

# **Ordinances of the Town of Bethany**

Bethany, West Virginia

Revised edition

As adopted and amended through September 1, 2016

Complete text can be viewed in the Office of the Town Recorder, with digital copy available at [bethanywv.org](http://bethanywv.org)

## **Town Officials**

The Town of Bethany

Bethany, West Virginia

As of September 1, 2016

		Term Expires
Mayor	Patrick J. Sutherland	June 30, 2017
Town Recorder	Cynthia R. Hoffman	June 30, 2017
Council Members	Shirley Kemp	June 30, 2017
	Helen Moren	June 30, 2017
	Thom Furbee	June 30, 2017
	Lindsay Gilbert Tredway	June 30, 2017
	Carolyn Walsh	June 30, 2017
Treasurer	Melanie D. Stewart	
Director of Sanitation	Sam Hubbard	
Fire Chief	C.E. Schwertfeger	
Police Chief	Michael Bolen	
Municipal Judge	Lorraine Eckhardt	
Court Clerk	Laura Kemp	
Solicitor	Mark D. Panepinto	

Town Officials for whom no term limits are shown serve at the will and pleasure of the Mayor, with the approval of the Town Council.

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## **Part I. Governance: Offices, Powers and Duties**

## **Ordinance No. 109**

AMENDED BY ORDINANCE NO. 114<sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, providing for the governance of the town and superseding and repealing any prior inconsistent legislation**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

*Section 1. Regular Election of Officers. The regular election of officers shall be held on the second Tuesday in June of each odd-numbered year, as provided generally by the laws of West Virginia.*

Section 2. Governing Body. There shall be elected a governing body of the municipality, comprised of a mayor, a recorder and a legislative council of five members. Whenever two or more individuals shall receive an equal number of legal votes for the same office, if such number be the highest cast for such office, the persons under whose supervision the election is held shall decide by lot which of such individuals shall be returned as elected and shall make the return accordingly.

Section 3. No Wards. The municipality shall not be divided into wards or election districts, but rather, all members of council shall be elected at large.

Section 4. Eligibility. The mayor, recorder and members of council shall be residents of the municipality; shall be qualified voters entitled to vote for members of the governing body; and for the year preceding their election shall have been assessed with and paid real or personal property taxes to the municipality upon at least one hundred dollars' worth of property therein, provided, however, that for two years after the date of his or her discharge, the eligibility of any honorably discharged veteran of the armed forces of the United States for any of such offices in the municipality shall not be affected or impaired by reason of his or her not having been assessed with or paid such taxes.

Section 5. Oath of Office. Every person elected or appointed to an office in the municipality shall within 20 days after his or her election or appointment and before he or she shall enter upon the duties of his or her office, take and subscribe to the oath of office prescribed by law for district officers, which may be done before any person authorized by law to administer oaths or before the mayor or recorder of the municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder, and a certified copy of such oath and certificate shall be filed and recorded in the office of the Clerk of the County Commission of Brooke County, West Virginia.

Section 6. Terms of Office. The terms of all officers shall commence on the first day of July following their election and shall be for two years. All municipal officers, whether elected or appointed, shall hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law.

Section 7. Vacancies in Elective Offices. When a vacancy shall occur from any cause in any municipal elective office, it shall be the duty of the town council so to declare the vacancy. The vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by council from among the eligible residents of the municipality.

Section 8. Officers, Positions and Employees Generally. Subject to other applicable provisions of law, council by ordinance shall determine and prescribe the officers and positions which are to be filled by election, appointment or employment; the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees; and the method of filling any vacancies which may occur.

Section 9. Compensation of Officers and Employees. The council by ordinance shall fix or cause to be fixed the salary or compensation of every municipal officer and employee, but the salary of any officer shall not be increased or diminished during his or her term. The council shall also provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness, and for any personnel management incentives deemed necessary, as additional consideration for such officers' and employees' services and employment. A municipal officer or employee who in the performance of his or her duties uses a municipally owned vehicle may, in the discretion of the council, use such vehicle to travel to and from the workplace to his or her residence, but any such usage shall always be subject to the mayor's supervision and must be directly connected with and required by the nature and in the performance of such officers' or employees' duties and responsibilities.

Section 10. Bond. No officer, employee or other representative of the municipality shall handle public funds or property, except as otherwise provided by law, unless he or she shall have given bond, with good security, to be approved by council and in such penalty as council shall prescribe, conditioned upon the faithful discharge of the duties of office and the faithful accounting for and paying over of such funds or property.

Section 11. Meetings of Governing Body. Meetings of the governing body shall be presided over by the mayor, or in his or her absence, by the recorder, or in the absence of both the mayor and recorder, by one of the council members selected by a majority of the council members present. A majority of the members of council shall be necessary to constitute a quorum for the transaction of any business. The mayor and recorder as members of the governing body may vote on matters before council, and in the case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he or she shall have voted previously. No member of the governing body shall vote on any ordinance, order, measure, resolution or proposition in which he or she may be interested other than as a citizen of the municipality.

