

## TITLE 2

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## CHAPTER 1 - Governing Body

### Section 2-101 Time and Place of Regular Meetings

The Council shall hold regular meetings at 6:30 p.m., on the second Wednesday of each month in the Council Chambers, at the Town Hall, or at such time or place in the Town as the Council shall specify. The Mayor, the Recorder, or any three members of the Council may call special meetings as deemed necessary.

The Town shall make available, in advance, the time and place of all regularly scheduled meetings of the Council and the time, place and purpose of all special meetings of the Council to the public and news media.

A notice shall be posted by the Town Recorder at the front door of the Town Hall stating the time and place fixed and entered on record by Council for the holding of regularly scheduled meetings. If a particular regularly scheduled meeting is cancelled, a notice of such cancellation shall be posted at the front door of the Town Hall.

A notice shall be posted by the Town Recorder at the front door of the Town Hall at least two days before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held. If the special meeting is cancelled, a notice of such cancellation shall be posted at

the front door of the Town Hall

Section 2-102 Who is to preside at meetings; quorum; interested members of  
Council not to vote

The Mayor shall serve as the presiding officer at all meetings of the Council, or if the Mayor is absent, the Recorder or a member of the Council, selected by a majority of the members present, shall preside. A quorum, consisting of a majority of the members of the Council, must be present in order to transact business. No member of the Council shall vote upon any ordinance, order, measure, resolution, or proposition, in which he or she may be interested in other than as a citizen of said municipality.

Section 2-103 Tie vote; Mayor and Recorder may vote

The Mayor and Recorder shall have votes as members of the Town Council. In the case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted. If the Mayor or Recorder presides at meetings of the governing body of said municipality, he may elect not to -vote-on issues decided by the Council 7- However, this choice does not restrict his right to cast a tie-breaking vote.

Section 2-104 Order of Business

Unless dispensed with by a 2/3 majority of the members present, the Council shall observe the following regular order of ^business:

- 1) Call to order by presiding officer
- 2) Roll call by the Recorder
- 3) Reading of minutes of the previous meeting by the Recorder and approval or correction
- 4) Old business - unfinished business
- 5) Reports from committees
- 6) Reports from officers of the town
- 7) Hearing of grievances of citizens
- 8) Communications from the Mayor
- 9) New business
- 10) Adjournment

Section 2-105 Rules of Order

The rules of order and parliamentary procedure contained in Roberts Rules of Order, Revised shall govern the transaction of business by and before the Council insofar as they are not in conflict with provisions of this Code.

Every motion or proposition shall, at the request of either the Mayor or any member, be reduced to writing.

Section 2-106 Standing Committees Amended 03-11-1986

The following standing committees are hereby established: Finance, Public Works and Police. Committees shall consist of three (3) members appointed by and from the Council. Special committees may be established and members appointed by the Mayor.

AN ORDINANCE AMENDING SECTION 2-106  
OF THE SHEPHERDSTOWN CODE  
STANDING COMMITTEES

WHEREAS CHAPTER 1, SECTION 2-106 OF THE SHEPHERDSTOWN CODE READS: police  
Committee shall consist of three (3) members appointed by and from Council.

BE IT RESOLVED TO READ: Section 2-106 of the Shepherdstown Code, Police  
Committee shall consist of four (4) members appointed by and from the Council.  
I  
The Mayor to serve as Ex Officio member.

**Adopted March 11, 1986**

**AN ORDINANCE AMENDING SECTION 2-101  
OF THE SHEPHERDSTOWN CODE TIME  
AND PLACE OF REGULAR MEETINGS**

Whereas Chapter 1, Section 2-101, paragraph 1 of the Shepherdstown Code reads: "The Council shall hold regular meetings at 7:30 p.m., on the second Tuesday of each month in the Council Chambers, at the Town Hall. "

Be it resolved to be changed to read: "The Council shall hold regular meetings at 7:30 p.m., on the second Tuesday of each month in the Council Chambers at Town Hall or at such other location accessible to the public within the Town as may be proposed by the Mayor, such location to be approved by Town Council at a prior meeting and public notice given.

**First Reading - August 10, 2004 Second**

**Reading - September 14, 2004**

**Adopted - September 14, 2004**

## Section 2-107 Ordinance Adoption

All ordinances shall be presented in writing and no ordinance shall be amended after its first reading as to change its general purpose. All ordinances shall be read twice by title unless a member of the governing body demands that the ordinance be read in full. No ordinance shall be presented for second reading or considered for final passage at the meeting at which it is introduced, and there shall be at least one week intervening between each meeting at which it is presented.

The first reading of an ordinance proposed at a council meeting shall be for information and the question shall be: "Shall the proposition be rejected?" If no objection be made or the question to reject be lost, the ordinance shall go on to a second reading without further question, at which time it shall be subject to amendment or debate and ready for final passage.

At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class 1-0 legal advertisement in compliance with the provisions of WV Code 59-3-1 et seq. and the publication area for such publication shall be the municipality. The notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

## CHAPTER 2 - Powers and Duties of the Mayor Section

### 2-201 Executes acts of the Town Council

The Mayor shall see to it that all ordinances, orders, bylaws, acts, resolutions, rules and regulations made by the Council are faithfully executed.

### Section 2-202 Jurisdiction to hear and determine violations of Town ordinances

The Mayor shall have the power, unless and until otherwise delegated to a municipal court judge, to hear and decide alleged violations of ordinances and to convict and sentence persons therefore; however, in no case shall he sentence anyone to a jail term exceeding 30 days nor hand down a monetary penalty exceeding \$500.00.

### Section 2-203 Has control of police

The police of said municipality are subject to the control of the Mayor. The Mayor may appoint special police officers wherever he deems it necessary to preserve the peace and order of the community.

### Section 2-204 Recommend important measures

It shall be the duty of the Mayor to recommend to the Town Council, measures he deems important to the welfare of the community.

Section 2-205 Authority to hire special counsel

It shall be within the power of the Mayor, subject to authorization of the Council to employ an attorney or firm of attorneys to represent and advise the municipality on legal matters. This action may be taken in lieu of or in addition to the town attorney.

Section 2-206 Generally supervises municipality affairs

The Mayor shall have general supervisory powers over all the affairs of the municipality. He may require municipal officers and employees to submit reports whenever he deems it necessary to fully execute his executive functions. The Mayor shall execute all contracts authorized by the governing body.

CHAPTER 3 - Recorder Section

2-301 Keep Minutes.

It shall be the duty of the Recorder to keep a journal of the proceedings of the Council. The Recorder shall also preserve all ordinances in a separate ordinance book.

Section 2-302 Shall be bonded

The Recorder, before assuming office, shall be bonded in the sum of \$10,000, with surety acceptable to the Council. His bond shall not be released until the complete transfer of office by his successor.

Section 2-303 Replaces Mayor of the municipality

Whenever the Mayor is unable to faithfully discharge the duties of his office, the Recorder shall perform all mayoral duties and be invested with all of the Mayor's power and authority.

Section 2-304 Performs general administrative duties

Administrative duties not expressly assigned a municipal officer by this Code, shall be performed by the Recorder. The Recorder shall have custody and maintain the records, corporate bonds, papers, etc., of the municipality.

CHAPTER 4 - Municipal Court

Section 2-401 Municipal Court

There is hereby established a court which shall be called the municipal court. The municipal court shall be presided over by the Municipal Court Judge.

Section 2-402 Office of Municipal Judge

The Town Council hereby provides for the appointment of an officer to be known as the Municipal Court Judge.

The Municipal Court Judge shall have jurisdiction to exercise the powers and perform the duties specified for mayors, municipal courts and municipal judges, respectively in WV Code 8-10-1 and 8-10-2.

#### Section 2-403 Maintenance of Docket

The Municipal Judge shall maintain a docket of all judicial matters and proceedings which come before him. The docket shall include the defendant's name, warrant and/or summons numbers, description of alleged offense, disposition, fines and costs imposed and whether received, whether incarcerated, and other information relevant to the judicial proceedings.

#### Section 2-404 Issuance of arrest warrants

Besides the Municipal Judge, the Mayor and the Recorder are invested with the authority to issue arrest warrants for violations of this Code.

#### Section 2-405 Issuance of summons

The Municipal Judge, along with the Mayor and Recorder shall have, at his discretion, the choice of either issuing an arrest warrant or a summons whenever an alleged violation of Town ordinances occurs. The summons will order the defendant to appear before the municipal court at a specified time in order to answer the charges against himself. The summons shall contain a brief description of the offense charged against him but need not be a verbatim account of the supposed violated ordinance. If the defendant fails to answer the summons, the municipal court may proceed with judgement and it shall be binding, subject to the defendant's right of appeal.

#### Section 2-406 Issuance of subpoenas

The officials designated in Section 2-404 of this Code have invested in them the authority to subpoena witnesses whose testimony is relevant to any judicial proceeding. It shall be unlawful for any citizen to ignore said subpoena.

#### Section 2-407 Disposition of cases

Every individual charged with a violation of a municipal ordinances shall have the right to trial and disposition of his case in conformity to due process requirements.

#### Section 2-408 Appearance bonds

Whenever the municipal court is not in session, or the Municipal Judge is not available, the defendant may be allowed to post a reasonable appearance bond. He may also post an appearance bond if he has reasonable grounds for delaying his trial. Such a bond shall be posted with the Municipal Judge, and in his absence, with the ranking police official on duty at the time. However, this provision does not apply if an individual is intoxicated or in need of protective custody.

Section 2-409 Contempt

If any person shall, by threats or force, attempt to intimidate or impede a judge, justice, juror, witness or an officer of a court, or any sergeant, policeman, or other peace officer, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of contempt. The court may punish contemptuous persons by imposing a fine of not more than \$50.

