

## **TITLE 11.**

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## CHAPTER 1 - Authorization of Municipal Public Works

### Section 11-101 Definitions

In this chapter, the terms municipal public works or projects shall mean the construction or repair of public buildings, utilities or property.

### Section 11-102 Public uses for which property may be taken or damaged

The public uses for which private property can be taken are as follows:

- (a) For the construction of railways, waterways, roadways, sidewalks, storm sewers or other works for internal improvement used by the public.
- (b) For the construction of telephones and power plants used by the public.
- (c) For the construction, maintenance, or operation of the works of natural resources.
- (d) For the construction, maintenance, or operation of water plants.
- (e) For the construction, maintenance, or operation of sewer systems or sewage plants.
- (f) For the reasonable use of public enterprises of which the municipality is sole or part owner.
- (g) For buildings, parks, recreation areas, monuments, etc., of the municipality.
- (h) For cemeteries or for enlarging existing ones.
- (i) For public schools, libraries or hospitals.
- (j) For the construction, maintenance, or operation of pipelines, plants, systems and storage facilities; for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations.

### Section 11-103 Municipalities authorized to construct, etc., public works and to acquire property, payment of cost

This municipality has the power to construct or repair any public works, and the authority to acquire necessary land by gift and condemnation. The acquisition or improvements of any public works may be financed by the issuance of general obligation bonds or revenue bonds, special assessment to the appropriate landowners, or grants or loans.

#### Section 11-104 Obligation paid by general obligation bonds

This municipality may issue general obligation bonds for public works projects, the price of which shall not be below the par value of the bond. The sale of general obligation bonds shall be governed by the restrictions and limitations of the United States Government. The indebtedness of the town shall not be more than five percent of the value of the taxable property within; nor shall any bond be issued unless the debt will be serviced within the regular tax levy limits prescribed in the Tax Limitation Amendment, of the state constitution. No general obligation bonds shall be issued until the question of issuance has been submitted to the voters during an annual or special election and three-fifths of the people voting approve the bond.

#### Section 11-105 Obligation paid by revenue bonds

This municipality may issue revenue bonds for public works projects. The revenue bonds shall not in any way be a corporate indebtedness of this municipality within the meaning of any statutory or constitutional limits therein.

Such revenue bonds shall bear interest at not more than eight percent per annum payable semi-annually and shall mature at a time set by the resolution. Such bond may be made redeemable before maturity at not more than par value below thereto and a premium of five percent. Said ordinance shall fix the form and denomination of the bonds plus the place where the principle and interest are to be paid which may be at any bank or trust company. The bonds shall state, on the front, that the municipality is not responsible for paying for the bonds but that payment will come from the net revenues of the works. All bonds shall be under the Uniform Commercial Code of the State. Said bonds shall be exempt from all taxation. All bonds shall contain the municipal seal and all the signatures on the bond shall remain good even if these people leave office. If the proceeds of the bonds are not enough, more may be issued. If the proceeds are too great, the profit shall be used to pay back the bonds.

#### Section 11-106 Obligation paid by special assessment

The cost of the public works project may be apportioned upon the landowners whose land abutts upon the project's rights of way. If the project's rights of way should be different on one street than another, then the cost may be equitably apportioned. The cost shall only be against those whose abutting land benefitted from the project's rights of way in all situations not covered in this section, the cost shall be apportioned equally as determined by the governing body.

The property abutting any project's right of way may be held in lien until such assessment which is charged to such property is paid. A notice of the liens shall be certified by the recorder and sent to the county clerk. The owner shall pay when the installments come due. If he defaults his payments for sixty days, this municipality can demand the entire sum owed and take legal action to obtain it based on the records as held by the clerk of the county.

Section 11-107 Issuance of general obligation bonds to be repaid by special  
assessments

This municipality may issue general obligation bonds for improvements, acquisition or construction in anticipation of special assessments, the price of which shall not be below the par value of the bond. The bonds shall be payable not to exceed ten years from the date of the issuance and shall bear interest not to exceed eight percent/annum, payable annually. The sale of municipal bonds shall be governed by the restrictions and limitations of the United States Government. The indebtedness of the town shall not be more than five percent of the value of the taxable property within; nor shall any bond be issued unless an annual tax is imposed to pay off the interest of all bonds and the balance in ten years. All money collected from the abutting landowners shall go toward paying off the bonds. No general obligation bonds shall be issued until the question of issuance has been submitted to the voters during an annual or special election in which three-fifths of the people voting approve the bond.