Section 12. Records of Proceedings. The governing body shall cause to be kept, in a well-bound book, an accurate record of all of its proceedings, ordinances, orders, acts, resolutions, rules and regulations, which record shall be fully indexed and open to inspection by anyone who is required to pay taxes to the municipality. At each meeting of the governing body, a journal of the proceedings of the last meeting shall be read and if erroneous, corrected, and signed by the officer then presiding, provided, however, that such reading may be dispensed with by majority vote of the governing body if the members have received and examined a copy of the journal or a synopsis thereof prior to the meeting at which the journal is signed. Upon the call of any member, the yeas and nays on any question shall be taken and recorded in the journal. Section 13. Special Municipal Elections. In any instance where there is no statutory or lawful ordinance provision authorizing, relating to or requiring a special municipal election, the council shall, upon receipt of a proper petition (as specified in this section) requesting a special municipal election for a proper governmental purpose, stated in such petition, forthwith adopt a resolution or ordinance (where procedure by ordinance is required) calling and providing for a special municipal election for such purpose. Such petition must bear the signatures, written in their own handwriting, of not less than 20 percent of the qualified voters of the municipality. Such special elections shall be held, superintended and conducted, and the results ascertained, certified, returned and canvassed in the same manner and by the same persons as elections for municipal officers. In any instance where there is a statutory or lawful ordinance provision authorizing, relating to or requiring a special municipal election upon petition or otherwise, the provisions of this section shall not be applicable, and such statutory or lawful ordinance provision shall govern and control in all respects, including without limitation the requisites of any petition for such special municipal election.

Section 14. Other Provisions Regarding Elections. The order of council ordering an election to be held under the provisions of this ordinance shall be reviewable by the Circuit Court of Brooke County, West Virginia, as provided by law, and all proceedings shall be suspended or stayed pending final adjudication of the matters involved. Municipal elections shall be canvassed by council. Any contest of a public-question election ordered and held by the municipality shall be heard and decided by council, and any such contest shall be conducted in the manner provided by law. An election may be contested by a qualified elector or voter or by an interested freeholder. It shall be the right and duty of council to determine the sufficiency of any petition presented under the provisions of this ordinance, and such determination shall be accomplished within a reasonable period of

time. Any such determination shall be reviewable by the Circuit Court of Brooke County, West Virginia, as provided by law.

Section 15. Conflicts of Interest. It shall be unlawful for the governing body or any member thereof or any other officer to be interested personally, either directly or indirectly, or as a member, manager, officer or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the municipality, or to any contractor or workers for the municipality, or in any manner whatsoever whereby the taxpayers of the municipality shall become the paymaster, either directly or indirectly. Any violation shall be punishable as provided by law, including automatic removal from office.

Section 16. Prior Inconsistent Legislation Superseded. Any prior inconsistent legislation of the town council is superseded by this ordinance, and to the extent of such inconsistency, is declared to be repealed.

Section 17. Effective Date. The ordinance shall be effective upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 1/14/03

Second Reading (adopted): 2/11/03

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<sup>1</sup> As amended by Ordinance No. 114 adopted 9/9/03.



## Ordinance No. 53

### **An ordinance providing for integrating the conduct of all municipal elections within the system of permanent registration of voters**

WHEREAS, the Town of Bethany is required by W. Va. Code Section 8-5-13 (1976 Replacement Vol.) to make provision for integrating the conduct of all municipal elections within the system of permanent registration of voters.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

That the West Virginia Election Code, W. Va. Code Section 3-1-1 et seq. (1979 Replacement Vol.), insofar as it relates to the conduct of elections by municipalities, is hereby adopted, incorporated by reference into this Ordinance, and is to be read as a part hereof.

BE IT FURTHER ORDAINED that the voting precincts of the Town of Bethany shall be the same as the voting precincts fixed by the Brooke County Commission for all state and county elections.

BE IT FURTHER ORDAINED that the municipal registration records for the Brooke County precincts which are within the town, as they are kept and maintained by the Brooke County Commission, shall be the official registration of voters for any municipal election, and only those persons so registered shall be eligible to vote.

This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 11/10/81

Second Reading (adopted): 12/ 7/81

## Ordinance No. 117

### An ordinance of the Town of Bethany, West Virginia, providing for open governmental proceedings

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Policy. The council finds and declares that West Virginia law requires generally that proceedings of municipal government be conducted openly, except as otherwise expressly provided. Accordingly, it shall be the public policy of Bethany that the provisions of the open governmental proceedings act as enacted in West Virginia (Section 6-9A-1 et seq. of the West Virginia Code) shall be implemented as fully as practicable in the proceedings of this municipality.

Section 2. Definitions. As used in this ordinance:

(a) "Governing body" means the elected governing body of this municipality, comprised of a mayor, a recorder and a legislative council of five members, as described in Ordinance No. 109 of this municipality, Articles 5 and 9 of Chapter 8 of the West Virginia Code and other provisions of law, as such provisions be amended from time to time.

(b) "Other public agency" means any other administrative or legislative unit of this municipality authorized by law to exercise some portion of administrative or legislative power. Public agencies of Bethany include the municipal planning commission, the municipal sanitary board and any other commission, authority, board, committee or other agency or unit of municipal government, the membership of which shall consist of two or more members and which shall have authority to make decisions on matters of policy or administration or to make recommendations to the governing body or another public agency on such matters.