Section 2-410 Imposition, remission and disposition of fines and costs

All fines and costs imposed by the Municipal Judge must be recorded in the court docket. Once recorded, it shall be beyond the power of the Town judge to remit the whole or any part of said fines and costs unless it is necessary to correct an error. Once recorded, it shall be the duty of the Municipal Judge to turn over all fines and costs to the municipality daily. It shall also be the duty of the municipal judge to submit an accounting report to the governing body at least once a month, detailing the collection and non-collection of all fines and costs imposed by his court. The report will give a summary of all fines and costs for the current month and to date for the current fiscal year.

Section 2-411 Appeals Amended February 14, 2006

It shall be the right of any defendant to appeal any verdict of the municipal court to the next term of the circuit court. Such an appeal must occur within 10 days following the judgement of the municipal court. All appeals must be accompanied with the posting of an appeal bond as set forth in Section (2-412).

Section 2-412 Bond amounts, conditions and forms

The amount of appearance bonds shall be set by the Municipal Judge or by the ranking police official on duty at the time. It is conditioned on the defendants appearance before the municipal court at a stated time and place. Appeal bonds shall be with surety deemed sufficient by -the Municipal Judge and are conditioned that if the circuit court finds against the defendant, he shall promptly pay all costs of the trial and of the appeal. The forms of appearance and appeal bonds shall be made either by, 1) cash deposits, 2) any corporate surety company authorized to do business in this state and 3) any person who individually owns real property within Jefferson County. No other type of bond is acceptable.

## Section 2-413

Added 02-10-1998

**Section 2-414 Bail; personal recognizance; failure to appear.**

Right to bail.

A person arrested for an offense not punishable by life imprisonment shall be admitted to bail by the court.

Release upon own recognizance authorized.

Any other provision of this section to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance.

Bail defined; form; receipts.

Bail is security for the appearance of a defendant to answer to a specific criminal charge before the municipal court at a specific time or at any time to which the case may be continued. It may take any of the following forms:

The deposit by the defendant or by some other person for him of cash.

The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.

Such other form as the municipal judge may determine.

All bail shall be received by the mayor, or by the Town Clerk and, except in case of recognizance, receipts shall be given therefore by him.

Fixing of amount; bail may cover two or more charges.

The amount of bail shall be fixed by the court or justice with consideration given to the seriousness of the offense charged, the previous criminal record of the defendant, his financial ability, and the probability of his appearance. When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

Recognizance; signing; requirements for signers or surety company; release upon own recognizance; indigent persons.

The recognizance shall be signed by the defendant. It shall also be signed by one or more adult persons owning real property in the state. The court or justice may require that justification of surety be furnished. The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail. Or, the recognizance may be signed by the defendant and a surety company authorized to do business in this state. If the offense is a felony, the judge of the court that will have jurisdiction to try the offense may release the defendant on his own recognizance. If the offense is a misdemeanor, either the court or justice may release the defendant on his own recognizance. An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

Recognizance and deposits subject to order of court or magistrate.

The recognizance shall be returnable to and all deposits shall be held by the municipal court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.

Continuing bail.

The bail as initially given may continue in effect pending indictment, arraignment, continuance, trial and appeal

after conviction, as the court may direct.

Forfeiture of bail.

Basis for forfeiture.

**Whenever a person under bail serves as his or her own surety and he or she willfully and without just cause fails to appear as and when required or violates any other term or condition of bail, the municipal court shall declare the bail forfeited.**

**Whenever a person or entity other than the person under bail serves as surety, forfeiture of bail shall be declared only when the person under bail willfully and without just cause fails to appear as and when required unless the surety, by the express terms of the bail instrument, has agreed to be responsible to ensure compliance with one or more other conditions of bail and there is a willful violation of such condition.**

Setting aside. The court or justice may direct that forfeiture be set aside, upon such conditions as may be imposed, if it appears that justice does not require the enforcement of the forfeiture.

Enforcement. When a forfeiture has not been set aside, the court or justice, upon motion of the Town, shall enter a judgment of default and execution may issue thereon: *Provided*, That if the forfeiture is declared in a court of record, the order taking judgment shall be entered at the same term of court in which the forfeiture was declared: *And provided further*, That if the deposit for bail be by a person other than the defendant, or if the bail be in the form of recognizance, such person making the deposit or the surety on the recognizance shall be given ten days' notice by certified mail at his last-known address to appear and show cause why a judgment of default should not be entered. Execution shall issue in the name of the Town and shall proceed in the manner provided by law in civil actions. If the bail be in the form of bonds or stocks, the judgment order may direct that all or part thereof be sold through a state or national bank or through a brokers exchange registered with the federal securities and exchange commission.

Bail in excess of jurisdictional limit of justice

or of particular court. Where the forfeiture has been declared by a justice or by a court of limited jurisdiction of bail in excess of the jurisdictional limit of justice or of the particular court, such forfeiture shall be certified to a court of the county having sufficient jurisdiction, which court shall thereupon proceed as if the forfeiture were originally declared in such court.

Remission. After entry of such judgment, the court or justice may remit the penalty in whole or in part under the conditions applying to the setting aside of forfeiture in section 2-414(g)(2) of this chapter.

Exoneration; return of deposit.

**When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the surety and release any bail and, if the bail be in a form other than a recognizance, the deposit shall be returned to the person who made the same. The surety may be exonerated by a deposit of cash in the amount of the bail or by a timely surrender of the defendant into custody.**

**Notwithstanding any provision of the West Virginia Code, to the contrary, when a bail bondsman, as defined in article ten, chapter fifty-one of the West Virginia Code, has a surety bond forfeited because of the failure of a defendant to appear before the court, that bail bondsman shall be reimbursed the full amount of the bond forfeiture, be it cash or surety, if the bail bondsman returns the defendant to the custody of the court, within two years of the forfeiture of the bond.**

**The Administrator of the West Virginia Supreme Court of Appeals shall, ex officio, be empowered to audit, review and suspend any bail bondsman whose surety on bonds is or becomes insufficient or whose assets are below the amount of bonds he or she has in existence.**

Defects in form of bail. No action or judgment for forfeiture of bail shall be defeated or arrested by the neglect or omission to record the declaration of forfeiture or by reason of any defect in the form of the bail, if it appears to have been taken by a court or justice authorized to take it, and be substantially sufficient.

Bailpiece; issuance to surety; taking accused into custody.

A bailpiece is a certificate stating that the bail became such for the accused in a particular case

and the amount thereof. Upon demand therefore, the court or clerk shall issue to the bail bondsperson a bailpiece. Any officer having authority to execute a warrant of arrest shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him before the court. The bail bondsperson may take the accused into custody and surrender him or her to the court without such bailpiece.

If bailpiece is inaccessible due to unavailability of the court's clerk or judge, the bail bondsperson, or his or her designee, can take an offender to a regional or county jail without bailpiece, and the jail must accept the offender; provided:

**The bail bondsperson, or his or her designee, delivering an offender to a jail without a bailpiece issued by the court's clerk or judge appears on the registered list maintained at the jails and approved by the court of original jurisdiction;**

**The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece. Such agreement shall contain a clause indicating the incarceration of such offender is lawful and that the jail accepting the offender shall be held harmless from any claims of illegal incarceration or other relative charges; thereby, such bail bondsperson assumes the risk and liability of such incarceration; and**

**Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's clerk or judge and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.**

Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in paragraph (2) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state and shall be fined not more than one thousand dollars and confined in the regional or county jail not more than one year.

No officer, jailer or other person having authority to accept offenders in a county or regional jail is required to accept such offenders being housed in lieu of bailpiece if such offender appears to be in need of medical attention of a

degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this paragraph, he or she may not be accepted for detention until the bail bondsperson, or his or her designee, provides the jailer or persons accepting such offender with a written clearance from a licensed physician reflecting that the offender has been examined and, if necessary, treated, and which states that it is the physician's medical opinion that the offender can be safely confined in the county or regional jail. The regional jail authority, the Chief of Police, Town Council, or any of their agents or employees, shall be immune from liability for any claims of illegal incarceration or other relative charges for any offender accepted into a facility under this section.

Bail for witness.

The bail for a witness for or against the accused shall be conditioned upon his appearance at such time and place as the court or justice shall direct.

Guaranteed arrest bond certificate.

For a misdemeanor violation of any motor vehicle law of the municipality, except reckless driving or driving while intoxicated, the guaranteed arrest bond certificate of any surety company licensed to do business by the insurance commissioner, when presented by the person whose signature appears thereon shall be accepted as bail in lieu of cash or recognizance in an amount not to exceed five hundred dollars. A "guaranteed arrest bond certificate" shall mean any printed card or certificate issued by an automobile club or association to its members in good standing bearing the signature of the member and containing a printed statement that such club or association and a surety company will guarantee the payment of any fine or forfeiture imposed on the member in an amount not to exceed five hundred dollars if the member fails to appear in court as required.

Bail in situations of alleged child abuse.

When the offense charged is an offense defined in article eight-d, chapter sixty-one of the West Virginia Code, it shall be a condition of bond that the defendant shall not live in the same residence as and shall have no contact with the victim of the alleged offense and the court may make such other conditions of bond with respect to contact with the victim as it deems necessary

under the circumstances to protect the child:  
*Provided*, That the requirement of no contact with  
the victim of the alleged offense and all other  
conditions of bond may be reviewed by summary  
petition from the municipal court to the circuit  
court.

In cases where the charge is a sexual offense, as  
defined in chapter sixty-one of the West Virginia  
Code, against any person, the court, upon a  
showing of cause, may make such conditions of bond  
on the defendant or on any witness bond issued  
under subsection (i) of this section as it deems  
necessary with respect to contact with the victim.

Failure to appear; penalties.

Any person, who, having been released upon his  
personal recognizance pursuant to subsection (b)  
of this section or having been otherwise admitted  
to bail and released in accordance with this  
section, and who shall willfully and without just  
cause fail to appear as and when it may be  
required of him, shall be guilty of the offense as  
hereinafter prescribed, and, upon conviction  
thereof, shall be punished in the manner  
hereinafter provided.