Section 11-108--Acceptance of grants; procurement of loans

This municipality can secure loans to build or improve its works from federal sources, private agencies, individuals or corporations which loan or temporarily advance money which can be repaid out of the proceeds of the bonds issued under this chapter.

In no event shall any loan or temporary advance be a general obligation of the municipality but shall be paid for solely from the proceeds of the bond or the revenue of the works.

Section 11-109 Limitations on additional assessment

When the cost of constructing public works projects has been assessed against abutting property owners, no part of the cost of a similar improvement of the same portion of the street shall be assessed for ten years after completion of the preceding similar assessment.

CHAPTER 2 - Administration and Management of Public Works Projects

Section 11-201 Construction, etc., to be under control of governing body or  
appointed board, etc.

The construction and repair of all works may be made up of a committee or board containing either all or a part of the governing body. (i.e. Sanitary Board, Parks and Recreation Board).

The governing body shall set the powers and compensation of such board members, the number of members and the way in which they are to be appointed or selected. The board shall be nonpartisan and shall establish its own bylaws.

Section 11-202 Powers of board

The board shall take all steps necessary and have the power to make contracts and agreements in order to carry out the provisions in this chapter;

Provided, that any contract relating to financial matters shall be approved by the governing body. The board shall employ and fix the rate of compensation for those necessary, and the employees shall do such work as the board directs. All expenses incurred, shall be paid by provisions outlined in this chapter and at no time shall the board spend beyond the extent to which money shall have or may have been provided under the authority of this chapter. No contract or agreement with any contractor of over one thousand dollars shall be made without first having open public bids and the award made to the lowest bidder. The board shall establish rules and regulations for the use of the works.

Section 202a: Creation of a Sanitary. Board;  
Qualifications; Term; Powers and Duties

(a) There be and is created a Sanitary Board for the Town of Shepherdstown in Jefferson County, West Virginia.

(b) The Sanitary Board of the Town of Shepherdstown shall be appointed by the Mayor and the Town Council, and the members of said Board, upon their appointment, shall qualify by taking the oath of office required by other public officials of the Town.

(c) The Sanitary Board, as herein created, shall be composed of the Mayor of the Town of Shepherdstown and two persons appointed by the Mayor and the Town Council, who shall be

bona fide residents of the Town. No officer or employee of the Town of Shepherdstown shall be eligible for appointment on said Sanitary Board until at least one year after the expiration of the term of his or her public office.

(d) The appointed members of said Board shall serve for a term of three years. Vacancies shall be filled for any unexpired term in the same manner as the original appointment. The Mayor's term shall coincide with his or her tenure of office. (Note: The current appointed members of the Sanitary Board shall be deemed members of the Board created by this Ordinance and shall continue to serve until the expiration of their original appointed terms:)

(e) The Sanitary Board shall have the control over and supervision of construction, acquisition, improvement, equipment, custody, operation and maintenance of any sewage collection system and sewage treatment plant or plants; intercepting sewers; outfall sewers; force mains; pump stations and ejector stations as hereafter may be constructed within and for the benefit of the residents of the Town of Shepherdstown as well as the collection, treatment, purification and disposal, in a sanitary manner of liquid and solid waste, night soil and industrial waste of the Town of Shepherdstown; and in addition thereto, said Board shall be vested with and shall exercise all of the rights and perform all of the duties conferred upon it by Article 13 of Chapter 16

of the Code of West Virginia, and all acts amendatory and supplementary thereto.

(f) The Mayor of said Town shall act as chairman of the Sanitary Board, which shall select from its members a vice chairman and shall designate a secretary and treasurer (but the secretary and treasurer may be one and the same), who need not be a member or members of the Sanitary Board. The vice chairman, secretary and treasurer shall hold office at the will of the Sanitary Board.

(g) This ordinance shall be effective from passage.

