

TITLE 3

ALCOHOLIC BEVERAGES

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CHAPTER 1 - In General

Section 3-101 Definitions

Words and phrases defined in West Virginia Code 11-16-2, 60-1-5 and 60-7-2 shall have the same meanings as therein defined wherever such words and phrases are used in this Title.

Section 3-102 Drinking in public places; illegal possession It

shall be unlawful for any person to:

- (a) Appear in a public place in an intoxicated condition.
- (b) Drink alcoholic liquor in a public place.

(c) Drink alcoholic liquor in a motor vehicle on any street or in

a public place.

**AN ORDINANCE REPEALING THE OPEN CONTAINER LAW,
SECTION 3-307 OF THE SHEPHERDSTOWN MUNICIPAL CODE
AND RE-ENACTING AND EXPANDING
THE OPEN CONTAINER LAW AS SECTION 3-102(g) AND (h),
BY PROHIBITING POSSESSION OF AN OPEN CONTAINER
OF ALCOHOLIC BEVERAGES WITHIN A MOTOR VEHICLE AND
BY RE-ENACTING SECTION 3-102 TO INCLUDE REFERENCES TO
NON-INTOXICATING BEER AND OTHER CLARIFYING LANGUAGE**

THE SHEPHERDSTOWN TOWN COUNCIL ORDAINS:

Section 3-307 of the Shepherdstown Code is repealed, and section 3-102 of the Shepherdstown Code is re-enacted and amended as follows:

Section 3-102: Drinking in public places; illegal possession

It shall be unlawful for any person to:

- (a) Appear in a public place in an intoxicated condition.
- (b) Drink alcoholic liquor or non-intoxicating beer in a public place.
- (c) Drink alcoholic liquor or non-intoxicating beer in a motor vehicle on any highway, street, alley or in a public garage.
- (d) Tender a drink of alcoholic liquor or non-intoxicating beer to another in a public place.
- (e) Possess alcoholic liquor in an amount in excess of one gallon in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commission, without first having obtained written authority from the commission therefor.
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.
- (g) Possess any open container of alcoholic liquor or non-intoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane, or other public place.

(h) Possess any open container of alcoholic liquor or non-intoxicating beer in any motor vehicle traveling or parked on any public highway, street or alley or in a public garage.

First reading: October 9, 2001

Second reading: November 13, 2001

Adopted: November 13, 2001

Section 3-102 cont.

- (d) Tender a drink of alcoholic liquor to another person in a public place.
- (e) Possess alcoholic liquor in an amount in excess of one gallon in containers not bearing stamps or seals of the West Virginia Alcohol Beverage Control Commission, without first having obtained written authority from the commission therefore.
- (f) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of Chapter 60 of the Code of West Virginia.

Amended to include (g) and (h) 11-13-2001

Section 3-103 Restrictions on the sale

No sale of nonintoxicating beer or intoxicating liquor shall be made to the following persons within this municipality.

- (.1) A person less than eighteen years of age.
- (2) A person addicted to alcoholic beverages.
- (3) A person who is addicted to the use of narcotic drugs.
- (4) A person declared mentally incompetent by a court of legal jurisdiction.

Section 3-104 Violation-Penalties

A violation of any provision of this chapter shall be punishable by a fine of not more than fifty dollars (\$500.00) for each separate offense.

Section 3-105: Use of false identification, etc., by person underage; penalty.

Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking beer or liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

CHAPTER 2 Intoxicating

Liquor Section 3-201 Tax Imposed

Pursuant to the provisions of West Virginia Code 8-13-7, there is hereby imposed a tax of five per cent of the retail purchase price of any and all

intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provisions of Article 8, Chapter 60 of the Code of West Virginia. Provided, however, that such tax shall not be collected on intoxicating liquors sold by or purchased from holders of a license issued under provisions of Article 7, Chapter 60 of said Code of West Virginia.

ORDINANCE NO. 3-201

An Ordinance amending and readopting Section 3-201 of the Code of the City of Shepherdstown West Virginia; setting the rate of tax on the purchase of intoxicating liquors within the corporate boundaries of said municipality at five per cent.