If any such person was admitted to bail or  
released after being arrested for, charged or  
convicted of a felony and shall thereafter be  
convicted for a violation of the provisions of  
paragraph (1) of this subsection, such persons  
shall be guilty of a felony and shall be fined not  
more than five thousand dollars or imprisoned not  
less than one nor more than five years, or both  
such fine and imprisonment.

If any such person was admitted to bail or  
released after being arrested for, charged or  
convicted of a misdemeanor and shall thereafter be

convicted for a violation of the provision of paragraph (1) of this subsection, such persons shall be guilty of a misdemeanor and shall be fined not more the one thousand dollars or confined in the county jail for not more than one year, or both such fine and confinement.

If any such person was admitted to bail or released pending appearance as a material witness and shall thereafter fail to appear when and where it shall have been required of him, such persons shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more the one thousand dollars or confined in the county jail not more than one year, or both such fine and confinement.

Any penalty authorized by this subsection shall be in addition to any forfeiture authorized or mandated by this section or by any other provision of law.

Bail in cases of crimes between family or household members.

When the offense charged is a crime against a family or household member, it may be a condition of bond that the defendant shall not have any contact whatsoever, direct or indirect, verbal or physical, with the victim or complainant.

In determining conditions of release, the issuing authority shall consider whether the defendant poses a threat or danger to the victim or other family or household member. If the issuing authority makes such a determination, it shall require as a condition of bail that the defendant refrain from entering the residence or household of the victim, the victim's school, and the victim's place of employment or otherwise contacting the victim and/or minor child or

household member in any manner whatsoever, and shall refrain from having any further contact with the victim. A violation of this condition may be punishable by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody or a modification of the terms of bail.

The clerk of the court issuing an order pursuant to this section shall issue certified copies of the conditions of bail to the victim upon request without cost.

Where a law-enforcement officer observes any violation of bail condition, including the presence of the defendant or at the home of the victim, the officer shall immediately arrest the defendant, and detain the defendant pending a hearing for revocation of bail.

Repeal of inconsistent laws.

All provisions of this Town Code which are inconsistent with the provisions of this section are hereby repealed to the extent and only to the extent of such inconsistency.

## Severability.

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or its application, and to this end, the provisions of this section are declared to be severable.

### (m) Failure to appear; penalties.

Any person, who, having been released upon his personal recognizance pursuant to subsection (b) of this section or having been otherwise admitted to bail and released in accordance with this section, and who shall willfully and without just cause fail to appear as and when it may be required of him, shall be guilty of the offense as hereinafter prescribed, and, upon conviction thereof, shall be punished in the manner hereinafter provided.

If any such person was admitted to bail or released after being arrested for, charged or convicted of a felony and shall thereafter be convicted for a violation of the provisions of paragraph (1) of this subsection, such persons shall be guilty of a felony and shall be fined not more than five thousand dollars or confined in the county jail for not more than thirty (30) days, or both such fine and confinement.

If any such person was admitted to bail or released after being arrested for, charged or convicted of a misdemeanor and shall thereafter be convicted for a violation of the provision of paragraph (1) of this subsection, such persons shall be guilty of a misdemeanor and shall be fined not more the one thousand dollars or confined in the county jail for not more than thirty (30) days, or both such fine and confinement.

If any such person was admitted to bail or released pending appearance as a material witness and shall thereafter fail to appear when and where

it shall have been required of him, such persons shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more the one thousand dollars or confined in the county jail for not more than thirty (30) days, or both such fine and confinement.

Any penalty authorized by this subsection shall be in addition to any forfeiture authorized or mandated by this section or by any other provision of law.

## CHAPTER 5 - Town Attorney

### Section 2-501 Qualifications

The Town Attorney shall be a member, in good standing, of the West Virginia State Bar.

### Section 2-502 General Duties

The Town Attorney shall be the legal advisor and attorney of this municipality and its officers, in matters relating to official duties. He

**AN ORDINANCE AMENDING SECTION 2-411 OF THE SHEPHERDSTOWN  
CODE ENTITLED "APPEALS"**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 2-411 Appeals

It shall be the right of any defendant to appeal any verdict of the municipal court to the next term of the circuit court. Such an appeal must occur within 20 days following the judgment of the municipal court. All appeals must be accompanied with the posting of an appeal bond as set forth in section (2-412).

First Reading: December 12,

2005 Second Reading: February 14,

2006 Adopted: February 14, 2006

**AN ORDINANCE TO AMEND AND RE-ENACT  
SECTION 2-413 OF CHAPTER 4, TITLE 2 OF THE  
SHEPHERDSTOWN CODE TO CHANGE THE  
TITLE OF MUNICIPAL COURT JUDGES I, II, AND III TO MAGISTRATES  
AND RE-ESTABLISHING THEIR LEGAL AUTHORITY, DUTIES,  
PAYMENT, AND TERMS OF APPOINTMENT**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 413 of Chapter 4, Title 2 of the Shepherdstown Code, originally adopted December 9, 1986 and entitled "An Ordinance to Provide for the Appointment of Additional Municipal Court Judges, to be Designated as Municipal Court Judges I, II, & III, and to Establish Their Legal Authority, Duties and Payment" is hereby amended and re-enacted as follows:

**Section 2-413. Municipal Court Judge; Residency; Legal Authority; Appointment; Payment.**

(a.) There is hereby created in the Town the office of Municipal Court Judge hereby known as "Magistrate". The Council shall appoint up to three "Magistrates", as it deems necessary, all of which shall have identical legal authority. All "Magistrate(s)" shall be residents of the Corporation of Shepherdstown, unless sufficient candidates cannot be found, in which case residents of Jefferson County can be considered, but are not required to be attorneys at law. Said "Magistrate(s)" shall serve at the pleasure of the Mayor and Council. The "Magistrate(s)" appointed herein are in addition to the Municipal Court Judge for the Town appointed under the provisions of Shepherdstown Code Section 2-402.

(b) The "Magistfate(s)" appointed under the provisions of Section 2-413(a) shall have the same jurisdiction, duties, and authority of the Municipal Court Judge of the Town as set forth in Sections 2-404, 2-405, 2-408, and 2-402, and West Virginia Code § 8-10-2 which includes, but is not limited to, issuing arrest warrants, summonses, and setting bonds. The "Magistrate(s)" shall not have authority or jurisdiction to hold or preside at trials to determine the guilt or innocence of any person.

(c) Any person who assumes the duties of "Magistrate" who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge may attend a course for the purpose of continuing education. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) The Council shall determine the rate of pay and is authorized to pay any of said "Magistrate(s)" said rate of pay.

(e) The position(s) of "Magistrate(s)" shall be appointed by the Mayor and Town Council on the first day of July or as soon thereafter as possible and shall be for a term not to exceed one year.

First Reading: January 9, 2007

Second Reading: February 13, 2007

Adopted: February 13, 2007

Mayor

>rdef

AN ORDINANCE TO PROVIDE FOR THE APPOINTMENT OF ADDITIONAL MUNICIPAL COURT JUDGES, TO BE DESIGNATED AS MUNICIPAL COURT JUDGES I, II & III, AND TO ESTABLISH THEIR LEGAL AUTHORITY, DUTIES AND PAYMENT.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SHEPHERDSTOWN:

Section 2-413 (a): There is hereby created in the Town the office of Municipal Court Judge I, Municipal Court Judge II, and Municipal Court Judge III, all of whom shall have identical duties and legal authority. The Council shall appoint said Municipal Court Judges as it deems necessary, but shall not be required to appoint one or two or all three of said judges, or any of them. Each of said judges must be a resident of the Corporation of Shepherdstown, but are not required to be attorneys at law. Said judges shall serve at the pleasure of the Council. The judges appointed herein are in addition to the Municipal Court Judge for the Town appointed under the provisions of Shepherdstown Code Section 2-402.

(b): The Municipal Court Judges I, II and III appointed under the provisions of Section 2-413(a) shall have the same jurisdiction, duties and authority of the Municipal Court Judge for the Town, with the exception that said Municipal Court Judges I, II & III shall not have authority or jurisdiction to hold or preside at trials to determine the guilt or innocence of any person. Said Municipal Judges

shall have the authority and jurisdiction to conduct arraignments and to perform any other duties as set forth in Shepherdstown Code Sections 2-404, 2-405, 2-408 and 2-412 and West Virginia Code 8-10-2.

- The Council shall determine the rate of pay and is
- (c) : authorized to pay any of said Municipal Court Judges I, II and III sa.id rate of pay. The positions of Municipal Court Judges I, II & III shall be appointed
- (d) : by the Mayor and Town Council on the first day of July or as soon thereafter as possible. Said term of office for Municipal Court Judges shall be for one (1) year.

This Ordinance shall be effective from the date of its adoption.

MAYOR

RECORDER

Adopted 12-09-1986

shall review all ordinances of this municipality. He shall represent the town in all matters and proceedings in any court in which the town is interested. It will also be his duty to perform any incidental duties the governing body or the Mayor may require of him.

CHAPTER 6 - Rate of Compensation for Municipal  
Officers Section 2-601 In General Amended

07-01-1994, 06-26-1996, 02-10-1998

The rate of remuneration for Town officials shall be as follows:

- a) Mayor \$2000 annually \_
- b) Recorder \$1500 annually
- c) Members of the Town Council \$1200 annually

CHAPTER 7 - Municipal Officers & Employees

Relation Section 2-701 Business dealings with town

It shall be unlawful for any municipal officer or employee to be privately interested in or profit from any business dealing with the town.

Section 2-702 Gifts and Bribes

It shall be unlawful for any municipal officer or employee to accept money, favors, or any other form of gift from any one other than the municipality, for the performance of an act or job. It shall also be unlawful for a municipal officer or employee to accept favors, or any other form of gift which could reasonably be construed as an attempt to influence the performance of his municipal duties.

Section 2-703 Outside employment Repealed 06-11-2002

It shall be unlawful for any full time officer or employee to engage in any outside employment without the written authorization of the Mayor. The Mayor shall not give such authorization if the employment is likely to interfere or is compatible with the officer's or employee's municipal duties. Authorization shall also be denied if it is likely to discredit or embarrass the municipality. This ordinance shall not apply to elective Officials.