(c) "Meeting" means the convening of the governing body or other public agency for which a quorum is required in order to make a decision or recommendation or to deliberate toward a decision or recommendation on any matter which requires or results in an official action. The term "meeting" is not limited to gatherings of members in close proximity but may include telephone conferences and other electronic means. The term "meeting" does not include:

(i) A hearing for the purpose of making an adjudicatory decision in a case or controversy;

(ii) An on-site inspection of a project or program;

(iii) General discussions among members of the governing body or other public agency on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed, so long as there is no intention for the discussion to lead to an official action; or

(iv) Discussions by members of the governing body or other public agency on logistical and procedural methods to schedule and regulate a meeting.

(d) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which the vote of the governing body or other public agency is required at any meeting at which a quorum is present.

(e) "Official action" means action which is taken pursuant to power granted by law, ordinance, policy or rule or by reason of the office held.

(f) "Quorum" means the gathering of a majority of the constituent membership of the governing body or other public agency, unless applicable law provides otherwise. In the case of the governing body, however, a quorum shall not be found unless three or more members of the council be present.

(g) "Executive session" means any meeting or part of a meeting of a governing body or other public agency which is closed to the public.

Section 3. Proceedings to Be Open; Public Notices of Meetings. (a) Except as expressly and specifically otherwise provided by law, whether previously or subsequently enacted, and except as provided in section 4 below, all meetings of the governing body and other public agencies shall be open to the public.

(b) If a majority of those present in person concur, a quorum may be found and a meeting be convened and held with one or more members participating by telephone and speakers so long as all members are audible

to each other and to the public present. The approval of such telephonic participation shall be noted in the minutes.

(c) The governing body and other public agencies may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(d) This ordinance does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that the orderly conduct of the meeting is compromised.

(e) Comments from the public shall be permitted at all meetings. Persons who desire to address the governing body or other public agency may not be required to register for such purpose more than 15 minutes prior to the time the meeting is scheduled to commence.

(f) The governing body and other public agencies shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public, except in the event of an emergency requiring immediate action.

(g) Unless and until council shall promulgate other rules by subsequent ordinance, the governing body shall regularly meet on the second Tuesday of every month, at 7:00 p.m., at the Bethany Community Center, at 101 Church Street, and the agenda for each such regular meeting shall be issued at least three days in advance of the meeting and shall be posted on the exterior bulletin board of such building, in at least two other places of common public gathering within the municipality, and on the Internet at the web site regularly maintained by the municipality. Unless and until the council shall expressly determine otherwise, the places of public notice shall include the public post office at Ross and Pendleton Streets and the store on Main Street near Ross Street known as Chambers General Store. Special meetings of the governing body shall similarly be held at the Bethany Community Center, and two days' notice of the date, time and purpose of the meeting shall similarly be posted. In calculating three- and two-day notice periods, the day of the meeting, Saturdays, Sundays and legal holidays shall not be counted. Meetings shall not be held on legal holidays, and if a scheduled meeting shall fall on a legal holiday (as defined in Section 2-2-1 of the West Virginia Code) or shall otherwise be rescheduled, the meeting date shall be the first succeeding day which is not a legal holiday and for which three days' or two days' notice (as appropriate) shall have been given as provided in this subsection.

(h) In the event of an emergency requiring immediate official action, the governing body or other public agency shall post an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) The agenda for each meeting shall reasonably describe all matters requiring official action by the governing body or other public agency that will be addressed at the meeting. Copies of each such agenda shall be available for inspection by the public attending the meeting before any vote is taken.

(j) A general notice containing the schedule for all regular meetings of the governing body or other public agency shall be posted annually on the exterior bulletin board of the Bethany Community Center and shall be maintained throughout the year.

(k) If members of the governing body or other public agency gather in any setting (for example, in an educational, training, informative or other work session) without intending to conduct public business, they may make no decision or recommendation nor may they deliberate toward a decision or recommendation on any matter which requires or results in an official action, even if a quorum be present.

(l) In the absence of more specific provisions in applicable law or established rules or procedures, the latest edition of Roberts' Rules of Order shall govern all meetings.

(m) Upon petition by any adversely affected party, a court of proper jurisdiction may invalidate an action taken at a meeting for which notice did not comply with the requirements of this section or of other applicable law.

Section 4. Executive Sessions. (a) The governing body or other public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section and applicable law. During the open portion of the meeting, prior to convening an executive session, the presiding officer shall identify the authorization under this section for holding the executive session and shall present the authorization to the governing body or other public agency, as the case may be, and to the general public. No decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body or other public agency for any of the following purposes:

(i) To consider matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee or a prospective public officer or employee, unless such person shall request an open meeting.

(ii) To conduct a hearing on a complaint, charge or grievance against the public officer or employee, unless such person requests an open hearing, but final action for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting. General personnel policy issues may not be discussed or considered in an executive session.

(iii) To issue, effect, deny, suspend or revoke a license, certificate, registration or other benefit, unless the person affected requests an open meeting.

(iv) To consider the physical or mental health of any person, unless such person requests an open meeting.

(v) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy, such as any records, data, reports, recommendations or other personal material relating to a program or institution operated by a public body.