(h) The provisions of this ordinance are several, and if any section, provision, sentence, clause or word of this ordinance be declared invalid, such decision shall not affect or impair any of the remaining provisions of this ordinance. It is hereby declared to be the intent of the Council of said Town that this ordinance would have been adopted had the invalid portion not be included herein.

#### Section 11-203 Rates for services rendered by works

This municipality has the power to establish rates and maintain these rates for all public works and to charge these rates to people for services rendered. The rates shall be used for maintenance and improvement and to pay off the bonded indebtedness. All rate changes shall be subject to public hearing.

#### Section 11-204 Accounting system, yearly auditing, custodian of funds

This municipality/board shall maintain a proper system of accounting, showing the amount received. All accounts shall be audited every year by a competent auditor and all audits shall be open to the public. The treasurer or other appointed official shall be the custodian of funds derived from the income received from the works and all such funds shall be kept separate from municipal funds.

#### Section 11-205 Publication of financial statement

The board/municipality shall publish a financial statement every year as a Class 1 legal advertisement. It shall include all expenditures for the year and where such expenditures went. It shall also include the money taken in from the bonds and how it was used plus a report on the debts that had occurred during the year and a final balance. If the board fails these duties, every member concurring

in the failure shall be guilty of a misdemeanor and fined not less than one hundred or more than two hundred dollars.

### CHAPTER 3 - Water and Sewage Works

#### Section 11-301 Authorization of water and sewage works

This municipality shall have the responsibility for the planning and implementation of a water and sewage system for the citizens of the municipality and those other area residents whom the council deems it feasible to serve. This is to be accomplished in keeping with existing State Statutes and with regard to the health, safety, and public interest of the citizens.

The council, in keeping with the statutes of the State of West Virginia, may engage in contracts for the provision of planning, engineering and construction, services with the purposes of providing water service for the residents of this municipality and those other populations to be considered.

Section 11-302 Connection to sewers; Board of Health

The owner of any property wherein people live, are employed or congregate must be equipped with sanitary facilities for sewage disposal that are approved by the board of health. Any person owning abutting land on a public sewer or where such a sewer might be placed may be compelled by the board of health to hook to the public sewer, and a notice to do so will be given to the owner by the board of health. Failing to comply with this order after ten days have gone by shall be a misdemeanor beginning on the eleventh day and every day afterwards shall be a separate offense. The fine shall not be less than five or more than twenty-five dollars.

Section 11-303 Rates for service

This municipality has the power to charge and maintain just and equitable rates to every person using the system and to charge these rates from time to time. The revenue gained from such charges shall be used to upkeep the works and pay off debt service requirements. All rates, if not paid when -charged, may constitute a lien, and if not paid in thirty days after the same is due, the amount thereof plus ten percent and the attorneys fee can be gained by the municipality in a civil suit. If this course of action does not work, the municipality may make application to the public service commission for relief.

Whenever a rate hike is to be put into effect, a public hearing shall be held not less than ten days after the proposal after which the hearing shall be held and the rates shall be decided. A copy of the rates shall be kept with the recorder and open to the public at all times. The aggregate of the rates must be sufficient to maintain the care of the works.

Section 11-304 System of accounts; audits

This municipality shall establish an accounting system based on the system of accounts as provided by the West Virginia Public Service Commission for the Water and Sewage Works. These accounts shall be audited annually and the audit should be made open to the public.

Section 11-305 Preparation and publication of financial statement

The clerk of the municipality in charge of the accounting for the water and sewage works shall prepare a monthly income statement to be presented to the mayor and council showing the cash collected and disbursed for the period.

The municipality shall prepare an annual report including a balance sheet, income statement, and list of assets of the water and sewerage works. Such a report shall be prepared in accordance with the format and system of accounts provided by the West Virginia Public Service Commission.

The municipality shall publish a financial statement of water and sewerage works every year as a Class 1 legal advertisement.

