

TITLE 10

POLICE DEPARTMENT

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CHAPTER 1 - In General

Section 10-101 Establishment; Purpose; Subject to Authority of the Mayor

The governing body of the Town of Shepherdstown in order to protect person and property within the town, to preserve law and order therein, and to enforce therein the criminal laws of this state and of this municipal code, does hereby establish the Shepherdstown Police Department , hereafter known as the municipal police department. It is also established that the municipal police department is subject to the control and authority of the Mayor. The governing body shall also provide all necessary equipment to maintain such a police department.

CHAPTER 2 - Organization

Section 10-201 Qualifications

Revised April 2002

All members of the municipal police department shall reside within a thirty (30) mile radius of the Town, shall be not less than eighteen (18) nor more than forty-five (45) years of age at the date of his or her application, shall be of sound mind and of good moral character, and shall be required to pass any examinations the governing body may deem necessary. No person shall be barred from employment with the municipal police department because of his race, color, creed, national origin, sex, religion or political conviction.

Section 10-202 Physical Exams

All applicants for positions in the municipal police department shall submit to a physical examination by a physician licensed in this state. Written certification of the applicants good health must be submitted to the governing body before his employment can commence.

Section 10-203 Appointment of Police Officers

Members of the municipal police department shall be appointed by the mayor, subject to prior approval of the governing body.

Section 10-204 Oath

All members of the municipal police department, before entering upon the discharge of their duties, shall take and subscribe to an oath which shall be in the form and effect as follows:

State of West Virginia

Town of Shepherdstown to wit: I, _____ do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia; and the Municipal Code of the Town of Shepherdstown, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the municipal police department, to the best of my skill and judgement.

All such oaths shall be filed and preserved in the office of the municipal police department.

Section 10-205 Chief of Police

The office of the Chief of Police is hereby established. The Chief of Police shall serve as the executive and administrative head of the municipal police department. He shall be responsible to the mayor and the governing body for the general administration of his department and shall make monthly written reports to the council concerning the conduct of his office.

He shall prepare the annual budget estimate for the police department and

submit it to the governing body through the mayor. He shall see to it that all fees and other money collected by members of the police department

are promptly turned over to the municipal recorder or otherwise disposed of according to law. He shall be responsible for the training, discipline and morale of the members of the police department and for their effective and efficient performance of duty.

He may also advise the mayor and the governing body as to the appointment of additional members to the municipal police department.

Section 10-206 Chain of Command; Obedience to orders

The chain of command shall be the mayor, chief of police, and other members of the police department according to rank and seniority within rank; and all members of the police department shall faithfully obey all lawful orders of their superiors in the chain of command.

Section 10-207 Special Police

The mayor, at his discretion and subject to the approval of the governing body, may appoint special police officers whenever the funds are available to do so. Such special police may include but are not limited to, school zones, parking lots or parking building officers. In performing their duties, special police shall be vested with the powers and duties described in Chapter 3 of this Title. They shall also be subject to the qualifications listed under Section 10-201 of this Title.

Section 10-208 Suspension; Demotion; Discharge; Appeal Revised February 2005

The Chief of Police may recommend the suspension, demotion or discharge from the Police Department of any member of the police force for any of the following causes: Refusing to obey the orders of his or her superior officer, neglect of duty, drunkenness, inefficiency, or any other cause the Chief of Police may determine to be necessary for the good of the Police Department.

If the Chief of Police recommends that a member of the Police Department be suspended, demoted, or discharged, a written statement of the charges supporting the recommended suspension, demotion, or discharge shall be delivered personally to the member by his commanding officer. The written statement of charges must explicitly provide the details giving rise to the cause or causes upon which the recommended suspension, demotion, or discharge was promulgated. The member has a right to notice and a hearing before the Police Hearing Board on any recommended punitive action in accordance with Section 10-503 of this Code.

CHAPTER 3 - Powers and Duties

Section 10-301 General Powers and Duties

The Chief of Police and any member of the municipal police department shall have all the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be

exercised or discharged by the sheriff of the county. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of the Chief of Police and any member of the municipal police department shall extend anywhere within the county in which the municipality is located, and any such Chief of Police or member of the police department shall have the same authority of pursuit and arrest beyond his normal jurisdiction as has a sheriff.