(vi) To consider matters relating to crime prevention or law enforcement or to security personnel or security devices.

(vii) To consider matters affecting the purchase, sale or lease of property or other matters involving commercial competition, which if made public might adversely affect the financial or other interests of the municipality. Information involving commercial competition, however, shall be exempt from disclosure under this ordinance only until the commercial competition has been completed. Information not subject to release pursuant to the West Virginia freedom of information act (Chapter 29B of the West Virginia Code) shall not become the subject of disclosure because of an executive session.

(viii) To avoid the premature disclosure of a prize or award.

(ix) To enable privileged communications between the governing body or other public agency and its attorney, including consideration of a settlement of a disputed matter. After the matter is concluded, and if the terms of a settlement allow disclosure, the terms of the settlement shall be reported at a meeting of the governing body or other public agency and reflected in the minutes, within a reasonable time.

(x) To discuss any matter which by express provision of federal law or state statute or rule of court is rendered confidential or which is not considered a public record within the meaning of the West Virginia freedom of information act.

Section 5. Minutes. The governing body and other public agencies shall provide for the preparation of written minutes of all of their meetings. Minutes of all meetings (except minutes of executive sessions, if any are taken) shall be available to the public within a reasonable time after the meeting and shall include at least the following information:

(i) The date, time and place of the meeting;

(ii) The names of the members present (including the names of any members participating telephonically) and absent;

(iii) All motions, proposals, resolutions, orders, ordinances and measures proposed, the names of the persons proposing such matters, and the disposition of each such matter; and

(iv) The results of all votes and upon the request of a member, the vote of each member by name.

Section 6. Enforcement by Injunction; Voidability. (a) It shall be a violation of law for the governing body or other public agency to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and/or making decisions that become official action.

(b) As provided with greater particularity in Section 6-9A-6 of the West Virginia Code, the provisions of this ordinance may be enforced by an appropriate and timely proceeding in the Circuit Court of Brooke County, West Virginia. Such court may annul a decision made in violation of this ordinance and may order other relief as permitted by law. If an order of such court shall compel compliance or enjoin noncompliance with the provisions of this ordinance or applicable law or shall annul a decision made in violation of this ordinance or such law, such order (including findings of fact and conclusions of law) shall be recorded in the minutes of the governing body or other public agency.

Section 7. Special Provision for Bond Issues. Notwithstanding the provisions of every other ordinance of this municipality and all other provisions of applicable law, no bond issue shall be finally considered, passed or approved by the governing body unless notice of such meeting and proposed bond issue was given at least 10 days prior to the meeting by a Class I legal advertisement published in a qualified newspaper of general circulation in accordance with the provisions of Section 59-3-1 et seq. of the West Virginia Code.

Section 8. Acting by Reference; Written Ballots. (a) Except as otherwise expressly provided by law, the members of the governing body or other public agency may not deliberate, vote or otherwise take official action upon any matter by referring to a letter, number or other designation or by other secret device or method which may render it difficult for persons attending the meeting to understand the deliberation, vote or action. Such prohibition shall not, by itself, prohibit the governing body or other public agency from referring to a written agenda so long as copies of the agenda are available for public inspection at the meeting.

(b) Neither the governing body nor any other public agency may vote by secret or written ballot.

Section 9. Broadcasting or Recording Meetings. (a) Except as otherwise provided in this section, a radio or television station may broadcast or record all or any part of a meeting required to be open.

(b) The governing body or other public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting so as to prevent undue interference with the meeting, but the governing body or other public agency shall nevertheless allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such



equipment may not be declared to constitute undue interference. If the governing body or other public agency shall determine in good faith that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and/or recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the governing body or other public agency, acting in good faith and consistently with the purposes of this ordinance, may require the pooling of the equipment and the operating personnel.

Section 10. Interpretive or Advisory Opinions. In the event of any question with respect to the application of this ordinance to the proceedings of the governing body or other public agency, an interpretive or advisory opinion may be sought from the executive director of the West Virginia ethics commission or the West Virginia ethics commission committee on open governmental meetings, as described in Sections 6-9A-10 and 11 of the West Virginia Code.

Section 11. Special Duties of Recorder. The recorder shall copy and forward to the members of the governing body and to the chairpersons of other public agencies such summaries and interpretations prepared by the office of the West Virginia attorney general as pertain to open governmental proceedings that the recorder may receive from time to time. In particular the recorder in a timely manner, as provided by law, shall provide copies or summaries of such materials to newly elected members of the governing body.

Section 12. Effective Date. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

Mayor

First Reading: 11/18/03

Second Reading (adopted): 12/ 9/03

**Ordinance No. 72**

AMENDED BY ORDINANCE NO. 144

**An ordinance permitting candidates for municipal office to file certificates of candidacy on or before April 15**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

That any candidate for the office of Mayor, Recorder or Member of the Town Council may file a Certificate of Candidacy on or before the 15th day of April in the year of a municipal election.