RESOLUTION PROVIDING FOR THE  
MEANS OF APPOINTMENT OF THE  
SHEPHERDSTOWN'S WATER BOARD  
AND DEFINING THE WATER  
BOARD'S POWERS AND DUTIES

WHEREAS, the Corporation of Shepherdstown owns and operates the municipal water works located in Shepherdstown, West Virginia, and environs; and

WHEREAS, the Town Council of the Corporation deems it in the best interest of the water works to supervise and control the operation of said plant with the advice of and upon the recommendations of a "Water Board"; and

WHEREAS, the Town Council wishes to provide for the means of appointment, the term of office and the duties and responsibilities of said Water Board

Now, Therefore, Be It Resolved By The Common Council of the Corporation of Shepherdstown, Jefferson County, West Virginia, As Follows :

1. That the Town Council will supervise and control the operation of the municipally owned water works with the advice and recommendations of a "Water Board"

2. That the Water Board shall consist of seven members appointed by the Mayor with the advice and consent of the Common Council. Board members shall be over the age of 21 years; competent to render the services required; live within the Corporation of Shepherdstown, or within the service area served by the water plant; be customers of the water plant and two members, to-wit: the Mayor and one other member of Council, shall be members of the Common Council. The term of Office of the Mayor and the other Council member shall be the term of their elected position in the Corporation government, and the term of the remaining five members shall be for a period of three (3) years. In order to ensure continuity of operation of the Water Board, the following persons are appointed as members of the Board for the noted term:

Appointment Date	End of Term
1. July 1, 1971 Mayor (Term of Office)	June 30 19,72
2. July 1, 1971 Recorder (" " ")	June 30, 1972
3. January 12, 1971 James Hafer	June 30, 1974
4. January 12, 1971 Kenneth Rentch	June 30, 1974
5. January 12, 1971 Gary Moreland	June 30, 1974
6. January 12, 1971 John Rachella	June 30, 1974
7. January 12, 1971 James Muncy	June30, 1974

### **3 The Water Board shall meet not less than one time per**

month; shall elect from their midst their own chairman and secretary; shall keep written minutes and records of their proceedings and shall exercise the following powers, duties and responsibilities:

- a. Prepares and implements annual budget for water facility..
- b. Establishes and approves operating and maintenance procedures for the water facility.
- c. Recommends revisions in rate schedule, billing procedure, delinquency accounts.
- d. Prepares and recommends short, medium and long, range maintenance program.
- e. Recommends employment, discharge, advancement and addition of employees.
- f. Monitors operating and maintenance practice of water facility.
- g. Acts liason between Council and citizens on all matters dealing with water facilities.
- h. Recommends additions or expansions to the facilities.

- i. Approves scheduled work involving shut down of service.

## CHAPTER 4 - Curbs and Sidewalks

### Section 11-401 Standards and specifications for construction, extension, repair and maintenance

Curbstones, curbing and sidewalks shall be constructed, extended, repaired and maintained in conformity with standards and specifications prepared by the street commissioner and approved by action of the town council entered upon its journal, a copy of which shall be maintained on file, in current status, in the office of the street commissioner and shall there be available to the public for inspection and use during all regular business hours.

### Section 11-402 Town may set line of curbing along streets

The town council may cause a line of curbing to be set or reset along any street, or any portion thereof, at the expense of the town.

### Section 11-403 Sidewalks in residential areas

In such residential portions of the town as may not be from time to time exempted from this provision by resolution of the town council, where a sidewalk is not less than ten feet in width, a grass plot twenty-four inches in width between the inside of the curb and the sidewalk proper may be sodded in lieu of paving; and where such sidewalk is less than ten and more than five feet in width a grass plot eighteen inches in width between the inside of the curb and the sidewalk proper may be sodded in lieu of paving thereon, margins shall be neatly sodded with grass by the owners of the adjacent lands.

### Section 11-404 Repair of sidewalk by abutting owners; failure to repair

All owners or agents of owners with property abutting and fronting upon any plaza, street, or alley within the corporate limits of the Town are required to keep the public sidewalks immediately abutting their property in good order and repair. Each such owner shall be liable in tort for any bodily injury or property damage caused by the failure to keep the sidewalks in good order and repair, and should the Town be called upon to make such payment in damages to a third party, the Town will look to the adjoining/abutting landowners for contribution and indemnity. The Town may, at its discretion, through the street committee, notify such owner that repairs are necessary to put such sidewalk in good order and such owner shall, within ten days after such notification, under the supervision of the street committee, complete such repairs, as specified in such notice. If the person fails to make the required repairs, the Town may repair same and the owner shall be liable to the Town for the cost of repairs. Failure by the Town to notify a property owner of a dangerous sidewalk condition shall not excuse the owner from his duty to discover and correct such a condition himself.