It shall be the duty of the members of the municipal police department to enforce the criminal laws of the state within the municipality and all municipal ordinances and to cause the arrest of or arrest any offender and take him before the town court in order to be dealt with according to the law.

Members of the municipal police department shall patrol the town, and its parking areas and shall assist the town court during trials. They shall also serve any legal process issued by the town court promptly. Failure of a member of the municipal police department to discharge any duty imposed by this section shall be deemed official misconduct for which he can be removed from office.

Section 10-302 Members of Police Department to Wear Uniforms and be Armed

The members of the municipal police department shall have the power and authority to carry a service pistol and billy club while on duty unless otherwise expressly directed by the Chief of Police for a special assignment. All members of the police department shall also have the authority to wear such uniform and badge as the governing body may prescribe.

Section 10-303 Duty of Police Officers to respond to Fire Alarms and Assist the Fire Department

It shall be the duty of the municipal police department, as practicable, to designate certain officers to respond to fire alarms and assist the fire department in the protection of life and property of the citizens, and property of the fire department, and in controlling traffic and maintaining order.

Section 10-304 When a Police Officer can make an Arrest

Unless otherwise authorized or directed by this code or applicable law, an arrest of a person by a police officer shall be made in the following cases:

- (1) Whenever he possesses a warrant for the arrest of the person.
- (2) Whenever an offense is committed or a breach of peace is threatened in the officers presence by the person,
- (3) Whenever a felony has in fact been committed and the police officer has reasonable cause to believe the person has committed it.

Section 10-305 Officer may require assistance in making an Arrest; Penalty

Whenever it is reasonably necessary to effectuate an arrest, a member of the police department may request the aid of any person. It shall be unlawful for a person to willfully refuse such aid, and upon conviction shall be subject to a fine of not more than \$50 dollars.

Section 10-306 Disposition of Arrested Persons

Unless otherwise authorized by law, when any person is arrested for an offense, he shall be brought before a court of competent jurisdiction for immediate trial or allowed to post bond. When the person is intoxicated, however, the police officer is hereby authorized to arrest him and hold him in custody until a complaint may be made before a county magistrate and a warrant issued.

Section 10-307 Interference with officer; Refusing to give information; Penalty

Any person who shall at any time, intercept, molest, or interfere with a member of the municipal police department, while on duty, or shall refuse upon request to give any such police officer any information possessed by him relating to any offense committed or about to be committed, shall be guilty of a misdemeanor. Provided that nothing in this section shall be construed to require a person to give information tending to incriminate himself or the husband or wife of such person.

Section 10-308 Police Department Records

It shall be the duty of the municipal police department to keep a comprehensive and detailed daily record, in permanent form, showing:

- (1) All known or reported offenses and/or crimes committed within the corporate limits.
- (2) All arrests made by police officers.
- (3) All police investigations made and all other miscellaneous activities of the municipal police department.

Section 10-309 Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers; penalties.

(a) Malicious assault -- Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer acting in his or her official capacity, and the person committing the malicious assault knows or has reason to know that the victim is a police officer acting in his or her official capacity, shall be charged with a violation of §61-2-10b(a) of the West Virginia Code, as amended.

(b) Unlawful assault -- Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her, and the person committing the unlawful assault knows or has reason to know that the victim is a police officer acting in his or her official capacity, shall be charged with a violation of §61-2-10b(b) of the West Virginia Code, as amended.

(c) Battery -- Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a police officer acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for no more than 30 days, fined the sum of five hundred dollars, or both. If any person commits a second or third violation of this subsection, such person shall be charged with a violation of §61-2-10b(c) of the West Virginia Code, as amended.

(d) Assault -- Any person who unlawfully attempts to commit a violent injury to the person of a police officer acting in his or her official capacity, or unlawfully commits an act which places a police officer acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than 30 days, fined not more than two hundred dollars, or both fined and confined.

(e) For purposes of this section "police officer" means any person employed by the State Police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as defined § 61-3-41 of the West Virginia Code, as amended.

Section 10-310 Obstructing officer; fleeing from officer; making false statement to officer; penalties; definitions.

(a) Any person who by threats, menaces, acts or otherwise, forcibly or illegally hinders or obstructs, or attempts to hinder or obstruct a police officer, acting in his or her official capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more the five hundred dollars or confined in the county or regional jail not more than one year, or both.