Section 2-704 Political Activity

It shall be unlawful for any full time municipal officer or employee to solicit campaign funds or actively participate in any political campaign. This ordinance shall not be construed as to abridge a municipal officer or employee's fundamental right to vote or privately express his political views. This ordinance shall not apply to elective officials.

Section 2-705 Use of municipal time and property

It shall be unlawful for any municipal officer or employee to use or authorize the use of any municipal time or property for private benefit or for the benefit of other private individuals or groups. This shall not apply whenever the governing body has given proper authorization for the use of such time and property.

## Council Pay Resolution

WHEREAS, the Corporation of Shepherdstown is governed by a Mayor, and Council and,

WHEREAS, these officers are elected every two (2) years, and

WHEREAS, the elected officials are paid a modest amount for their services, and

WHEREAS, the time consumed, in performing these duties, has increased greatly, and

THEREFORE BE IT RESOLVED, by the Town Council that Section 2-601 , Rate of Compensation for Municipal Officers, hereby amended as follow to be effective on July 1 , 1998: The rate of remuneration for Town Officials shall be as follows:

Mayor:	\$ 2,000.00 annually
Recorder:	\$ 1,500.00 annually
Each Council person	\$ 1,200.00 annually

Corporation of Shepherdstown

By: Vincent Parmesano  
Mayor

The foregoing Amendment was adopted by the Town Council on a vote of 3 aye 2 nay in meeting on February 10, 1998.

Barnes A Schmitt  
Recorder

First reading: January 13, 1998

Second reading: February 10, 1998

Adopted: February 10, 1998

**AN ORDINANCE TO AMEND  
CHAPTER 6 SECTION 2-601  
RATE OF COMPENSATION FOR MUNICIPAL OFFICERS**

WHEREAS: the rate of remuneration for Town Officials is as follows:

<b>Mayor</b>	<b>\$1,500.00 annually</b>
<b>Recorder</b>	<b>\$1,200.00 annually</b>
<b>Members of Council</b>	<b>\$ 900.00 annually</b>

THEREFORE BE IT RESOLVED: that the rate of remuneration for Mayor and Town Officials be:

<b>Mayor</b>	<b>\$1,600.00 annually</b>
<b>Recorder</b>	<b>\$1,300.00 annually</b>
<b>Members of Council</b>	<b>\$1,000.00 annually</b>

To become effective January 1, 1997.

**First Reading June 11.1996**

**Second Reading June 26.1996**

**Approved June 26.1996**

AN ORDINANCE TO AMEND  
CHAPTER 6 SECTION 2-601  
RATE OF COMPENSION FOR MUNICIPAL OFFICERS

WHEREAS: - the rate of remuneration for Town Officials is as follows.

A: Mayor \$1,200.00 --  
B: Recorder \$1,000.00 annually  
C: Member of Council 600.00 Annually

THEREFORE BE IT RESOLVED: that the rate of remuneration for Mayor and Town Officials

A: Mayor \$1,500.00 annually B:  
Recorder \$1,200.00 annually C:  
Member of Council 900.00 annually

To become effective July 1, 1994

1st reading " \_\_\_\_\_

2nd reading

Approved

### Section 2-706 Use of title or position

It shall be unlawful for any municipal officer or employee to use his position or title to secure unwarranted privileges or benefits for himself or others. No municipal officer or employee shall use his position and title to make purchases in the name of the municipality when they are intended for private use.

### Section 2-707 Strikes and Union Activity

It shall be unlawful for any municipal officer or employee to participate in any strike against the municipality. It shall also be unlawful for any municipal officer or employee to join, be a member of, or solicit any other municipal officer or employee to join a union or any type of employees bargaining organization.

### Section 2-708 Violations

Any municipal officer or employee who violates any section of this chapter shall be subject to dismissal following a proper hearing and determination of his wrong doing.

### Section 2-709 Leave Repealed 06-11-2002

The provisions of the following paragraphs shall only apply to full time municipal officers and employees (those working at least 40 hours per week). Officers and employees working under the auspices of a separate board of commission are exempt from these provisions.

#### (A) Vacation Leave

Vacation leave will be accrued at the rate of eight (8) hours per pay period. Vacation leave may be accrued up to a maximum of 480 hours. Requests for vacation leave must be submitted in advance of the desired starting date and are subject to the approval of the Mayor or any other official he may designate.

#### (B) Sick Leave

All municipal officers and employees shall be entitled to one (1) day of sick leave per pay period. There is no limit on the amount of accumulated sick leave allowed. Sick leave credit is subject to approval of the Mayor or any other official he may designate and is only applicable when absence is due to illness, bodily injury, exposure to contagious disease, or death in the immediate family. The Mayor may, at his discretion, require proper verification that the absence can be charged as sick leave.

#### (C) Leave Record

The Mayor shall cause to be kept, by the recorder, an up-to-date record showing sick leave credits earned and taken.

AN ORDINANCE AMENDING CHAPTER 7 OF TITLE 2  
OF THE CODE OF SHEPHERDSTOWN RELATING TO  
MUNICIPAL OFFICERS & EMPLOYEE RELATIONS  
BY AMENDING SECTION 2-704 AND  
REPEALING SECTIONS 2-703 AND 2-709

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 2-703 of Chapter 7 of Title 2 entitled "Outside Employment" and Section 2-709 of Chapter 7 of Title 2 entitled "Leave" are repealed, and Section 2-704 of Chapter 7 of Title 2 entitled "Political Activity" is amended as follows:

Section 2-703 Outside Employment

REPEALED

Section 2-704 Political Activity

It shall be unlawful for any police officer or police department employee to solicit campaign funds or actively participate in any political campaign. This ordinance shall not be construed as to abridge a police officer's or police department employee's fundamental right to vote or privately express his or her political views. This ordinance shall not apply to elective officials.

Section 2-709 Leave

REPEALED

First reading:        May 14, \_\_\_\_\_

2002

Second reading:    June 11, \_\_\_\_\_

2002

Adopted:            June 11, \_\_\_\_\_

2002

1009320.1

CHAPTER 8 -

Comm-issions Section 2-801

In General

It will be necessary, from time to time, for municipalities to formulate certain commissions to better oversee the development of specific areas under the supervision of the municipality. Examples include: planning commission; park commissions; utility commission; or human relations commissions. In enacting enabling ordinances creating such commissions, the governing body should include the following provisions:

- 1) Creation; composition; appointment; terms and compensation of members; filling vacancies
- 2) Purpose
- 3) Officers; rules; meetings; records
- 4) Powers and authority generally; budget; annual report
- 5) Duties

CHAPTER 9 - Vacancies in

Office Section 2-901 In General

When a vacancy shall occur for any cause in the office of Mayor, Recorder or in the Council, the vacancy, until the next succeeding election and until the qualification of an elected successor, shall be filled by appointment by the Council from among the eligible citizens of the town.

**AN ORDINANCE TO ENACT THE PROVISIONS OF  
SECTION 2-802, OF CHAPTER 8, OF TITLE 2  
OF THE TOWN CODE OF THE CORPORATION OF SHEPHERDSTOWN  
ALL RELATING TO THE SHEPHERDSTOWN BUILDING COMMISSION**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 2-802, of Chapter 8 of Title 2, entitled "Building Commission" is hereby enacted to create and establish a municipal building commission; accordingly, Section 2-802 shall read as follows:

**Section 2-802 Building Commission**

Pursuant to the authority vested in it by virtue of Chapter 8, Article 33 of the Code of West Virginia of 1931, as amended (the "Act") the Corporation of Shepherdstown, a municipal corporation created and existing under the laws of the State of West Virginia (the "Town"), acting by and through the Town Council of the Town (the "Town Council") does hereby ordain that there shall and there is hereby created a municipal building commission, which municipal building commission shall be known and designated as the "Shepherdstown Building Commission", and shall have perpetual existence and shall be vested with the authority, powers, duties and responsibilities as by the Act provided, and be governed by the provisions of said Act.

The Board of the Shepherdstown Building Commission (the "Board") shall consist of not less than three nor more than five members, as determined by the Town Council in a subsequent resolution adopted by the Town Council. The members of the Board shall likewise be appointed by the Town Council in one or more subsequent resolutions adopted by the Town Council. All members of the Board shall be appointed for terms of five years. Prior to making the initial appointments to the Board, the Town Council shall make such initial appointments so that approximately one fifth of the total number of members of the Board shall be appointed for a term of one year, approximately one fifth of the total number of members of the Board shall be appointed for a term of two years, approximately one fifth of the total number of members of the Board shall be appointed for a term of three years, approximately one fifth of the total number of members of the Board shall be appointed for a term of four years, and approximately one fifth of the total number of members of the Board shall be appointed for a term of five years.

As the term of each of the appointees shall expire, the successor to fill the vacancy created by such expired term shall be appointed for a term of five years by the Town Council and, thereafter, successors shall likewise be appointed for terms of five years by the Town Council.

If any member of the Board dies, resigns or for any reason ceases to be a member of the Board, the Town Council shall appoint in a resolution adopted by the Town Council another individual to fill the unexpired portion of the term of such member of the Board. No more than two thirds of the total number of members of the Board of such Building Commission shall be from the same political party and no member of such Board shall hold any office (other

than the office of notary public) or employment under the United States of America, the State of West Virginia, any county or political subdivision thereof, or any political party. All members of such Board shall be residents of the Town. No member of such Board shall receive any compensation for his services as such, but each member shall be reimbursed by such Building Commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the Board.

It is further ordained that all property, powers and duties and management and control of the Shepherdstown Building Commission shall be and the same is vested in said Board.