Be it ordained by the governing body of Shepherdstown West Virginia, that after the effective date of this Ordinance, pursuant to Chapter 8, Article 13, Section 7 of the Official Code of West Virginia, of 1931, as last amended, there is hereby imposed a tax of five per cent of the retail purchase price of any and all intoxicating liquors purchased from the Alcohol Beverage Control Commission or from any person licensed to sell wine at retail to the public under the provision of Chapter 60, Article 8 of the aforesaid Code of West Virginia, within the corporate boundaries of the municipality. Such tax shall be levied upon the purchaser of said intoxicating liquor or wine, and shall be added to any collected with the retail purchase price of 'such intoxicating liquor or wine. Such tax shall be received by the municipality from the State Treasury pursuant to the rules and regulations adopted by the said Alcohol Beverage Control Commissioner. Provided, however, that such tax shall not be collected, on intoxicating liquors, other than wine sold by or purchased from holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code. Provided further, such tax shall be collected upon all sales of wine to holders of a license issued under the provisions of Chapter 60, Article 7 of said West Virginia Code from. a wine distributor licensed pursuant to the provisions of Chapter 60, Article 3 et seq. of said West Virginia Code.

This Ordinance amendment shall be effective July 1, 1983, or if adopted at a subsequent date, then this Ordinance shall be effective from passage.

(Drafter's Note:) A certified copy of the Ordinance is to be provided to the West Virginia Alcohol Beverage Control Commissioner and the State Tax Commissioner.

Section 3-202 Town license required for wine sales

Every person licensed by the state pursuant to the provisions of Article 8, Chapter 60 of the Code of West Virginia, whether as a distributor or retailer of wine and who does business as such within this town shall obtain a town license as provided in this chapter.

The Town shall collect an annual license tax as follows:

- (a) Twenty-five hundred dollars per year for a distributor's license.
- (b) One hundred fifty dollars per year for a retailer's license.

The license period shall begin on the first day of July of each year, and end on the thirtieth day of June of the following year. If the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining the fiscal year, including the quarter in which application is made.

A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

Section 3-204 Town license required for retail liquor sales.

(a) Every person licensed by the State of West Virginia pursuant to the provisions of Article 3A, Chapter 60 of the Code of West Virginia, as a Class A or Class B retail liquor licensee and who does business as such within this Town shall obtain a town license as provided in this chapter.

(b) The annual retail license period is from July 1 to June 30 of the following year. The annual retail license fee for a Class A or Class B retail license is \$2,000. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following June 30.

(c) All retail licenses expire on June 30 of each year and may be renewed only upon the submission to the Town of the same information required for the issuance of the license and any additional information requested by the Town on the forms and by the date prescribed by the Town, together with the payment of the applicable annual retail license fee required under this section.

(d) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.

Section 3-301 Town Licensed Required

Every person licensed by the state pursuant to the provisions of Article 16, Chapter 11 of the Code of West Virginia, whether as a retailer, private club, wholesaler or brewer of nonintoxicating beer and who does business as such within this town shall obtain town license as provided in this chapter, provided, that nothing contained in this chapter, and no license or payment under the provisions hereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person

Section 3-301 cont.

from any penalty prescribed for such violation. Upon the issuance of a town license, the licensee shall display it at all times in a conspicuous place, upon the premises thereby licensed. Town licenses under this chapter shall not be transferable. A license shall be required for each place of business and a full tax paid for each such place of business.

Section 3-302 License tax

There is hereby levied and imposed by annual license tax upon all brewers and dealers, as covered under Section 3-301, in or of nonintoxicating beer within the town, which license period shall begin on the first day of July of the following year, and if granted for a shorter period the same shall be computed quarterly in proportion to the remainder of the fiscal year as follows:

(a) Retail dealers shall be divided into two classes, Class A and Class B. In the case of Class A retail dealer the license fee shall be \$100.00 for each place of business; the license-fee for social, fraternal or private clubs not operating for profit, and having been in continuous operation for five years or more immediately preceding the date of application, shall be \$100.00.