Section 11-405 Driveways across sidewalks

Any person desiring a driveway across the sidewalk of his premises shall cause the sidewalk to be paved with cement or other material designated by the street commissioner and shall, when required by the street commissioner, replace the curbstone that may be injured or destroyed by the use of such driveway.

Section.11-406 Animals and vehicles prohibited on sidewalks

(a) It shall be unlawful for any person to drive any vehicle or to ride, drive, or to lead any horse or other beast of burden along or across any sidewalk in the town, except upon such part of any sidewalk as may be made for crossing thereof.

(b) It shall be unlawful for any person owning or having charge of a horse, cow, or mule to hitch such animal on, or to suffer any such animal to lie on, feed on, or befoul any sidewalk in the town.

Section 11-407 Prohibited accumulation of snow, ice and debris on sidewalks and removal thereof by town at expense of property owners

(a) No person shall permit the accumulation of snow or ice upon the sidewalk adjacent to any property owned or occupied by him within the town, but shall remove the same within a reasonable time not later than 9:00 a.m., and 4:00 p.m., each day that snow or ice accumulates thereon.

(b) No person shall permit the accumulation of trash, debris or anything unsanitary upon the sidewalk adjacent to any property owned or occupied by him within the town, or within five feet of any such sidewalk.

(c) Upon the accumulation of any snow, ice or debris upon any sidewalk or within five feet of any sidewalk in violation of this section the town, if the owner or occupant of the adjacent property fails to do so upon notice, may remove such snow, ice or debris and the expense of such removal shall be charged to the owner of such adjacent property and shall constitute a lien upon such property.

CHAPTER 5 - Streets and Public Places

Section 11-501 Person to be designated as street commissioner

The mayor shall, with the advice and consent of council, designate someone as street commissioner.

Section 11-502 Work on streets to be under supervision of street commissioner

All work done on streets of the town shall be under the supervision and direction of the street commissioner.

Section 11 -503 Placement of obstructions restricted. Revised  
October 1996

(a) It shall be unlawful for any person to obstruct any street, alley, sidewalk or public place in the town by placing anything thereon or therein that will interfere with travel or the free use thereof for the purpose for which they are intended,

(b) For purposes of this section, an obstruction that will interfere with travel or free use of a sidewalk shall mean any object of a permanent or temporary nature placed on a sidewalk:

(1) that constricts free passage of a pedestrian to a space of less than forty two (42) inches in width, or

(2) that is placed within forty eight (48) inches of the face of a curb in legal parking areas, or

(3) that is hung or suspended over the areas referenced in (1) or (2) above and provides less than seven (7) feet of clear space over the sidewalk.

(c) Any porch, entryway, stairstep, stepping stone, or other permanent construction that, provides access entry or admission into, and which is permanently affixed to a permanent structure will be exempt from the restrictions imposed by this ordinance, provided that such porch, entryway, stairstep, stepping stone or permanent construction was in existence and utilized for its intended function before the effective date of this ordinance.

(d) Any trees, benches, trash receptacles and fire hydrants placed in a street, alley, sidewalk or public place by the municipal government prior to the effective date of this ordinance are exempt from the restrictions imposed by this ordinance. Such items may be replaced by a similar item when deemed necessary by

the Public Works Superintendent.

(e) The council of the town may approve future installation of trees, benches, trash receptacles and fire hydrants by the municipal government as an exception to the above limitations, if it is deemed by the council that the public interest benefits from such installation.

(f) Any free standing signage placed on a street, alley, sidewalk or public place, must also comply with the signage requirements established by Section 9-210 of the Municipal Zoning Ordinance that pertain to free standing signs.

(g) Materials used in repairs or construction may be piled upon any public street, alley, sidewalk, or public place for a period of time not to exceed one week upon request to and approval by the Public Works Superintendent, who

may specify the manner and place where such materials may be deposited.