Adopted 04-10-2007

**Be it ordained by the Council of the Corporation of Shepherdstown that Title 2, Chapter 10 (Savings program for Municipal Employees), as enacted on January 13, 1998, is hereby rescinded and the following Title 2, Chapter 10 is hereby enacted, to become effective as of the date of enactment.**

**TITLE 2-Administration CHAPTER 10- Deferred  
Compensation Plan for Municipal Employees**

**Section 2-1001 Purpose**

The purpose of this enactment is to enable employees of the Corporation of Shepherdstown to participate in a voluntary deferred compensation plan authorized by the United States Internal Revenue Code as interpreted by the Internal Revenue Service, thereby permitting such employees to obtain the advantages inherent in such plans relative to the income tax treatment of the contributions and disbursements made pursuant to such voluntary income deferral plans. It is further the purpose of this enactment to authorize the establishment of a plan for the Corporation of Shepherdstown in accordance with §5-1 OB-1, *et seq*, of the Statutes of West Virginia.

**Section 2-1002 Definitions**

Unless the context in which used clearly indicates a different meaning, as used in this article:

(a) "Deferred compensation plan" means a trust whereby the Corporation of Shepherdstown as a public employer, agrees with an employee for the voluntary reduction in employee compensation for the payment of benefits by the public employer to the employee at a later date pursuant to this action and the federal laws and regulations relating to eligible deferred compensation plans as described in Section 457 of the Internal Revenue Code.

(b) "Employee" means any person, whether appointed, elected or under contract, providing services for the public employer, for which compensation is paid.

(c) "Public employer" means Corporation of Shepherdstown which meets the definition of "state" as described In Internal Revenue Code Section 457 (d) (1).

**Section 2-1003 Contracts for deferred compensation plans- Approval of plans-Approval of companies providing investments**

The Corporation of Shepherdstown may, by contract, agree with any of its employees to defer and hold in trust any portion of that employee's compensation and may subsequently purchase or acquire from any company licensed to do business in the state of West Virginia fixed or variable annuities, mutual funds, insurance, endowment, or savings account for the purpose of carrying out the objectives of the deferred compensation plan as described in this article.

**Section 2-1004 Responsibility for implementing plans-Payroll reductions-Billings and administration**

The responsibility for implementing the deferred compensation plan for employees of the Corporation of Shepherdstown, shall be delegated to the town council of the municipality. If the council has adopted more than one plan, an employee electing to participate shall also elect the plan in which he desires to participate. Payroll reductions shall be made, in each instance, by the appropriate payroll officer. The town council on behalf of the Corporation will authorize the Mayor to contract with a private corporation, institution and/or custodial bank to provide consolidated billing and all or any other administrative services deemed necessary, in order that any such deferred compensation plan adopted shall operate without administrative cost to the public employer except for the incidental expense of administering the payroll-salary reductions and the remittance thereof.

**Section 2-1005 Investment of funds**

Notwithstanding any other provision of law to the contrary, the contractor responsible for implementing a deferred compensation plan, is hereby authorized to invest compensation held pursuant to any such deferred compensation plan in fixed and variable annuities, mutual funds, insurance, endowment or savings accounts from any company duly authorized to contract such business in the state.

**Section 2-1006 Program supplemental**

The deferred compensation plan or plans established pursuant to this article shall exist and serve in addition to other benefit systems established by the public employer. The deferred compensation plan or plans established by this article shall; not supersede, make inoperative or reduce any benefits provided by any system or program established by the public employer, or any other benefit program established by law for the benefit of employees.

**Section 2-1007 Other benefits unaffected by deferred compensation plan.**

Notwithstanding any other provision of law to the contrary, any compensation deferred under this article shall be considered part of an employee's compensation for purposes of any other benefit program. No deferral of compensation under any deferred compensation plan shall effect a reduction of any other benefit program provided by law.

**Section 2-1008 Federal and state income tax**

Notwithstanding any other provision of this article or any other provision of law to the contrary, any compensation deferred under any deferred compensation plan shall not be subject to any federal, state or municipal income tax nor shall any amount of compensation deferred be included for the purposes of computation of any such income tax withheld on behalf of any employee. .

**Section 2-1009 Liabilities of Corporation of Shepherdstown**

The financial liability of the public employer under any deferred compensation plan shall be limited in each instance to the value of the particular fixed or variable annuity mutual fund, insurance, endowment or savings account acquired pursuant to the terms and provisions of this article, and the public employer shall not be liable for any change in value of such investment at the time of distribution to an employee.

**Section 2-1010 Deferred compensation plan funds held in trust.**

Notwithstanding anything herein to the contrary, all assets and income of all deferred compensation plans created or administered pursuant to this article shall be held in trust for the exclusive benefit of participants and their beneficiaries.

**Section 2-1011 Plan Guidelines**

(A) The savings program will be voluntary on the part of employees. Employees may enter or terminate participation at any time within the guidelines established by the plan administrator.

(B) Where not prohibited by state statute or Internal Revenue Code Section 457 or the regulations or pronouncements thereunder, the Corporation will match voluntary employee contributions to the savings program at a rate of twenty-five (25) cents for each dollar contributed by an employee up to a maximum contribution by the Corporation often (10) dollars per pay period into an individual employee's account and subject to the limitations under Internal revenue Code Section 457 applicable to an "eligible deferred compensation plan.". The Corporation's contribution will be considered as part of the compensation package and will be reported to the IRS as part of participating employees gross income.

Adopted: 04-19-1999

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## RESOLUTION

**WHEREAS**, the Corporation of Shepherdstown is authorized by Title 2 Chapter 10 of the Shepherdstown Ordinance to provide a deferred compensation plan for municipal employees, and

**WHEREAS**, the second reading and adoption of an amendment to Title 2 Chapter 10 Section 2-1011 "Plan Guidelines", hereby provides in part" the Corporation will match voluntary employee contributions to the savings program at a rate and/or amount to be determined from time to time by resolution of the Town Council, and

**BE IT THEREFORE RESOLVED**, the Town Council will match voluntary employee contributions to the savings program at a rate of one dollar for each dollar contributed by an employee up to a maximum contribution by the Corporation of fifty (50) dollars per pay period.

Corporation of Shepherdstown

Peter A. Wilson, Mayor

The foregoing was adopted by the Town Council in meeting November 8, 2005, and made a part of the official records.

Wanda Smith, Acting Recorder

**AN ORDINANCE TO AMEND SECTION 2-1011(B)  
OF CHAPTER 10 OF TITLE 2 OF THE  
CORPORATION OF SHEPHERDSTOWN TOWN CODE  
PERTAINING TO PLAN GUIDELINES FOR DEFERRED  
COMPENSATION PLAN FOR MUNICIPAL EMPLOYEES**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 2-1011(B), of Chapter 10 of Title 2, entitled "Plan Guidelines", is hereby amended to provide for Town Council to determine by resolution the rate and/or amount at which the Corporation will match voluntary employee contributions to the savings plan; accordingly, Section 2-1011(B) shall read as follows:

**Section 2-1011 Plan Guidelines**

(B) Where not prohibited by state law or Internal Revenue Code Section 457 or the regulations or pronouncements thereunder, the Corporation will match voluntary employee contributions to the savings program at a rate and/or amount to be determined from time to time by resolution of the Town Council, and subject to the limitations under Internal Revenue Code Section 457 applicable to an "eligible deferred compensation plan." The Corporation's contribution will be considered as part of the compensation package and will be reported to the IRS as required by federal tax laws.

First Reading: \_\_\_\_\_ October 11, 2005\_

Second Reading: \_\_\_\_\_ November 8, 2005

Adopted: \_\_\_\_\_ November 8, 2005

## ARTICLE I. INTRODUCTION

The Employer hereby establishes the Deferred Compensation Plan, hereinafter referred to as the "Plan," as of the effective date set forth in Section II of the General Terms herein. The Plan is intended to be an eligible deferred compensation plan under section 457 of the Internal Revenue Code of 1986, as amended. The primary purpose of this Plan is to attract and retain qualified personnel by permitting them to provide for benefits in the event of their retirement or death. Nothing contained in this Plan shall be deemed to constitute an employment agreement between any Participant and the Employer and nothing contained herein shall be deemed to give any Participant any right to be retained in the employ of the Employer.

## ARTICLE II. DEFINITIONS

- 2.1 Account: The account maintained for each Participant reflecting the cumulative amount of each Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Beneficiary and any fees or expenses charged against the Participant's Deferred Compensation.
- 2.2 Annuity Contract: If selected by the Employer as an investment option, one or more group fixed, variable or combination fixed and variable annuity contracts issued by The Variable Annuity Life Insurance Company (VALIC) and approved for sale in the Employer's state, or by another insurance company qualified to do business in the Employer's state, which provides for periodic payments at regular intervals, whether for a period certain or during one or more lives, and which are non-transferable.
- 2.3 Beneficiary or Beneficiaries: The person or persons designated by the Participant in his Deferred Compensation Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. If more than one designated Beneficiary survives the Participant, payments shall be made equally to the surviving Beneficiaries, unless otherwise provided in the Deferred Compensation Agreement. If no Beneficiary is designated in the Deferred Compensation Agreement or if no designated Beneficiary survives the Participant, then the estate of the Participant shall be the Beneficiary. However, a Participant may designate a contingent Beneficiary (or Beneficiaries) who shall become the primary Beneficiary (or Beneficiaries) under this Plan in the event that no primary Beneficiary survives the Participant.