Class A license issued for social, fraternal or private clubs as herein provided, shall authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A licenses shall authorize the licensee to sell nonintoxicating beer at retail for consumption on or off the licensed premises.

In the case of Class B retailer, there shall be two types of a Class B License, The fee for a Class B license authorizing the sale of unchilled beer only shall be fifteen dollars. The fee for a Class B license authorizing the sale of both chilled and unchilled beer shall be \$100.00. A Class B license shall authorize the licensee to sell nonintoxicating beer at retail in bottles, cans or other sealed containers only, and only for consumption off the licensed premises. Sales under this license to any person at any one time must be in less quantities than five gallons. Such license may be issued only to the proprietor or owner of a grocery store. For the purpose of this section the term "grocery store" means and includes any retail establishment commonly known as a grocery store or delicatessen, where food or food products are sold for consumption off the premises.

(b) In the case of a wholesaler, the license fee shall be \$200.00 for each place of business.

(c) In the case of a brewer with its principal place of business located in this Town, the license fee shall be \$500.00 for each place of manufacture.

Section 3-303 Application for Issuance of License

All licenses under the provisions of this chapter shall be issued by the recorder upon written application therefore verified by the applicant under oath. Application forms shall be furnished by the Town, designed to elicit all information necessary for the Recorder to determine the eligibility of the applicant for the license applied for; the amount of license fee; the location within the town of the premises to be licensed and whether or not such premises and structures comply with all applicable

Section 3-303 cont.

provisions of state law, this Code and other ordinances; and it shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for a license under this chapter.

No license under this chapter shall be issued to any person, firm, partnership, corporation, association, social, fraternal or business club having its place or places of business situated within 250 feet of certain premises, to-wit, the lot or parcel of ground of any Church or School, and said distance of 250 feet shall be measured from the premises, to-wit, the lot or parcel of ground on which stands the building occupied or to be occupied by the licensee, to the premises as aforesaid of any Church or School, said measurement to be made following the pavement, walkway, road or alley between the two premises, using the shortest of said routes where more than one route exists. It shall be unlawful and shall constitute false swearing for any applicant to knowingly make any false statement in any application for license under this chapter.

Before issuing any license hereunder, the Town Recorder may require the applicant to display his corresponding state license.

Section 3-304 Unlawful acts of licensees; penalties

It shall be unlawful:

(a) For any licensee, his servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer on weekdays between the hours of 2:00 A.M., and 7:00 A.M., or between the hours of 2:00 A.M. and 1:00 P.M. on any Sunday, except in private clubs licensed under the provisions of this title, where the hours shall conform with the hours of sale of alcoholic liquors as provided in chapter 60 of the Code of West Virginia.

(b) For any licensee, his servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of eighteen years.

(c) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer except for cash. Nothing herein contained shall prohibit a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for such containers when title is retained by the vendor.

(d) For any brewer or distributor or his agents, to transport or deliver nonintoxicating beer to any retail licensee on Sunday.

(e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of

Section 3-304 cont.

the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers; provided, that nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas.

(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry or upon the label of which there appears the word or words "strong," "full strength," "extra strength," "prewar strength," "high test" or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling proof from which such beverage was produced, except that such label shall contain a statement that the alcoholic content thereof does not exceed the state allowable percent by weight.

(g) For any licensee to permit in his premises any lewd, immoral or improper entertainment, conduct or practice.

(h) For any licensee, except the holder of a license to operate a private club issued under the provisions of this title, to possess a federal license, tax receipt or other permit entitling, authorizing or allowing such licensee to sell liquor or alcoholic drinks.

(i) For any licensee to obstruct the view of the interior of his premises by enclosure, lattice, drapes or any means which would prevent plain view of the patrons occupying such premises. The interior of all licensed premises shall be adequately lighted at all times; provided, that provisions of this subsection shall not apply to the premises of a Class B retailer or to the premises of a private club licensed under the provisions of this title.

(j) For any licensee to manufacture, import, sell, trade, barter possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith; provided, that the prohibitions contained in this subsection with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of this title.

(k) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee.