This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 3/10/87

Second Reading (adopted): 3/17/87

## **Ordinance No. 110**

SUPERSEDES ORDINANCE NO. 18<sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, describing the powers and duties of the mayor and superseding Ordinance No. 18, which is repealed**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Powers and Duties of Mayor. When not otherwise provided by general law, the mayor shall be the chief executive officer of the municipality; shall have the powers and authority described in this section; and shall see that the ordinances, orders, acts, resolutions, rules and regulations of the town council are faithfully executed. If there be no municipal court as described in Ordinance No. 32, as amended, or in any ordinance superseding Ordinance No. 32, or in the event of the absence or unavailability of the judge of such court, the mayor shall have jurisdiction to hear and determine any and all alleged violations of such ordinances, orders, acts, resolutions, rules and regulations and to convict and sentence persons for such violations, and upon complaint the mayor shall have authority to issue a search warrant in connection with a violation of a municipal ordinance. Any such search warrant, warrant of arrest or other process issued by the mayor may be directed to the chief of police or any member of the police department of the municipality, and the warrant may be executed any place within Brooke County, West Virginia. The mayor shall have control of the police of the municipality and may appoint special police officers whenever he or she deems it necessary, except as provided by law. It shall be the duty of the mayor to see that the peace and good order of the municipality are preserved and that persons and property are protected, and to such end the mayor may cause the arrest and detention of all riotous and disorderly individuals in the municipality before issuing his or her warrant in the matter. The mayor shall have power to issue executions for all fines, penalties and costs by him or her, or the mayor may require the immediate payment, and in default of such payment, the mayor may commit the party in default to the jail for Brooke County, West Virginia, but the term of imprisonment in such case shall not exceed 30 days. The expense of maintaining any individual committed to a county jail shall be paid by the municipality and taxed as part of the costs of the proceeding. The mayor shall from time to time recommend to council such matters as he or she may deem needful for the welfare of the municipality.

Section 2. Bond. The mayor shall not handle public funds or property, except as otherwise provided by law, unless or until he or she shall have given bond, with good security, to be approved by council and in such penalty as council shall prescribe, conditioned upon the faithful discharge of the duties of office and the faithful accounting for and paying over of such funds or property.

Section 3. Prior Ordinance Superseded and Repealed. Ordinance No. 18 of the Town of Bethany is declared to be superseded by this ordinance and is hereby repealed. Any other prior inconsistent legislation is also declared to be superseded by this ordinance and to the extent of such inconsistency is also repealed.

Section 4. Effective Date. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

Mayor

First Reading: 1/14/03

Second Reading (adopted): 2/11/03

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<sup>1</sup> Supersedes Ordinance No. 18, adopted unknown date.

## **Ordinance No. 111**

SUPERSEDES ORDINANCE NOS. 51 AND 97 <sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, describing the powers and duties of the Recorder and superseding ordinance No. 51, as amended, which is repealed**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

### Section 1. Powers and Duties of Recorder.

A. General. The recorder shall keep the proceedings of the governing body and shall have charge of and preserve the records of the municipality. Whenever the mayor is unable because of illness or absence from the municipality to perform the duties of his or her office, the recorder shall perform such duties and be invested with all of the mayor's power and authority.

B. Internal Controls. The recorder shall also (i) share joint responsibility with the treasurer for the development and implementation of a proper system of internal controls over financial reporting and operations, as required by law, the rules and regulations of the state auditor (acting as chief inspector and supervisor of public offices), the federal Office of Management and Budget (to the extent applicable), and the independent certified public accountants conducting the municipality's audits; (ii) initially receive all fines, taxes, service charges, special assessments and all other monies due the municipality; (iii) maintain a current and accurate ledger of such monies; (iv) deliver such monies and a copy of such ledger to the treasurer for deposit to the municipality's bank accounts; and (v) initially receive and review the periodic statements for the municipality's bank accounts and reconcile items of deposit with the recorder's ledger.

C. Sanitary Board. The recorder shall, further, share joint responsibility with the treasurer of the Sanitary Board for the development and implementation of a proper system of internal controls over financial reporting and operations for the Sanitary Board, in conformity with applicable laws, rules, requirements and standards.

Section 2. Illness or Absence, etc. If the recorder is unavailable because of illness or absence from the municipality, or if the recorder is performing the duties of the mayor, the treasurer shall keep the proceedings of the governing body.

Section 3. Bond. The recorder shall not handle public funds or property, except as otherwise provided by law, unless or until he or she shall have given bond, with good security, to be approved by council and in such penalty as council shall prescribe, conditioned upon the faithful discharge of the duties of office and the faithful accounting for and paying over of such funds or property.

Section 4. Prior Ordinance Superseded and Repealed. Ordinance No. 51 of the Town of Bethany, adopted September 9, 1980, as amended by Ordinance No. 97, adopted January 8, 2002, is declared to be superseded by this ordinance and is hereby repealed. Any other prior inconsistent legislation is also declared to be superseded by this ordinance and to the extent of such inconsistency is also repealed.

Section 5. Effective Date. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 3/11/03

Second Reading (adopted): 4/ 8/03

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<sup>1</sup> Supersedes Ordinance No. 51, adopted 9/9/80 as amended by Ordinance No. 97, adopted 1/8/02.