- 2.4 Code: The Internal Revenue Code of 1986, as amended, and regulations thereunder.
- 2.5 Deferred Compensation: The amount of Normal Compensation otherwise payable to the Participant that the Participant and the Employer mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under Section 8.01, or any other amount that the Employer agrees to credit to a Participant's Account and that does not exceed the Maximum Limitation.
- 2.6 Deferred Compensation Agreement An agreement entered into between a Participant and the Employer and any amendments or modifications thereof, which agreement shall fix the amount of Deferred Compensation; establish the time when the payment of benefits shall commence, if required by the Code, for Deferred Compensation Agreements effective prior to January 1, 2002; specify the Participant's investment selection with respect to his Deferred Compensation; designate the Participant's Beneficiary or Beneficiaries and incorporate the terms, conditions, and provisions of this Plan by reference.
- 2.7 Eligible Retirement Plan: A plan described in section 402(c)(8)(B) to which an Eligible Rollover Distribution may be transferred pursuant to section 457(e)(16) of the Code.
- 2.8 Eligible Rollover Distribution: A qualifying distribution to a Participant, or to a spousal beneficiary of a deceased Participant, that is described in section 402(c)(4) of the Code.
- 2.9 Employee: Any individual, whether appointed, elected or under contract, providing services for the Employer for which compensation is paid.
- 2.10 Includible Compensation: The amount of compensation payable to a Participant from the Employer that is includible in the Participant's gross income for federal income tax purposes. Such term does not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code or any other amount excludible from gross income for federal income tax purposes. Includible gross income shall be determined without regard to any community property laws.
- 2.11 Maximum Limitation: The maximum amount that may be deferred under this Plan (other than rollover amounts described in Section 8.03) for the taxable year of a Participant. Such amount shall be either the Normal Limitation or Catch-Up Limitation, whichever is applicable.

- (a) Normal Limitation: The maximum amount deferred shall not exceed the lesser of the applicable dollar amount (as described in Section 2.11(c) below) or 100% of the Participant's Includible Compensation, as adjusted by Section 2.11(d) below. [Ordinarily this limit shall be the equivalent of the lesser of the applicable dollar amount (as described in Section 2.11(c) below) or 50% of Normal Compensation, assuming no other pre-tax reductions apply under Section 2.10.]

Notwithstanding the preceding provisions of this paragraph, for calendar years prior to 2002, the maximum amount deferred shall not exceed such limit or limits in effect for the applicable year pursuant to section 457 of the Code.

- (b) Catch-Up Limitation: For each one of the last three (3) taxable years of a Participant ending before the Participant's attainment of Normal Retirement Age, the maximum amount deferred for each such year shall be the lesser of:

- (1) twice the applicable dollar amount (as described in Section 2.11(c) below); or
- (2) the sum of the Normal Limitation, plus that portion of the Normal Limitation not used in each of the prior taxable years of the Participant commencing after 1978 in which (i) the Participant was eligible to participate in this Plan or the plan of another employer, and (ii) compensation deferred under this Plan (or such other plan) was subject to the deferral limitations set forth in this section.

A Participant may utilize the Catch-Up Limitation only if the Participant has not previously utilized it with respect to a different Normal Retirement Age under this Plan or any other plan.

For years prior to 2002, the limit under this paragraph (b) for any year shall not exceed \$15,000.

- (c) Applicable Dollar Amount For contributions in 2002 and in subsequent years, the applicable dollar amount shall be the amount determined in accordance with the following table:

<u>For taxable years beginning in calendar year:</u>	<u>The applicable dollar amount:</u>
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000

In the case of taxable years beginning after December 31, 2006, the applicable dollar amount will be adjusted for cost-of-living increases in accordance with section 457(e)(15) of the Code.

- (d) Coordination with Other Plans. For contribution years prior to 2002, the amount excludible from a Participant's gross income for any taxable year under this Plan or any other plan under section 457(b) of the Code shall not exceed \$7,500 (as adjusted for cost-of-living increases in accordance with section 457(e)(15) of the Code) or such greater amount allowed under paragraph (b) of this section, less any amount excluded from gross income under sections 403(b), 402(e)(3), or 402(h)(1)(B) or (k) of the Code, or any amount with respect to which a deduction is allowable by reason of a contribution to an organization under section 501(c)(18) of the Code.
- (e) Age-Based Catch-Up Contributions. In addition to any other limit set forth in this section, and subject to any limitations that may be imposed under present or future federal tax laws and rules, a Participant who has attained age 50 may contribute an additional amount in such year or a subsequent year, according to the following schedule:

Year of Contribution:	Additional Catch-Up Amount:
Prior to 2002	\$ 0
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 and later	\$5,000

In the case of taxable years beginning after December 31, 2006, the additional catch-up amount will be adjusted for cost-of-living increases in accordance with section 414(v)(2)(C) of the Code.

A Participant may not make an age-based catch-up contribution in any year in which the Participant may utilize the Catch-Up Limitation in paragraph (b) above.

- 2.12 Normal Compensation: The amount of compensation that would be payable to a Participant by the Employer if no Deferred Compensation Agreement were in effect to defer compensation under this Plan.

- 2.13 Normal Retirement Age: Age 70 1/2, unless the Participant has elected an alternative Normal Retirement Age by written instrument delivered to the Employer prior to Severance from Employment. A Participant's Normal

Retirement Age determines the period during which a Participant may utilize the Catch-Up Limitation of Section 2.11(b) hereunder.

Once a Participant has to any extent utilized the Catch-Up Limitation of Section 2.11(b), his Normal Retirement Age may not be changed.

A Participant's alternative Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Employer's basic retirement plan covering that Participant and may not be later than the calendar year in which the Participant attains age 70%.

If a Participant continues employment after attaining age 70<sup>14</sup> not having previously elected an alternative Normal Retirement Age, the Participant's alternative Normal Retirement Age shall not be later than the mandatory retirement age, if any, established by the Employer or the age at which the Participant actually severs employment if the Employer has no mandatory retirement age.

If the Participant will not be eligible to receive benefits under a basic retirement plan maintained by the Employer, the Participant's Normal Retirement Age may not be earlier than attainment of age 55 and may not be later than the calendar year in which the Participant attains age 70<sup>1/2</sup>.

- 2.14 Participant: Any Employee who has enrolled in this Plan pursuant to the requirements of Article IV.
- 2.15 Plan Year: The 12-month period commencing each January 1 and ending on the following December 31.
- 2.16 Retirement: The first date upon which each of the following shall have occurred: Severance from Employment and attainment of age 65.
- 2.17 Severance from Employment: Termination of the Participant's employment relationship with the Employer. For years prior to 2002, references in this Plan to Severance from Employment shall mean the Participant's severance of the Participant's employment with the Employer, within the meaning of section 402(e)(4)(D)(i)(III), rather than termination of the Participant's employment relationship with the Employer.
- 2.18 Service Provider. The Variable Annuity Life Insurance Company or such other entity as the Employer designates to perform administrative services under this Plan.

### ARTICLE III. ADMINISTRATION

- 3.1 Plan Administrator. This Plan shall be administered by the Employer or one or more persons designated by the Employer. The Plan Administrator, if other than the Employer, shall act as the agent of the Employer in all matters concerning the administration of this Plan. The Plan Administrator shall have full power to adopt, amend, and revoke such rules and regulations consistent with and as may be necessary to implement this Plan, to enter into contracts on behalf of the Employer under this Plan, and to make discretionary decisions affecting the rights or benefits of Participants under Section 6.07 of this Plan.
- 3.2 Employee with Administrative Responsibilities. Any Employee who is charged with administrative responsibilities hereunder may participate in the Plan under the same terms and conditions as apply to other Employees. However, he shall not have the power to participate in any discretionary action taken with respect to his participation under Section 6.07 of this Plan.
- 3.3 Administrative Services. The Employer may enter into an agreement with a Service Provider to provide nondiscretionary administrative services under this Plan for the convenience of the Employer, including, but not limited to, the enrollment of Employees as Participants, the maintenance of Accounts and other records, the making of periodic reports to Participants, and the disbursement of benefits to Participants.

### ARTICLE IV. PARTICIPATION IN THE PLAN

- 4.1 Participant. An Employee becomes a Participant when he has executed and entered into a Deferred Compensation Agreement with the Employer.
- 4.2 Enrollment in the Plan. An Employee may become a Participant as of the first day of any calendar month by entering into a Deferred Compensation Agreement with respect to compensation not yet earned. A new Employee may become a Participant on the first day of employment by entering into a Deferred Compensation Agreement on or before the first day of employment with respect to compensation not yet earned. The Deferred Compensation Agreement shall defer compensation not yet earned, and each Deferred Compensation Agreement must be made before the beginning of the month in which it is to become effective or, with respect to a new employee, on or before the first day of employment.
- 4.3 Minimum Deferral Amount. At the time of entering into or amending a Deferred Compensation Agreement hereunder, a Participant must agree to defer a minimum periodic amount as specified by the Plan Administrator.

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- 4.4 Change in Amount of Deferred Compensation or Beneficiary. A Participant may not amend or modify an executed Deferred Compensation Agreement to change the amount of Deferred Compensation except with respect to compensation to be earned in the subsequent calendar month and provided that notice is given prior to the beginning of the month for which such change is to be effective. A Participant may change the Beneficiary designated in his Deferred Compensation Agreement at any time by giving written notice to the Plan Administrator.
- 4.5 Revocation of Deferred Compensation Agreement. A Participant may revoke his Deferred Compensation Agreement and thereafter be restored to his Normal Compensation in the subsequent calendar month, by giving notice to the Employer prior to the beginning of the month for which such revocation is to be effective.
- 4.6 New Deferred Compensation Agreement Upon Return to Service or After Revocation. A Participant who returns to active service with the Employer after a Severance from Employment, or who has revoked his Deferred Compensation Agreement under Section 4.05, may again become an active Participant by executing a new Deferred Compensation Agreement with the Employer prior to the beginning of the calendar month as to which it is to be effective.
- 4.7 Leave of Absence; Other Absences. Compensation may continue to be deferred under this Plan with respect to a Participant who is on an approved leave of absence from the Employer with compensation, and all of the rules of this Article shall apply with respect to making, amending or revoking any Deferred Compensation Agreement for such a Participant. If a Participant is absent from work without compensation for a period of not more than six months, whether by reason of illness, strike, lockout, shutdown or otherwise, his Deferred Compensation Agreement will remain in effect and compensation will again be deferred thereunder when he returns to work.