(l) For any retail licensee to sell or dispense nonintoxicating beer purchased or acquired from any source other than a licensed distributor or brewer under the laws of this state.

Section 3-304 cont.

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

(n) For any person whose license has been revoked, as provided in this chapter, to obtain employment with any retailer within the period of one year from the date of such revocation, or for any retailer to employ knowingly any such person within such time.

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

For any licensee to permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state.

(q) For any Class B retailer to permit the consumption of nonintoxicating beer upon his licensed premises.

(r) For any licensee, his servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, or upon such premises in the immediate company of his parent, or where and while such person under the age of eighteen years is in, on

or upon such premises for the purpose of and actually making a lawful purchase of any or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any item of food, drink or soft drink therein lawfully prepared and served or sold for consumption on such premises.

(s) For any licensee to sell nonintoxicating beer to which wine, spirits, or alcohol has been added.

The word "licensee" as used in this section shall mean any person paying a license tax to the town pursuant to this chapter.

Section 3-305 Violation - Penalties

Any person who violates any provision of this chapter shall, upon conviction, be punished for each offense by a fine of not less than twenty-five dollars nor more than five hundred dollars.

Section 3-306 Revocation of license

The Recorder shall revoke the license granted or refuse to issue to any licensee under this chapter, subject to an appeal of any licensee to a court of competent jurisdiction, whenever such applicant or licensee

AN ORDINANCE REPEALING AND RE-ENACTING SECTION 3 OF ARTICLES OF THE SHEPHERDSTOWN CODE, BY ADDING THERETO SUBSECTION 307 RELATING TO THE CONSUMPTION OF NON-INTOXICATING BEER, AS DEFINED IN THE SHEPHERDSTOWN CODE, IN OR ON ANY PARK, PUBLIC SIDEWALK, WALKWAY, ENTRANCEWAY, STREET, OR LANE.

The Shepherdstown Town Council Ordains:

1. There is enacted subsection 307 of Section 3, Alcoholic Beverages, to read as follows: Section 3-307

It shall be unlawful for any person to consume, or have in his possession, non-into-xicating beer as heretofore defined, in any open container, in or on any park, public sidewalk, walkway, entranceway, street, or lane. This ordinance shall be effective from the date of its adoption,

ADOPTED 09-14-1982

Section 3-306 cont.

has his, her or its. .license revoked by the West Virginia Nonin-toxicating Beer Commissioner pursuant to the provisions of Chapter 11, Article 16 of the West Virginia Code of 1931, as last amended or has been found guilty of a violation of provisions of Section 3-304 or whose application does not comply with the provisions of Section 3-303 Par.

CHAPTER 4 Private Clubs

Section 3-401 License Required

A) "Private Club" shall mean:

- 1) A nonprofit social club which allows in only dues paying members of good standing and guests, collects dues which it does not pay to shareholders, and has a private building with a-kitchen suitable for serving guests._____
- 2) A recognized fraternal or veterans organization which allows in only dues paying members of good standing and guests, collects dues which it does not pay to shareholders, and has a private building with a kitchen suitable for serving guests.
- 3) An organization operated for legitimate purpose which has at least one hundred members, allows in only dues paying members of good standing and their guests, collects dues which it does not pay to shareholders, has a private building with a kitchen suitable for serving guests and employes a staff to serve meals for those guests.

B) All private clubs, as defined in subsection A, the premises of which are situated within the corporate limits of the town shall obtain a town license and shall pay to the town an annual license fee.

Section 3-402 Application and Fee

Application for a license to operate a private club shall be made to the Recorder of the Town of Shepherdstown and shall include:

- (1) The name of the applicant;
- (2) If such applicant be an incorporated association, the names and addresses of the members of its governing board;
- (3) If such applicant be a corporation, the names and addresses of its officers and directors;
- (4) The place at which such applicant shall conduct its operations and whether the same is owned or leased by the applicant;
- (5) The number of members of the applicant;
- (6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation.

It shall be sufficient for the purpose of the above requirements to submit a copy of the application .which such private club made to the State of West Virginia for a State license to operate such private club.