(h) Any person who knowingly causes or allows items to obstruct streets, alleys, sidewalks or public places in violation of this ordinance , shall be guilty of a misdemeanor, and shall, in addition to all other penalties provided for in this chapter or any other provisions of this code or ordinance of the town, be punished by imposition of a fine of not more than one hundred dollars (\$100.00) for each separate offense, provided that each day a violation is maintained shall constitute a separate offense and may be proceeded against by separate prosecution until such violation is abated.

Section 11-504 Closing of streets and sidewalks while  
undergoing repairs

The street commissioner may close any street or sidewalk in the town to the passage of pedestrians or vehicles when any work is being done or is to be done under the direction of the town authorities, while such work is in progress, and shall notify the police department and fire department of such closing.

## Section 11-505 Shepherdstown Tree Commission (Added 10-2000)

### AUTHORITY AND POWER.

There is hereby created and established a Tree Commission for the Corporation of Shepherdstown which shall consist of five members who shall be appointed by the Mayor and with the approval of Council. Members of the Board shall serve without compensation.

### TERMS OF OFFICE.

The term of the five persons to be appointed shall be three years, except the term of two members appointed to the first Board shall be for only one year and the term of one member shall be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term. The Board shall choose its own officers, make its own rules and regulations and keep a journal of its proceedings. A majority of the members shall constitute a quorum for transaction of business.

### APPLICABILITY.

This article provides full power and authority to the Tree Commission over all trees, plants, and shrubs located within street right-of-ways, parks, and public places of the Corporation. The Commission shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the public right-of-way and other publicly owned grounds as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such publicly owned lands.

### DEFINITIONS.

- (a) "Arborist" means a person with special skills, training or certification to apply knowledge on urban trees.
- (b) "Corporation" means the Corporation of Shepherdstown, a political subdivision of West Virginia.
- (c) "Contractor" means any individual, corporation or firm who agrees to supply labor or material to the Corporation of Shepherdstown.
- (d) "Right-of-way" means any public street, alley, or easement owned by the Corporation of Shepherdstown.
- (e) "STC" means the Shepherdstown Tree Commission.
- (f) "Tree" means any perennial woody plant supported by a trunk with branches and foliage growing at the same distance above the ground and includes shrubs and various woody plants.

LICENSING.

It shall be unlawful for any person, firm or corporation to engage in the business of planting, cutting, trimming, pruning, removing, spraying, otherwise treating trees, shrubs or vines within the Corporation without first producing evidence of certification/license

before the Corporation. Those providing any tree service to the Corporation must have a business license and show proof of certification as an arborist. The STC may impose specific tests, licensing requirements, certification or other methods of determining the professional status of those individuals working on urban trees within the Corporation.

#### INSURANCE.

Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of three hundred thousand dollars (\$300,000) for bodily injury or death and one hundred thousand dollars (\$100,000) property damage indemnifying the Corporation or any personal injured or damaged resulting from the pursuit of such tree work determined by the STC.

#### LANDSCAPE.

In new subdivisions or when the development of commercial property occurs, the STC will review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks and other public places abutting lands henceforth developed and/or subdivided. All developments shall provide shade trees with the following standards:

- (a) A minimum caliper of 1-1/4 inches.
- (b) Uniformly spaced not less than twenty feet or more than fifty feet apart along the entire length of each street within the development except in special plantings designed by a landscape architect and approved by the STC.
- (c) Varieties (species) acceptable to the Corporation must be on the list of acceptable tree species maintained by the STC.

#### TREE PLANTING, MAINTENANCE AND REMOVAL.

- (a) Tree Species The STC develops and maintains a list of desirable trees for planting along streets and elsewhere within the Corporation.
- (b) Topping It shall be unlawful as a normal practice for any person, firm or Corporation department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical

may be exempted from this section at the determination of the STC. All exceptions must be approved by the STC.

- (c) Planting Trees shall not be planted on any publicly owned grounds within the Corporation without the specific written approval of the STC. Only those trees on the list of desirable tree species as maintained by the STC shall be considered for new or replacement planting. All tree planting shall comply with the American Association of Nurserymen Standards unless special standards are allowed by the STC.
- (d) Maintenance No person, firm or corporation shall provide tree maintenance of any kind to any Corporation owned tree without the express written consent of the STC.