## ARTICLE V. INVESTMENT OF DEFERRED COMPENSATION

- 5.01 Annuity Contracts and Other Plan Investments. For the purposes of satisfying its obligation to provide benefits under this Plan, the Employer shall invest the amount of compensation deferred by each Participant in Annuity Contracts and other Plan investments as specified in the Participants' Deferred Compensation Agreements. Responsibility for the selection of investment alternatives for Plan assets shall be retained by the Employer, and the Employer shall have the right to modify the selection of investment alternatives from time to time. However, Participants and Beneficiaries may allocate amounts held in their Accounts or otherwise credited for their benefit under the Plan among the investment alternatives

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selected by the Employer, and the Employer shall cause such amounts to be so allocated within a reasonable time after the receipt of Participant instructions, or may instruct the issuer, trustee, or custodian to accept such allocation instructions directly from Participants and Beneficiaries as representatives of the Employer.

- 5.2 Exclusive Benefit. Notwithstanding any provision of the Plan to the contrary, all amounts held under the Plan, including amounts deferred and earnings or other accumulations attributable thereto, shall be held for the exclusive benefit of Plan Participants and Beneficiaries (i) in annuity contracts, or (ii) in trust or in one or more custodial accounts pursuant to one or more separate written instruments. Any such annuity contract, trust, or custodial account must satisfy the requirements of section 457(g)(1) of the Code. For purposes of this section, the terms Participant and Beneficiary shall also include contingent beneficiaries and/or spouses, former spouses, or children of Participants for whose benefit amounts are being held under the Plan pursuant to the terms of a domestic relations order which has been recognized under the terms of the Plan. Any discretionary authority reserved to the Employer (or to any administrator or administrative committee) under the Plan or under any investment held under the Plan, to the extent the exercise thereof would otherwise be inconsistent with this section, shall be exercised for the exclusive benefit of Plan Participants and Beneficiaries. Any issuer of an annuity contract or trustee or custodian of other investments held under the Plan shall have no authority to pay any amounts from such Plan investments to any creditor of the Employer, and shall have no duty to inquire into the validity of any request by the Employer or by an administrator or administrative committee for distribution of amounts for the benefit of a Participant or a Beneficiary under the Plan.
- 5.3 Benefits Based on Participant's Account Value. The benefits paid to a Participant or Beneficiary pursuant to Article VI of this Plan shall be based upon the value of the Participant's Account. In no event shall the Employer's liability to pay benefits exceed the value of the Participant's Account, and the Employer shall not be liable for losses arising from depreciation or other decline in the value of any investments acquired under this Plan.
- 5.4 Periodic Reports. Each Participant shall receive periodic reports, not less frequently than annually, showing the then-current value of his Account.
- 5.5 Employer-Directed Accounts. Notwithstanding any provision of the Plan to the contrary, the Employer shall direct the issuer, trustee or custodian with respect to the investment of any contributions that are forwarded to the issuer, trustee or custodian prior to the date on which the Participant or Beneficiary completes the necessary paperwork with the issuer, trustee or

custodian (or takes such other action or actions as may be necessary) to direct the investment of such amounts. Such direction shall be communicated to the issuer, trustee or custodian by means of a separate written agreement between the Employer and issuer, trustee or custodian, which agreement will include a default investment option and a default beneficiary designation. This direction shall be effective only until such time as the Participant or Beneficiary exercises his right to direct the investment of such amounts and to designate a Beneficiary in accordance with the terms of the Plan.

## ARTICLE VI. BENEFITS

- 6.1 Retirement Benefits on Severance from Employment Except as otherwise provided in this Article, a Participant's Account shall become distributable upon a Participant's Severance from Employment. The distribution of a Participant's Account shall commence no later than April 1 of the calendar year following the year of the Participant's Retirement or attainment of age JQYz, whichever is later. Distributions shall be made in accordance with one of the payment options described in Section 6.03. Notwithstanding the other provisions of this section, Accounts established prior to January 1, 2002 will be subject to the additional distribution requirements, and rules regarding permitted distribution elections, to which such Account may have been or may be subject under Code section 457.
- 6.2 Distribution Procedures. The Employer may from time to time establish procedures for Participant distribution elections, provided that such procedures are not inconsistent with the requirements of Section 6.01.
- 6.3 Payment Options. A Participant (or a Beneficiary as provided in Section 6.06) may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options provided that such option is consistent with the limitations set forth in Section 6.04:
- (a) life annuity;
  - (b) life annuity with 60, 120, or 180 monthly payments guaranteed;
  - (c) unit refund life annuity;
  - (d) joint and last survivor annuity (spouse only);
  - (e) lump sum;
  - (f) term certain annuity with 36, 48, 60, 72, 84, 96, 108, 120, 132, 144, 156, 168 or 180 monthly payments guaranteed;

- (g) withdrawals for a specified number of years;
- (h) withdrawals of a specified amount; or
- (i) any other method of payment agreed upon between Participant and Employer and accepted by the investment provider or Service Provider.

If a Participant fails to elect a payment option, any required payments shall be made under a payment option designated by the Employer.

Notwithstanding the options above, any option that involves a life contingency (or a joint life contingency) shall only be available under an Annuity Contract offered or obtained under the terms of the Plan.

- 6.4 Limitation on Options. No payment option may be selected by the Participant (or a Beneficiary) unless it satisfies the requirements of Code section 401(a)(9) and any additional Code limitations applicable to the Plan. Notwithstanding the other provisions of this section, Accounts established prior to January 1, 2002 will be subject to the additional distribution requirements, and rules regarding permitted distribution elections, to which such Account may have been or may be subject under Code section 457.
- 6.5 Post-Retirement Death Benefits. Should the Participant die after he has begun to receive benefits under a payment option, the guaranteed or remaining payments, if any, under the payment option shall be payable to the Participant's Beneficiary commencing with the first payment due after the death of the Participant. Payment to the Participant's Beneficiary must comply with section 401(a)(9) of the Code, and with any additional Code limitations applicable to the Plan. If the Beneficiary does not continue to live for the remaining period of payments under the payment option, then the remaining benefits under the payment option shall be paid to the Beneficiary's beneficiary or, if none, the Beneficiary's estate. In no event shall the Employer be liable for any payments made in the name of the Participant or a Beneficiary before the Employer or its agent receives proof of the death of the Participant or Beneficiary,
- 6.6 Pre-Retirement Death Benefits. Should the Participant die before he has begun to receive benefits under Section 6.01, a death benefit equal to the value of the Participant's Account shall be payable to the Beneficiary. Such death benefit shall be paid in a lump sum unless the Beneficiary elects a different payment option. Payment to the Participant's Beneficiary must comply with section 401(a)(9) of the Code, and with any additional Code limitations applicable to the Plan. Should the Beneficiary die before

the completion of payments under the payment option, the value of the remaining payments under the payment option shall be paid to the Beneficiary's beneficiary or, if none, the Beneficiary's estate. Notwithstanding the other provisions of this section, Accounts established prior to January 1, 2002 will be subject to the additional distribution requirements, and rules regarding permitted distribution elections, to which such Account may have been or may be subject under Code section 457.

- 6.7 Unforeseeable Emergency Withdrawals. Except as provided in this section, no amount shall be distributable to a Participant or Beneficiary prior to the Participant's Severance from Employment. In the event of an unforeseeable emergency before or after Severance from Employment or the commencement of Retirement Benefits, a Participant may apply to the Employer to receive that part of the value of his Account that is reasonably needed to satisfy the emergency needs. If such application for withdrawal is approved by the Employer, the Employer shall direct the issuer, trustee or custodian to pay the Participant such value as the Employer deems necessary to meet the emergency needs. The regulations under section 457(d)(1)(A)(iii) of the Code define an unforeseeable emergency as a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent (as defined in Code section 152(a)) of the Participant, loss of property due to casualty, or other similar extraordinary or unforeseeable circumstances arising as a result of events beyond the control of the Participant which would cause severe financial hardship to the Participant if early withdrawal were not permitted. Payment may not be made to the extent that such hardship is or may be relieved by other financial resources available to the Participant, including insurance reimbursement, cessation of deferrals under this Plan or liquidation of other assets, to the extent the liquidation of such assets would not itself cause severe financial hardship. Unforeseeable emergencies do not include the need to send a child to college or the desire to purchase a home.

- 6.8 Transitional Rule for Annuity Payment Option Elections. If this Plan document constitutes an amendment and restatement of the Plan as previously adopted by the Employer and if a Participant or Beneficiary has commenced receiving benefits under an annuity payment option, that annuity payment option shall remain in effect notwithstanding any other provision of this Plan.

- 6.9 Participant's Election to Receive In-Service Distribution. A Participant may elect to receive an in-service distribution of the total amount payable to him under the Plan if:

- (a) such amount does not exceed the dollar amount under section 411(a)(11)(A) of the Code,

- (b) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution, and
- (c) there has been no prior distribution under the Plan to the Participant under this Section 6.09 or under Section 6.10.

6.10 Distribution without Participant's Consent The total amount payable to a Participant under the Plan may be distributed to the Participant without his consent if:

- (a) such amount does not exceed the dollar amount under section 411(a)(11)(A) of the Code,
- (b) no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the distribution, and
- (c) there has been no prior distribution under the Plan to the Participant under this Section 6.10 or under Section 6.09.

#### ARTICLE VII. NON-ASSIGNABILITY

7.1 In General. Except as provided in Section 7.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

7.2 Domestic Relations Orders.

(a) Allowance of Transfers: To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, or child of the Participant. Where necessary to carry out the terms of such an order, a separate Account may be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant; any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the order directs an earlier time, to the extent allowed under the Code, or a different form of payment. Where the final judgment, decree or order does not define a form or time of payment that is available under this Plan, the Employer shall have the right to

interpret the final judgment, decree or order in a manner that is consistent with the terms of this Plan. Any payment made to a person other than the Participant pursuant to this section shall be reduced by required income tax withholding.