(b) Any person who intentionally disarms or attempts to disarm a police officer shall be charged with a violation of §61-5-17 of the West Virginia Code, as amended.

(c) Any person who, with intent to impede or obstruct a police officer in the conduct of an investigation of a felony offense, knowingly and willfully makes a materially false statement, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars and not more than two hundred dollars, or confined in the county or regional jail for five days, or both: Provided, That the provisions of this section 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 purposes of this subsection, "police officer" is defined in accordance with Section 10-309(e) of this code.

(d) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any police 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, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less

than fifty nor more than five hundred dollars or confined in the county or regional jail not more than one year, or both.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any police officer, acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than three thousand dollars, and shall be confined in the county or regional jail for not less than six months nor more than one year.

(f) Any person who intentionally flees or attempts to flee in a vehicle from any police 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 who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than three thousand dollars, and shall be confined in the county or regional jail for not less than six months nor more than one year.

(g) Any person who intentionally flees or attempts to flee in a vehicle from any police 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 who causes bodily injury to any person during or resulting from his or her flight, shall be charged with a violation of § 61-5-17 of the West Virginia Code, as amended.

(h) Any person who intentionally flees or attempts to flee in a vehicle from any police 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 who causes death to any person during or resulting from his or her flight, shall be charged with a violation of § 61-5-17 of the West Virginia Code, as amended.

(i) Any person who intentionally flees or attempts to flee in a vehicle from any police 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 who is under the influence of alcohol, shall be charged with a violation of § 61-5-17 of the West Virginia Code, as amended.

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

(k) For purposes of this section, the terms "flee," "fleeing" and "flight" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing police officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

CHAPTER 4 - Limitations on Officers

Section 10-401 Provisions of Title 2, Chapter 7 apply

All the provisions enumerated in Title 2, Chapter 7 of this code shall apply to all members of the municipal police departments.

Section 10-402 Retired members not to exercise Police Authority

A member who has been or shall be retired shall not, while in retirement, exercise any of the powers conferred upon active members.

CHAPTER 5 - Procedure for Investigation

Section 10-501 Definitions.

Unless the context clearly indicates otherwise, as used in this chapter:

(1) "Accused officer" means any police officer who is the subject of an investigation or interrogation which results in a recommendation of punitive action against him or her.

(2) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

(3) "Hearing board" means a board appointed to hold a hearing on a complaint against an accused officer. The hearing board shall consist of three members to be appointed pursuant to paragraph (a) of this subdivision.

- (a) The hearing board shall be a standing hearing board. The chief of police shall appoint the first member, the Martinsburg Chapter of the Fraternal Order of Police, which covers the Counties of Jefferson, Berkeley and Morgan, shall appoint the second member, and the Shepherdstown Business Association shall appoint the third member. Of the three original appointments, the first member shall serve for six years from the date of his or her appointment; the second member shall serve

f and the third member shall serve for two years from the date of his or her
o appointment. After the original appointments, all appointments shall be made for
u periods of four years each by the designated appointing authority. In the event that
r any member shall cease to be a member due to death, resignation, final removal or
y other cause, a new member shall be appointed within thirty days of the date the
e ex-member ceased to be a member. This appointment shall be made by the officer or
a body who in the first instance appointed the member who is no longer a member.
r When the hearing board is appointed, the three members shall elect one of their
s number to act as president of the board, who shall serve as president for one year. In
f the event that a member has had a part in the investigation or interrogation of an
r accused officer or is related by consanguinity or affinity to an accused officer,
o that member shall be recused from participation in the accused officer's hearing. In
m such an instance, the officer or body who in the first instance appointed the recused
t member shall appoint another person for the sole purpose of the accused
h officer's hearing. No member shall hold any other office (other than the office of
e notary public) under the United States, this state, or any municipality, county or
other political subdivision thereof; nor shall any member serve on any political
committee or take any active part in the management of any political campaign.