Section 3-402 cont.

(7) A license fee is hereby established, as follows:

- a) fraternal or veteran organizations
nonprofit social clubs \$ 375.00
- b) Private clubs other than subsection (a)
less than 1,000 members..... 500.00
more than 1,000 members 1,250.00
- c) the fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one half the annual fee noted in subsections (a) and - (b).

Section 3-403 Duties of State License Holders

All licensees shall report annually to the Recorder to show their state license and to pay town license fees. These licenses of both the town and the state shall be displayed in plain view at the place of business, with an annual year ranging from the first day of July to the last day of June.

Section 3-404 Revocation of License

The Recorder shall automatically void all town licenses in places where the state license has also been voided.

**AN ORDINANCE REPEALING CHAPTER 4 PRIVATE CLUBS OF
THE MUNICIPAL ORDINANCES AND ENACTING A SUBSTITUTE
CHAPTER 4 PRIVATE CLUBS**

The Shepherdstown Town Council ordains:

Chapter 4 of the municipal ordinances entitled "Private Clubs" is hereby repealed and in substitution there is enacted a Chapter 4 entitled "Private Clubs" as follows:

CHAPTER 4 Private Clubs

Section 3-401 License Required

A) "Private club" shall mean any corporation or unincorporated association which either:

- 1) belongs to or is affiliated with a nationally recognized fraternal or veterans organization, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or
- 2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or
- 3) is organized and operated for legitimate purposes, which has at least one hundred duly elected or approved dues paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this State, to which club are admitted only duly elected or approved dues paying members in good standing of

such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests, or

- 4) is organized for legitimate purposes and owns or leases a building or other limited premises in any state, county or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with said club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in said club to said members and their guests.

B) "Licensee" means the holder of a license to operate a private club granted under the provisions of this chapter, which license shall remain unexpired, unsuspended and unrevoked.

C) "Applicant" means a private club applying for a license under the provisions of this chapter.

D) "Commissioner" means the West Virginia alcohol beverage control commissioner.

E) All private clubs, as defined in subsection A, the premises of which are situated within the corporate limits of the town shall obtain a town license and shall pay the town an annual license fee.

Section 3-402 Notice of Application for License to be Given to Town Recorder

A) A person intending to apply for a license to operate a private club under the provisions of this article at any location within the corporate limits of the town shall file a notice of such intention with the Recorder of the Town of Shepherdstown at least ten days prior to filing an application for such a license with the commissioner. Such notice shall include the address and a general description of the premises to be licensed, the food services to be offered and the patron capacity of the club. The Recorder shall report such notice to the governing body of the town at its next regular meeting or special meeting to be held not sooner than two days thereafter, together with a report of the zoning administrator for the town as to whether:

- (1) The proposed location of said private club is consistent with the zoning ordinances as either a permitted use or a conditional use of such premises; and

- (2) The premises are situate in an area designated for the use of community development block grant funds in the municipality, and, if so situate, whether the planned use of the premises is consistent with any plan adopted by the governing body for revitalization or rehabilitation of such area.

B) Within ten days of such report, the governing body may submit written comment upon such intended use to the commissioner, (a) if the use of the premises is neither a permitted nor a conditional use under the zoning ordinances of the town and, if so, whether the town provides within its business zones suitable alternative locations, or (b) if such use is incompatible with any plan adopted by the governing body for revitalization or rehabilitation of the area wherein such premises are situate. The town shall not unreasonably exclude a use of the premises which is compatible with such plan or zoning ordinance solely because the use includes premises licensed under Chapter 60, Article 7, of the West Virginia Code, 1931, as amended [known as "Licenses of Private Clubs"].

Section 3-403 Application and Fee

A) Application for a license to operate a private club shall be made to the Recorder of the Town of Shepherdstown and shall include:

- (1) The name of the applicant;
- (2) If such applicant be an unincorporated association, the names and addresses of the members of its governing board;
- (3) If such applicant be a corporation, the names and addresses of its officers and directors;
- (4) The place at which such applicant will conduct its operations and whether the same is owned or leased by the applicant;
- (5) The number of members of the applicant;
- (6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation;
- (7) The size and nature of the dining and kitchen facilities operated by applicant; and
- (8) Such other information as the Recorder may reasonably require which shall include, but not be limited to, the criminal records, if any, of each member of the applicant's governing board and/or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

It shall be sufficient for the purpose of the above requirements to submit a copy of the application which such private club made to the State of West Virginia for a State license to operate such private club.