(b) Release from Liability to Participant: The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse, or child pursuant to paragraph (a) of this section. No such transfer shall be effectuated unless the Employer or Service Provider has been provided with satisfactory evidence that the Employer and the Service Provider are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Employer and the Service Provider from any claim with respect to such amounts, in any case in which (i) the Employer or Service Provider has been served with legal process or otherwise joined in a proceeding relating to such transfer, (ii) the Participant has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending by service of process in such action or by mail from the Employer or Service Provider to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the Employer or Service Provider from the obligation to comply with the judgment, decree, or order. The Participant shall also be deemed to have released the Employer or Service Provider if the Participant has consented to the transfer pursuant to the terms of a property settlement agreement and/or a final judgment, decree, or order as described in paragraph (a).

(c) Participation in Legal Proceedings: The Employer and the Service Provider shall not be obligated to defend against or seek to have set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Service Provider to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Service Provider shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

## ARTICLE VIII. TRANSFERS AND ROLLOVERS

- 8.1 Transfers from Other Plans. This Plan shall accept transfers, pursuant to section 457 of the Code, of amounts deferred by an individual under another eligible deferred compensation plan meeting the requirements of section 457(g) of the Code. In no event may the Employer cause such a transfer to be made, except at the request of a Participant. Any such transferred amount shall not be treated as a deferral subject to the limitations of Section 2.11, except that, for purposes of applying the limit of Section 2.11, an amount deferred during any taxable year under the plan from which the transfer is accepted shall be treated as if it had been deferred under this Plan during such taxable year and compensation paid by the transferor employer shall be treated as if it had been paid by the Employer.
- 8.2 Transfers to Other Plans. A Participant may elect to have any portion of the amount payable to him transferred to another eligible deferred compensation plan. In the event of a request by a Participant for a transfer to another eligible deferred compensation plan under which amounts are not held in the manner described in Section 5.02, such transfer shall be permitted only if otherwise permitted by the Plan and applicable law. Subject to any limitations imposed by an investment provider, the Plan may also permit transfers of a portion of an amount payable to a Participant to a defined benefit governmental plan in conformity with section 457(e)(17) of the Code.
- 8.3 Rollovers. A Participant may elect to roll an Eligible Rollover Distribution to an Eligible Retirement Plan. The Participant shall be provided with a description of available rollover rights and rules in advance of such a distribution. A distribution that is an Eligible Rollover Distribution and that is paid in a form other than a rollover will be subject to mandatory withholding of 20%, or such other mandatory withholding rate as may be imposed under the Code from time to time. This Plan shall be permitted to accept a rollover distribution from an Eligible Retirement Plan (including a distribution from an IRA) to this Plan, subject to any administrative restrictions imposed by the Plan or by the investment provider. To the extent necessary to satisfy the requirements of the Code, any such rollover distribution to the Plan shall be subject to the same restrictions on distributions applicable to other amounts held under the Plan.

## ARTICLE IX. AMENDMENT OR TERMINATION OF PLAN

- 9.01 Amendment or Termination. The Employer may at any time amend this Plan or terminate this Plan and distribute the Participants' Accounts in conformity with the Code and applicable regulations; provided, however, that such amendment or termination shall not impair the rights of

Participants or their Beneficiaries with respect to any compensation deferred before the date of the amendment or termination of this Plan except as may be required to maintain the tax status of the Plan under the Code. Participants shall thereafter receive their Normal Compensation and benefits shall be paid as provided in Article VI.

9.02 Amendment and Restatement of Previously Adopted Plan. If this Plan document constitutes an amendment and restatement of the Plan as previously adopted by the Employer, the amendments contained herein shall be effective as of the effective date set forth in Section II of the General Terms herein, and the terms of the preceding plan document shall remain in effect through such date.

#### ARTICLE X. USERRA

Notwithstanding any other provision of this Plan to the contrary, contributions and service credit with respect to qualified military service will be provided in accordance with Code section 414(u).

#### ARTICLE XI. GOVERNING LAW

Except to the extent any federal law applies, this Plan shall be construed under the laws of the State of Employer's principal place of business.

#### ARTICLE XII. RELATIONSHIP TO OTHER PLANS

This Plan serves in addition to any other retirement, pension or benefit plan or system presently in existence or hereinafter established.

**TITLE 2 - Administration CHAPTER 10 -  
Savings Program for Municipal Employees**

**Section 2-1001- Establishment of a savings program.** A savings program is hereby established as part of the compensation package for full time employees of the corporation. The program will be established by agreement between the Corporation of Shepherdstown, on behalf of participating employees, and an appropriate firm, licensed in West Virginia, to provide and administer an IRS approved salary reduction savings program. Each employee participating in the savings program will have his/her contributions credited directly to an individual account with the savings program administrator. The corporation's participation and liability will be limited to collecting and depositing individual contributions with the program administrator and contributing the town's share of the program as indicated below.

**Section 2-1002 Program Guidelines.**

(A) The savings program will be voluntary on the part of employees. Employees may enter or terminate participation at any time within the guidelines established by the plan administrator.

(B) The corporation will match voluntary employee contributions to the savings program at a rate of twenty-five (25%) cents for each dollar contributed by an employee up to a maximum contribution by the corporation of ten (10) dollars per pay period into an individual employee's account\*

(C) Contributions made by the corporation will not be vested in a participating employee's savings account until that participant has been employed by the corporation for a period of five years. Any employee resigning from employment with less than five years' service; or any employee withdrawing money from an account prior to completion of five years' service will have the corporation's contribution revert to the corporation upon departure from the corporation's employment or upon withdrawal of funds from the participant's savings account.

(D) The mayor is authorized to develop an agreement with an appropriate firm, licensed in West Virginia, to manage the savings program and, with the approval of the council, is authorized to execute such an agreement on behalf of the corporation and its employees.

First reading:           December 9, 1997  
Seconded reading:    January 13, 1998  
Adopted:                January 13, 1998

Recorder

AN ORDINANCE TO ENACT A NEW CHAPTER 10, TITLE 2 OF THE CODE OF SHEPHERDSTOWN, TO PROVIDE FOR EQUAL OPPORTUNITY IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS AND THE SALE, LEASE, RENTAL AND FINANCING OF HOUSING ACCOMMODATIONS WITHOUT REGARD TO RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, SEX, AGE, BLINDNESS, HANDICAP, OR SEXUAL ORIENTATION AND GENDER IDENTITY.

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Chapter 10, Title 2 of the Code of Shepherdstown, to be known as the Non-Discrimination Ordinance, is hereby enacted in order to provide for equal opportunity in the areas of employment, public accommodations, and the sale, lease, rental and financing of housing accommodations without regard to race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or sexual orientation and gender identity.

**WHEREAS**, the Town of Shepherdstown continues to strive to be an inclusive Town, where people can live and work without fear of discrimination; and

**WHEREAS**, the Town of Shepherdstown wishes to maintain a competitive business environment by working with businesses to eliminate barriers to recruiting a talented workforce,

**Accordingly, Chapter 10, Title 2 of the Code of Shepherdstown is enacted to read as set forth in Exhibit A, attached:**

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### **Section 2-1001 Declaration of Policy.**

(a) Equal opportunity in the Corporation of Shepherdstown in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, handicap, sexual orientation or gender identity. Equal opportunity in the Corporation of Shepherdstown in the sale, lease, rental and financing of housing accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, sexual orientation or gender identity.

(b) The denial of these rights of properly qualified persons is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

### **Section 2-1002 Definitions.**

When used in this Chapter:

*Age* means 40 or above.

*Discriminate* or *discrimination* means to exclude from, or fail or refuse to extend to, a person, equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, sexual orientation or gender identity and includes "to separate" or "segregate".

*Employee* shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

*Employer* means any person employing 12 or more persons within the Town and includes an agent of such person, and its agencies. Provided, that such terms shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.

*Employment Agency* includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

*Familial Status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

*Gender Identity* means actual or perceived appearance, or behavior of an individual, with or without regard to the individual's assigned sex at birth.

*Handicap* means a person who:

(1) Has a mental or physical impairment which substantially limits one or more of such person's major life activities; "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) Has a record of such impairment; or

(3) Is regarded as having such an impairment.

For this purposes of this article, "handicap" does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

*Housing Accommodations* means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented.

*Labor Organization* includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

*Person* means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

*Owner* shall include the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the Town or any agent of any of these.

*Place of Public Accommodations* means any establishment or person, as defined herein, including the Town and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are in their nature private.

*Purchaser* includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

*Real Estate Broker* includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or

assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

*Real Estate Salesman* includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real state, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell real estate, or any parts thereof, in lots or other parcels.

*Real Property* includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

*Rooming House* means a house or building where there is one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

*Sexual Orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

*Unlawful Discriminatory Practices* includes only those practices specified in Section 2-1003.

### **Section 2-1003 Unlawful Discriminatory Practices.**

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, sexual orientation or gender identity. Provided, that it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection (1);

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to:

a. Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity of any applicant for employment or membership, except for such forms which shall be kept separate from the application blanks for the administration of any bona-fide affirmative action plan, that is in accordance with state and federal laws and regulations, or for the purpose of complying with any state or federal statute, or rule or regulation issued by any agency of the state or federal government, or for the purpose of making reports required by agencies of the state or federal government;

b. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation or gender identity; or

c. Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity.

(3) For any labor organization, because of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity of any individual, to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly related to employment.

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

a. Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review;

b. Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

c. Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

d. Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application for such programs; or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification.

(5) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity.

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

a. Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;

b. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity, or that the patronage or custom thereof of any individual belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, age, sexual orientation, or gender identity or who is blind or handicapped is unwelcome, objectionable, not acceptable, undesired or not solicited.

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

a. Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or

economic loss, or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

b. Willfully obstruct or prevent any person from complying with the provisions of this Ordinance;

c. Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this Ordinance or because such person has filed a complaint, testified or assisted in any proceeding under this Ordinance

**Section 2-1004 Remedies.**

Any person aggrieved under the provisions of this Ordinance may file a private cause of action in the Jefferson County Circuit Court and seek all available remedies.