## **Ordinance No. 50**

AMENDED BY ORDINANCE NO. 97<sup>1</sup>

### **An ordinance providing for the appointment of a Treasurer for the Town of Bethany and setting forth the powers and duties of said Treasurer**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. The Treasurer shall be appointed by the Council, and shall serve at its will and pleasure.

Section 2. The Treasurer shall: (a) establish, organize and keep all accounts of the town government; (b) prepare and submit to Council or the Mayor such financial statements and reports as the Council or Mayor may require; (c) collect and promptly pay into the town treasury all taxes, fines, special assessments, and other monies due the town, which are hereby declared to be debts owing to the town, for which the debtor shall be personally liable, and the Treasurer may enforce this liability by appropriate civil action in any court of competent jurisdiction, and is hereby vested with the same rights to distrain for the same as is vested in the Sheriff for collection of taxes; (d) prepare bills for amounts due the town; (e) disburse town funds, such disbursements to be made by a warrant, check or draft signed by two of the following officials, Mayor, Recorder and Treasurer; (f) perform such other duties as may be prescribed by law.

Section 3. The Treasurer shall give bond, conditioned according to law, in such penalty and with such surety as the Council may require.

Section 4. This Ordinance shall take effect from and after the date of its adoption.

/s/ Gary E. Larson

MAYOR

First Reading: 8/12/80

Second Reading (adopted): 9/ 9/80

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<sup>1</sup> As amended by Ordinance No. 97 adopted 1/8/02.

## **Ordinance No. 101**

SUPERSEDES ORDINANCE NOS. 32 AND 37, AS AMENDED <sup>1</sup>

### **An ordinance for the creation and maintenance of a municipal court for the Town of Bethany, West Virginia, and the appointment of a municipal court judge**

WHEREAS the Town of Bethany desires to promote the general welfare by providing for a Municipal Judicial System which will provide for the efficient and impartial adjudication of matters within the judicial jurisdiction of the Town of Bethany,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Municipal Court. The municipal court, previously created, is hereby continued. Such court shall continue to be held at a regularly designated time and place, in public session.

Section 2. Municipal Court Judge. The judge of the municipal court shall be appointed by a two-thirds vote of the Town Council and shall hold office for a term of three years, and until his or her successor shall be appointed and sworn, or until his or her resignation or his or her dismissal for cause by a two-thirds vote of the Town Council. The judge of the municipal court shall serve for an annual compensation to be determined by the Town Council at its annual budget meeting.

Section 3. Powers. The municipal court shall have such jurisdiction and the judge of such court shall have such judicial powers, authority and duties as are set forth in Section 8-10-1 of the West Virginia Code and other applicable provisions of law. Without limiting such jurisdiction, judicial powers, authority and duties, such judge and court shall have jurisdiction to hear and determine any and all alleged violations of the ordinances, orders, resolutions, rules, regulations and other acts of the Town Council and to convict and sentence persons therefor. Such judge upon complaint shall have authority to issue a search warrant in connection with an alleged violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by such judge may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within Brooke County, West Virginia. The judge and court shall preserve or help to preserve the peace and good order of the municipality and shall protect or help to protect persons and property therein, and to this end the judge may cause the arrest and detention of all riotous and disorderly individuals in the municipality before issuing a warrant therefor. The judge shall have power to issue executions for all fines, penalties and costs imposed by the court, or the judge may require the immediate payment thereof, and in default of such payment, the judge may commit the party in default to the



jail for Brooke County until the fine or penalty and costs shall be paid, but the term of imprisonment in such case shall not exceed 30 days. The judge shall from time to time recommend to the Town Council such measures as he or she may deem needful for the welfare of the municipality.

Section 4. Jail Costs. The expense of maintaining any individual committed to a jail for the county by the municipal court judge, except it be to answer an indictment, shall be paid by the municipality and taxed as part of the costs of the proceeding.

Section 5. Special Counsel. Notwithstanding any charter provision or other ordinance to the contrary, the Town Council shall have plenary power and authority by separate ordinance to authorize the mayor to employ within the limit of funds available for such purpose, in lieu of or in addition to the municipal solicitor and any assistant municipal solicitors, an attorney or firm of attorneys as special municipal counsel to represent the municipality in connection with any pending legal matter or matters, subject to the limitations of Section 8-10-1a of the West Virginia Code.

Section 6. Course of Instruction. Any person who assumes the duties of municipal court judge 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. Such course shall be conducted by a municipal league or a like association whose members include more than one-half of the chartered cities and municipalities in West Virginia. Such instruction must be performed by or with the services of an attorney licensed to practice law in West Virginia for at least 3 years. Any municipal court judge may attend a course for the purpose of continuing education, and the cost of any course referred to in this section shall be paid by the municipality which employs the municipal judge.

Section 7. Trial by Jury. Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in criminal matters, the court shall follow the procedure set forth in the rules of criminal procedure for magistrate courts promulgated by the supreme court of appeals for West Virginia, except that the jury in municipal court shall consist of 12 members.

Section 8. Methods of Payment. The municipal court judge in his or her discretion may accept credit cards in payment of all costs, fines, forfeitures and penalties. The municipal court may collect a substantial

portion of all costs, fines, forfeitures and penalties at the time such amounts are imposed by the court so long as the court requires the balance to be paid within 90 days and in accordance with a payment plan which specifies (i) the number of additional payments to be made, (ii) the dates on which such payments and amounts shall be made, and (iii) the amounts due on such dates.