B) Under no circumstance shall any college fraternity or sorority be issued a license to operate a private club.

C) No license to operate a private club will be issued to applicants who discriminate against any person or group of persons because of race or color of such person or group of persons except clubs as defined in clauses (1) and (2), subsection A), section 401 of this chapter [Section 3-402 (A)(1) and (2)].

D) An annual license fee is hereby established, as follows:

- a) fraternal or veteran organizations or nonprofit social clubs\$ 375.00
- b) private clubs other than subsection (a)
 - less than 1,000 members..... 500.00
 - 1,000 members or more.....1,250.00
- c) the fee for any such license issued following the first day of January of any year and to expire on the thirtieth day of June of such year shall be one half the annual fee noted in subsections (a) and (b).

Section 3-404 Duties of State License Holders

All licensees shall report annually to the Recorder to show their State license and to pay town license fees. Both the license of the town and the license of the State shall be displayed in plain view at the place of business, with an annual year ranging from the first day of July to the last day of June.

Section 3-405 Revocation of License

The Recorder shall automatically void all town licenses in places where the State license has also been voided.

Section 3-406 Certain Acts of Licensee Prohibited; penalties.

A) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;

(2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine or device in the nature of a slot machine;

(3) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine or alcoholic liquors on the licensee's premises, by any person less than twenty-one years of age;

(4) Sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemed legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give or dispense nonintoxicating beer, wine or alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of three o'clock a.m. and one o'clock p.m. on any Sunday;

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine or alcoholic liquors, covered by this Title 3, to any person who is less than twenty-one years of age;

(7) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues paying member in good standing of said private club or a guest of such member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium or nitrous oxide for purposes of human consumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen years of age in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

(B) Employ any person who is between the ages of eighteen and twenty-one who is not directly supervised by a person aged twenty-one or over in a position where the primary responsibility for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

B) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

C) Any person who violates any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

Section 3-407 Unlawful Acts by Persons: penalties.

A) A person under the age of twenty-one years may not order, pay for, share the cost of or attempt to purchase any nonintoxicating beer, wine or alcoholic liquors from a licensee or consume any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee or possess any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee. Any person under the age of twenty-one years who violates any provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars: Provided, That nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer, wine or alcoholic liquors when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia alcohol beverage administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the commissioner.

B) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, wine, or alcoholic liquors from a licensee, misrepresents his or her age, or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own, or who illegally attempts to purchase nonintoxicating beer, wine, or alcoholic liquors from a licensee, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars.

C) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one years, any nonintoxicating beer, wine or alcoholic liquors purchased from a licensee, is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than five hundred dollars.

(d) Any person who exhibits or displays a false or erroneous birth certificate, draft card, registration card or certificate, license, or identification card or certificate of any kind or character, or who exhibits or displays any certificate, card or license of any kind or character not his own, for the purpose of purchasing or drinking wine or alcoholic liquor or gaining admittance to any establishment, from which he or she would otherwise be barred by reason of age, shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars.

Section 3-408 Hours for Sale, Operation and Entertainment.

A) Hours for sale of alcoholic beverages. No licensee shall sell, give or dispense

alcoholic liquor or nonintoxicating beer, or permit the consumption thereof, on any licensed premises or in any room directly connected therewith between the hours of three o'clock a.m. (3:00 AM) and one o'clock p.m. (1:00 PM) on any Sunday; nor shall any licensee sell, give or dispense alcoholic liquors or nonintoxicating beer, or permit the consumption thereof, on any licensed premises or in any rooms directly connected therewith, between the hours of three thirty a.m. (3:30 AM) and seven a.m. (7:00 AM) on any weekday.