- (e) Removal No person, firm or corporation shall remove, cut above the ground, or disturb any tree on any street, park or other specific place without first filing a written request and procuring written permission from the STC. The person receiving said permission shall abide by the standards set forth in this section. The STC may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which may by reason of its nature is injurious to sewer, utility lines, gas lines, water lines or other public improvements or is affected with any infectious fungus, insect or pest.

#### TREE PROTECTION.

- (a) Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, or threatens to spread disease or insect infestations, the Corporation shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree is situated, and the notice shall require such property owner to eradicate, remove or otherwise control such condition within a reasonable time to be specified in such notice.
- (b) No person, firm or corporation, except the STC or its agent, may perform any of the planting, removal, trimming, pruning, spraying or maintenance of any nature on publicly owned trees without first obtaining a permit from the STC which no fee shall be charged.

#### ENFORCEMENT.

The Corporation shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the Corporation.

#### PENALTIES, CLAIMS AND APPEALS.

- (a) Violations Any person who violates any provision of this article or who fails to comply with any notice issued pursuant to provisions of the article, upon being found guilty of violation, shall be subject to a fine not to exceed one hundred dollars (\$100) for each separate offense. Each day during

which any violation of

any provision of this article shall occur or continue shall be a separate offense. If, as the result of the violation of any provision of this article, the injury, mutilation, or death of a tree, shrub or other plant located on Corporation owned property is caused, the cost of repair or replacement of such tree, shrub or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens", as published by the International Society of Arboriculture.

Assignment of Claim In the event that a nuisance is not abated by the date specified in the notice, the Corporation is authorized to cause the abatement of such nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

(c) Appeals All hearings shall be open to the public. The appellant, the STC or its agent and any person whose interests are affected shall be given an opportunity to be heard before the Shepherdstown Town Council. The procedures shall not require compliance with strict rules or evidence but shall mandate that only relevant information be received. Council shall render its decision within thirty days.

## CHAPTER 6 - Refuse Collection and Disposal

### Section 11-601 Definitions

Refuse - The word "refuse" shall be taken to mean all sweepings, cleanings, trash, rubbish, litter, garbage, industrial or domestic waste; organic wastes or residue of animals sold as meat, fruit or other vegetable matter from kitchens, dining rooms, markets, or places dealing in or handling meats, fowl, fruits, grain or vegetables; offal, animal excreta, the carcasses of animals, tree or shrub trimmings, grass clippings, dirt, wood stone, brick, plaster, or materials resulting from the demolition, alternation or construction of buildings or structures, accumulated waste materials or substances which may become nuisances, some of which are more particularly classified as prepared garbage, raw garbage, trash or ashes.

Private scavenger - The term "private scavenger" shall be taken to mean a person who, for hire, engaged in the hauling and transportation of refuse from point of collection to point of disposal.

### Section 11-602 Collections to be made by town or by private scavenger under town supervision; collection vehicles

All collections of refuse shall be made by or under the direction and supervision of the town government. Nothing herein contained, however, shall be construed to compel the town to collect refuse in town trucks or by town personnel, and the town council may permit a private scavenger to collect, transport and dispose of refuse. All vehicles used in collecting and transporting refuse shall be constructed so as to prevent any refuse from leaking, spilling or blowing upon the streets and premises in the town. Vehicles of private scavengers shall be kept clean, sanitary and free from odor.

### Section 11-603 Records to be kept by treasurer

The town treasurer shall bill users of the municipally operated refuse service in a manner prescribed by the town council and shall keep proper records showing all receipts.

#### Section 11-604 Use of county landfill

Municipally operated refuse service or any private scavenger service shall use the Jefferson County landfill or any other disposal site as designated by town council.

#### Section 11-605 Duty of resident, .etc. , to subscribe to and pay for collection, removal and disposal service

All residents or business houses residing in or doing business within the town shall subscribe to, use and pay for the collection, removal and disposal service provided by the town or by an approved private scavenger having a permit from the town as provided in this chapter.

It shall be unlawful for any person to neglect or refuse to subscribe to such service and to pay therefore at the rates established by the town council for the type of service furnished each such person or business house.