Section 9. Special Rule for Motor Vehicle Violations. If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as described in Section 17B-3-3a of the West Virginia Code are not paid within 90 days, or if a person who committed any such violation defaults on a payment plan as described in section 8 of this ordinance, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in such section of the West Virginia Code, the municipal court shall notify the commissioner of the department of motor vehicles of such failure to pay or failure to appear.

Section 10. Special Rule for Criminal Offenses. If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in Section 17B-3-3c of the West Virginia Code are not paid in full within 90 days of the judgment, the municipal court clerk or the official acting as such (or, upon a judgment rendered on appeal, the circuit clerk) shall notify the division of motor vehicles of such failure to pay, provided, that at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered shall result in the suspension of such person's license or privilege to operate a motor vehicle in this state and that such suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for such person or such person's family (but the failure of the judge to provide such notice shall not affect the validity of any suspension of such person's license or privilege to operate a motor vehicle in this state). For purposes of this section, payment shall be stayed during any period that an appeal from the conviction which resulted in the imposition of such costs, fines, forfeitures or penalties is pending. (Upon such notice the division of motor vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.)

Section 11. Financial Inability to Pay. Notwithstanding the provisions of section 10 above to the contrary, the notice of the failure to pay such costs, fines, forfeitures or penalties shall not be given where the municipal court, upon application of the person upon whom the same were imposed filed prior to the expiration of the period within which the same are required to be paid, enters an order finding that such person is financially unable to pay all or a portion of the same, provided, that where the municipal court, upon finding that the person is financially unable to pay a portion thereof, requires the person to pay the remaining portion thereof, the municipal court shall notify the division of motor vehicles of such person's failure to pay the same if the same is not paid within the period of time ordered by such court.

Section 12. Failure to Appear. If a person charged with a criminal offense fails to appear or otherwise respond in court, the municipal court shall notify the division of motor vehicles thereof within fifteen (15) days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the judge. (Upon such notice the division of motor vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.)

/s/ Sven deJong

MAYOR

First Reading: 2/12/02

Second Reading (adopted): 3/12/02

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<sup>1</sup> Amends Ordinance No. 32 adopted 8/21/75 and Ordinance No. 37, adopted 10/17/77.

## **Ordinance No. 22**

### **Street commissioner**

The street commissioner shall be appointed by the Council, and shall hold his office at their pleasure; and perform such duties and receive such compensation therefor as the Council may from time to time prescribe.

/s/ Roger N. Pauls

MAYOR

First Reading: 6/11/74

Second Reading (adopted): 7/ 9/74

## **Ordinance No. 10C**

### **An ordinance adopting certain provisions of the West Virginia Code, and providing certain enabling powers**

WHEREAS, the Town of Bethany desires to comply with the West Virginia Code, and

WHEREAS, the Town of Bethany desires to secure and promote the proper utilization of its land, and

WHEREAS, the Town of Bethany desires to protect the health, welfare and safety of its citizens,

BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY:

#### ARTICLE I. TITLE

Section 1. This Ordinance shall be known and may be cited as “The Municipal Zoning Board of Appeals Ordinance.”

#### ARTICLE II. ESTABLISHMENT OF ZONING BOARD OF APPEALS

Section 1. A “Municipal Zoning Board of Appeals” is hereby created to serve the needs of the Town of Bethany and its residents, and comprised of five (5) duly selected persons.

#### ARTICLE III. WEST VIRGINIA CODE INCORPORATED

Section 1. The West Virginia Code provisions relating to the creation, composition, purposes, functions, powers and procedures of a municipal zoning board of appeals, and any later amendments thereto are hereby incorporated by reference into this Ordinance, as though fully set forth herein, and shall be the enabling

authority and guide for whatever future provisions are established by the Town Council of the Town of Bethany, or any other appropriate persons or group.

Section 2. The Town Council of the Town of Bethany is hereby specifically empowered to do whatever is necessary, proper, desirable and permissible under the West Virginia Code to secure the prompt and effective operation of the Zoning Board of Appeals, and may do so by the passage of motions at any regular or special meeting of said Council unless other methods are mandated.

ARTICLE IV. SEVERABILITY

Section 1. Should any provision of this Ordinance, or any part thereof, be declared unconstitutional, or otherwise inoperative, the remaining provisions shall be retained and remain in effect.

ARTICLE V. EFFECTIVE DATE

Section 1. This Ordinance shall become effective immediately.

/s/ Roger N. Pauls

MAYOR

First Reading: 5/11/71

Second Reading (adopted): 6/15/71

## **Ordinance No. 98**

AS AMENDED BY ORDINANCE 98A

### **An ordinance continuing the Municipal Sanitary Board**

WHEREAS the Town of Bethany owns, equips, operates and maintains a municipal sewage works, consisting of a sewage collection system, a sewage treatment plant, intercepting sewers, pumping stations and other appurtenances necessary or useful and convenient for the collection, treatment, purification and disposal, in a sanitary manner, of liquid and solid wastes within its service area;

WHEREAS the West Virginia Code, at Chapter 16, Article 13, provides that the construction, improvement, equipping, custody, operation and maintenance of any such works, and the collection of revenues from such works, shall be under the supervision and control of a sanitary board appointed by the governing body;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY:

#### ARTICLE I. TITLE

This Ordinance shall be known and may be cited as “The Municipal Sanitary Board Ordinance.”