B) Hours of Operation. The licensed premises of all private clubs shall be closed for operation and cleared of all persons, including employees, thirty (30) minutes after the hours of sale of alcoholic liquors and nonintoxicating beer have expired. Licensed premises shall not be occupied by persons any sooner than one-half (1/2) hour prior to the hours of sale of alcoholic liquors and nonintoxicating beer; provided that the licensed premise may be open for food sales an nine a.m. (9:00 AM) on any Sunday.

C) Cessation of Entertainment. All entertainment, both live and mechanical, the latter to include juke boxes, shall cease and abate on the licensed premises one-half (1/2) hour prior to the expiration of the hours for sale of alcoholic liquors and nonintoxicating beer as specified in subsection B) of this section.

D) Any licensee, or agent, employee or member thereof, who violates, any of the foregoing provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

Recorder

First Reading-October 10, 2000
Second Reading - November 14, 2000
Adopted- November 14, 2000

AN ORDINANCE RE-ENACTING TITLE 3 OF THE
SHEPHERDSTOWN CODE, BY AMENDING SUBSECTION 402
AND ADDING THERETO SUBSECTION 405, RELATING TO
PRIVATE CLUBS.

Article IV

ie Shepherdstown Town Council ordains:

Chapter 4 of Title 3 is re-enacted by amending subsection 402 and adding thereto subsection 405, to read as follows: Section 3-402 Application and Fee

Application for a license to operate a private club shall be filed to the "Recorder of the Town of Shepherdstown at least ten (10) days prior to filing an application for such a license with the

West Virginia Alcohol Beverage Control Commissioner and shall include:

(1) The name of the applicant;

(2) If such applicant be an incorporated association, the names and addresses of the members of its governing board;

If such applicant be a corporation, the names and

addresses of its officers and directors;

(4) The place at which such applicant shall conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;

(6) The name or names of any national organizations with which applicant is affiliated and the nature of such affiliation.

(7) A general description of the premises to be licensed, food services to be offered, and the patron capacity of the

It shall be sufficient for the purpose of the above requirements to submit a copy of the application which such private club in made to the State of West Virginia for a State license to operate

club. P (8) A license fee is hereby established,

as follows:

^K	(a) fraternal or veteran organizations	
^K	nonprofit social clubs	\$ 375.00

Br

B	(b) Private clubs other than subsection (a)	
• p	less than 1,000 members.....	
500.00		
R:	more than 1,000 members.....	1,250.00

Bf^c

mi- . '• (c) the fee for any such license issued following the grst day of January of any year and to expire on the thirtieth Kg of June of such year shall be one half the annual fee noted in B6Yection's (a) and (b) .

ISction 3-405 Duties of Recorder; Consistency with Zoning and ^tnmunity Development Programs; Report to Commissioner.

Hfe? Following the filing of an application for a license to operate Bmprivate club or notice of such intention, pursuant to West Sroginia Cpde, 60-7-4a, as amended, with the Recorder, the Recorder

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Hill report such filing to the Council at its next regular meeting sSiiftn

llppecial meeting to be held not sooner than two (2) days there-

Bgj.,

Ker, together with a written report of the president of the fanning Commission as to whether:

Hp

wir0.) The proposed location of said private club is consistent lp?"

|||h the zoning ordinances as either a permitted use or a

PSditional use of such premises; and

H| (2) The premises are situate in an area designated for the

BeF of community development block grant funds in the town, and,

EJgso situate, whether the planned use of the premises is consistent

jjjPi any plan adopted by the Council for revitalization or ffi&bilitation of such area.

H|. Within ten (10) days of such report, the Council may submit

Britten comment upon such intended use to the West Virginia

Alcohol

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Control Commissioner, which may include findings whether

use of the premises is permitted or a conditional use under
the Town's zoning ordinances and whether the Town provides within its
business zones suitable alternative locations. The Council
shall not unreasonably exclude a use of the premises which is [Compatible
with such plan or zoning ordinance solely because the premises includes
premises licensed under article seven (7), chapter 60, of the
Code of West Virginia.

. Mayor

Recorder v ^

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