#### Section 11-606 Rules and regulations

The town council may prescribe, publish, promulgate and enforce reasonable rules and regulations, deemed necessary or proper, consistent with this chapter to carry out the objects and purposes thereof and for the safety and health of the citizens of the town in respect to the collection, removal and disposal of refuse as herein defined. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

#### Section 11-607A Specifications for refuse containers

Standard containers for the storage of refuse shall be substantially made of metal or plastic, leak proof and water tight, shall have a capacity, approximately of not less than five or more than 20 gallons for trash and garbage and not less than 5 nor more than 10 gallons for ashes and shall be equipped with an adequate carrying bail or carrying handles, with a tight cover, or shall otherwise be prescribed by the state, county or local health officials, provided, however, that ashes and dry trash which will not constitute a health hazard may be placed in substantial wooden containers.

#### Section 11-608 Location of containers

Where alleys are used by the municipal refuse collectors, containers shall be placed on or within six (6) feet of the alley line in such a position as not to intrude upon the traveled portion of the alley. Where streets are used by the municipal refuse collections, containers shall be placed adjacent to and back of the curb, or adjacent to and back of the ditch or street line if there be no curb, at such times as shall be scheduled by the municipality for the collection of refuse therefrom. As soon as practicable after such containers have been emptied, they shall be removed by the owner within, or to the rear of, his premises and away from the street line until the next schedule time for collection.

#### Section 11-609 Permit for private refuse collectors

No private scavenger shall engage in the collection, removal or disposal of refuse without first obtaining a permit from the town council to render such services.

Section 11-610 Depositing of garbage and refuse on premises, streets, etc.

It shall be unlawful for any person, either with or without the intent later to remove or burn, to deposit, throw, place or scatter any garbage, rubbish, trash, ashes or other refuse over or upon any premises, street, or alley, either public or private, or adjacent thereto.

Section 11-611 Levy; purpose

For municipal operated refuse service, the fees, rates and charges: provided in this chapter are hereby levied, imposed and established in order to support the collection and disposal service.

Section 11-612 Rate Schedule

The fee or rate to be imposed by the Town of Shepherdstown upon the users of such service shall be determined by the governing authority of said Town and shall be determined with due deference to the costs of such service to said Town. Users shall be classified as either one family residential, light commercial/office, light commercial/other or heavy commercial and different rates may be prescribed for each class, however, except for special services, rates shall be uniform within each class. Any person or business entity engaged in either the retail or wholesale selling of goods, wares, food, merchandise or services including banks, houses of commerce and insurance houses shall be classified as commercial users. Users having 60 gallons or more of refuse per pick up shall be classified as heavy commercial, users having less than 60 gallons per pick up shall be classified as light commercial. All others users shall be classified as one family residential or light commercial/office. Individual units in multi-family dwellings or apartments are classified as one family residential. Individual units in multi-family dwellings or apartments are classified as the equivalent of one family residential units. All units at one address served by a single water meter that receives a consolidated water bill shall also have bills for garbage service consolidated.

The rates set out in this section shall be for the standard three (3) times a week collection for one family residential or for light commercial users, of which one (1) collection a week will be for recycled material only, and for four (4) times a week for heavy commercial users, of which one (1) collection a week will be for recycled materials only. The rates shall be as follows:

- A. One family residential- \$15.89 per billing period
- B. Light Commercial/Office - \$15.89
- C. Light Commercial/ Other - \$31.78 per billing period
- D. Heavy Commercial - \$158.80 per billing period
- E. (Amended June 8, 1999) Special services to pick up items other than standard items: \$35.00 per pick up for items other than standard pick up truck load; \$75.00 per pick up for items other than standard items for a load larger than a standard pick up truck load, except that the \$35.00 and or \$75.00 charges will be waived during "Clean Up Week" as designated by the Town Council. In addition to the above costs, appliances containing freon will have a \$50.00 charge per appliance and tires will have a \$2.00 charges per tire. The appliance and tire charges will not be waived.

Section 11-613 Payment in advance required

The rates established and set forth in Section 11-612 above shall be payable in advance.

Section 11-614 Effect of failure to pay

If any fee, rate or charge provided for in this chapter shall not be paid within thirty days after the same is due, the amount thereof may be recovered by the town in any appropriate action. Upon the failure of any person receiving such service to pay for same when due, the town may discontinue such service without notice. In the case of rental properties, landlords shall be responsible for garbage fees on which their tenants have defaulted.