(b) (i) The mayor of the municipality may, at any time, remove any hearing board member for good cause, which shall be stated in writing and made a part of the records of the hearing board. However, within ten days of removing any member, the mayor shall file in the circuit clerk's office of Jefferson County, West Virginia, a petition setting forth in full the reason for the removal and seeking the circuit court's confirmation of the mayor's removal of the member. The mayor shall file a copy of the petition with the removed member at the same time it is filed with the circuit clerk. The petition shall have precedence on the circuit court's docket and shall be heard as soon as practicable on the request of the removed member. All rights vested in a circuit court by this subsection may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time the petition is filed, and the

udge thereof cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding circuit court term, whether regular or special, and the removed member shall remain removed until a hearing is held on the petition. The court or the judge thereof in vacation shall hear and decide the issues presented by the petition. The party affected adversely by the court's or judge's decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk's office within ten days as provided above, the removed member shall immediately resume his or her position as a hearing board member.

(ii) Any resident of the municipality shall have the right at any time to seek the removal of any hearing board member. To do so, the resident shall file a petition in the circuit clerk's office of Jefferson County, West Virginia. The resident shall also serve a copy of the petition on the member sought to be removed. The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard. Any party adversely affected by the circuit court's or judge's decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases.

(4) "Police officer" or "officer" means any police officer of the Shepherdstown police department employed by the municipality, but shall not include (a) the highest ranking officer of the police department or (b) any officer who has not completed the probationary period established by the police department.

(5) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(6) "Under investigation" or "under interrogation" means any situation in which any police officer becomes the focus of inquiry regarding any matter which may result in punitive action.

Section 10-502 Investigation and interrogation of a police officer.

When any police officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police department, which could lead to punitive action, such interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police officer being interrogated at any place other than his residence, such officer shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer occurs during his regular duty hours, such officer shall not be released from employment for any work missed due to interrogation.

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(4) command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. No more than three interrogators at one time shall question the officer under investigation.

(6) 3) No police officer under interrogation shall be subjected to offensive language or threatened with punitive action. No promise of reward shall be made as an inducement to answering questions.

(8) 4) The complete interrogation of any police officer shall be recorded, either written, taped or transcribed. Upon request of the police officer under investigation or his counsel, and upon advance payment of the reasonable cost thereof a copy of the record shall be made available to him not less than ten days prior to any hearing.

(11)

(12) 5) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any police

o e represented by counsel who may be present at
f all times during such interrogation.

i Nothing herein shall prohibit the immediate temporary suspension, pending an
c investigation, from duty of any police officer who reports for duty under the influence of alcohol
e or controlled substances which would prevent the officer from performing his duties as defined
r in chapter sixty-a [§§ 60A-1-101 et seq.] of the West Virginia Code, as amended, or under the
t influence of an apparent mental or emotional disorder.

t
h Section 10-503 Hearing.
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n (a) Before taking any punitive action against an accused officer, the
p police

t department shall give notice to the accused officer that he or she is entitled to a hearing on the
h issues by a hearing board. The notice shall state the time and place of the hearing and the issues
a involved and shall be delivered to the accused officer no later than ten days prior to the hearing.

t
o (b) When an accused officer faces any recommended punitive action, the hearing
b board shall conduct a hearing pursuant to the provisions of subsection (c) of this section.

f (c) The following requirements shall govern the operation conduct of a hearing board
f
i under subsection (b) of this section:

e (1) The hearing board shall keep an official record of each hearing it
r conducts. The official record shall include the testimony offered and exhibits introduced at the
s hearing.

h (2) Both the police department and the accused officer shall be given ample
a opportunity to present evidence and argument with respect to any issue raised at the hearing.

l (3) The hearing board may subpoena witnesses and administer oaths or

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- (14) examine any individual under oath, and may require and compel the production of records, books, papers, contracts and other documents, in connection with any
- (15) issue raised at the hearing.

(16)
(4) The hearing board shall prepare a written order detailing any decision or action it takes as a result of the hearing. The written order shall include written findings of fact setting forth a concise statement of the hearing board's factual findings and conclusions on each issue raised at the hearing. The hearing board shall hand-deliver or promptly mail a copy of the written order to the accused officer or his attorney of record.

(19)
(d) A hearing board's order is binding on all parties involved unless it is overturned in the appeal process described in Section 10-505 of this Chapter.

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No police officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the police officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

Section 10-505 Appeal

A hearing board's decision rendered under subsection (b), Section 10-503 of this Chapter may be appealed by the police officer adversely affected by the order or by the chief of police if he or she believes that the department would be adversely affected by the hearing board's order. An appeal under this section shall be made to the circuit court of Jefferson County, West Virginia, or in the county in which the police officer resides, if such officer resides in West Virginia.