p> | <p>545.08 Brandishing deadly weapons.</p> <p>545.09 Possessing deadly weapons on premises of educational facilities.</p> <p>545.10 Fireworks sale, possession and discharge.</p> <p>545.11 Discharging firearms.</p> <p>545.12 Throwing or shooting missiles.</p> <p>545.13 Carrying uncased or loaded guns.</p> <p>545.99 Penalty.</p> |
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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) "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.
- (b) "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 so released is locked in place by means of a button, spring, lever or other locking or catching device.

- (c) "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. "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 such knife is knowingly used or intended to be used to produce serious bodily injury or death.
- (d) "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.
- (e) "Nunchuka" 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 such a manner as to allow 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.
- (f) "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 struck. The term "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.
- (g) "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.
- (h) "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.
- (i) "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) to (h) hereof inclusive, 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 18-3-1a and 61-7-11a, in addition to the definition of "knife" set forth in subsection (c) hereof, "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 18-3-1a and 61-7-11a, "deadly weapon" includes explosives, 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.
- (j) "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.

- (k) "Firearm" means any weapon which will expel a projectile by action of an explosion.
- (l) "Controlled substance" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(d).
- (m) "Drug" has the same meaning as is ascribed to that term in West Virginia Code 61A-1-101(l). (WVaC 61-7-2)

545.02 CARRYING CONCEALED DEADLY WEAPONS WITHOUT LICENSE.

(a) No person shall carry a concealed deadly weapon, without a State license or other lawful authorization established under the provisions of West Virginia Code 61-7-4 et seq.

(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 DEADLY WEAPONS.

The licensure provisions set forth in West Virginia Code Article 61-7 shall not apply to:

- (a) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any 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, nor shall anything herein prohibit a person from 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;
- (b) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from the State, or from the United States for the purpose of target practice, from carrying any pistol, as defined in Section 545.01(g), unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;
- (c) Any law-enforcement officer or law-enforcement official as such are defined in West Virginia Code 30-29-1;
- (d) Any employee of the West Virginia Department of Corrections duly appointed pursuant to the provisions of West Virginia Code 28-5-5 while such employee is on duty;
- (e) Any member of the armed forces of the United States or the militia of the State while such member is on duty;
- (f) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of West Virginia, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney;
- (g) Any resident of another state who holds a valid license to carry a concealed weapon by a state or a political subdivision which has entered into a reciprocity agreement with this State, subject to the provisions and limitations set forth in West Virginia Code 61-7-6a.
- (h) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty. (WVaC 61-7-6)

545.04 PERSONS PROHIBITED FROM POSSESSION OF FIREARMS.

(a) Except as provided for in this section, no person shall possess a firearm such as 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 addicted to alcohol;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or who has been involuntarily committed to a mental institution;
- (5) Being an alien is 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 in any court of a 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.

(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 49-5-1 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) "Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States Department of Transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided in West Virginia Code 11-12-86:

- (1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.
- (2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.
- (3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.
- (4) Trick noisemakers which produce a small report designed to surprise the user and which include:
 - A. A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.
 - B. A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.
 - C. A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.
- (5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.
- (6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used: Provided, that sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.
(WVaC 29-3-23)

(b) Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks, provided, permits for the supervised display of fireworks may be granted upon application to the State Fire Marshal and after approval of the Police and Fire Chiefs, and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the Fire Chief, after proper inspection, and of the Police Chief shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The Mayor shall require a bond from the licensee in a sum not less than one thousand dollars (\$1,000) conditioned on compliance with the provisions of this section and West Virginia Code Article 29-3 and the regulations of the State Fire Commission, provided, that the Municipality shall not be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the State Fire Marshal determines to be necessary for the protection of the public.
(WVaC 29-3-24)

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.

545.13 CARRYING UNCASSED OR LOADED GUNS.

No person shall have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the City, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: provided, that the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode. (WVaC 20-2-5)

545.99 PENALTY.

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

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.