#### ARTICLE II. SANITARY BOARD CONTINUED

Section 1. The municipal sanitary board, previously created, is hereby continued. Such board shall be composed of the Mayor of the municipality and two persons appointed by the Town Council. Except for the Mayor no officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on the sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give bond, if any, as may be required by ordinance. The Mayor shall act as chairman of the sanitary board, which shall elect a vice-chairman from its members and which shall also designate a secretary and treasurer, but the secretary and the treasurer may be one and the same and need not

be a member or members of the sanitary board. The vice-chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

Section 2. The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the Town Council may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The Town Council shall fix a reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from the revenues of the works.

*Section 2A. During any period of construction, including the construction of any improvements to works or systems previously completed, one of the members of the sanitary board must be a registered professional engineer. The engineer member of the board need not be a resident of the municipality. After the construction of the new work has been completed, the engineer member may be succeeded by a person not an engineer.*

*Section 2B. The sanitary board shall have power to establish bylaws, rules and regulations for its own government.<sup>1</sup>*

Section 3. The sanitary board shall operate, manage and control the sewage works of the municipality and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefor be available or made available as provided by law, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation of such works, including but not limited to those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

Section 4. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out such work shall be paid solely from funds derived from the operation of the sewage works or from the sale of revenue bonds, except necessary preliminary expenses



to the extent provided by law, and the board shall not exercise or carry out any authority or power given to it so as to bind the board or the municipality beyond the extent to which money is properly available.

Section 5. The board shall have the power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties in the execution of its powers. No contract or agreement with any contractor or contractors for labor and/or material exceeding the sum of \$10,000 shall be made without advertising for bids, which bids shall be publicly opened and an award made to the best bidder, with the power of the board to reject any or all bids. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. Any other contract relating to the financing of the acquisition or construction of any works, or any trust indenture relating to any revenue bonds, shall be approved by the Town Council before the same shall become effective.

Section 6. The treasurer of the sanitary board shall have joint responsibility with the Town Recorder to develop and implement a proper system of internal controls over financial reporting and operations for the sanitary board.

Section 7. It shall be the duty of the sanitary board from time to time to recommend to the Town Council such changes and adjustments to the rates, fees and charges for the use and service of the municipal sewage works as the board may deem appropriate, which rates, fees and charges (i) shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, replacements and maintenance of the works and for the payment of sums required to be paid into bond sinking funds and (ii) shall be just, reasonable, applied without unjust discrimination or preference, and based primarily on the costs of service.

### ARTICLE III. WEST VIRGINIA CODE INCORPORATED

Section 1. The provisions of the West Virginia Code relating to the ownership, acquisition, construction, equipping, operation and maintenance of a sewage works, the collection of revenues from such works, and the establishment and powers of a sanitary board for the supervision and control of such works, and any later amendments thereto, are hereby incorporated by reference into this Ordinance, as though fully set forth herein,

and shall be the enabling authority and guide for all relevant future actions of the Town Council, the sanitary board and all other appropriate persons and groups.

Section 2. The Town of Bethany, its officers and employees shall take such actions as may be necessary, proper, desirable and permissible under the West Virginia Code to secure the prompt and effective operation of the sanitary board, and the Town Council may act by motion or resolution at subsequent meetings of said Council, unless other methods are mandated.

ARTICLE IV. SEVERABILITY

Should any provision of this Ordinance or any decision or action of the Town Council or the sanitary board in relation thereto be declared unconstitutional, improper or otherwise inoperative, the remaining provisions shall be retained and remain in effect.

ARTICLE V. EFFECTIVE DATE

This Ordinance shall become effective immediately.

/s/ Sven deJong

MAYOR

First Reading: 12/11/01

Second Recording (adopted): 1/ 8/02

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<sup>1</sup> As amended by Ordinance No. 98A, adopted 3/12/02. Sections 2A and 2B of Article II were added.

## **Ordinance No. 126**

### **An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 117 with respect to meetings of the governing body**

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST: Section 3 of Ordinance No. 117, adopted December 9, 2003, which ordinance relates to open governmental proceedings, is hereby amended at subsection (g), relating to meetings of the governing body, such subsection as amended to read in its entirety as follows:

Section 3. Proceedings to be Open; Public Notices.

...

(g) Unless and until council shall promulgate other rules by subsequent ordinance, the governing body shall regularly meet on the first Wednesday of every month, at 6:00 p.m., at the Bethany Community Center, at 101 Church Street, and the agenda for each such regular meeting shall be issued at least three days in advance of the meeting and shall be posted on the exterior bulletin board of such building, in at least two other places of common public gathering within the municipality, and on the Internet at the web site regularly maintained by the municipality. Unless and until the council shall expressly determine otherwise, the places of public notice shall include the public post office at Ross and Pendleton Streets and the store on Main Street near Ross Street known as Chambers General Store. Special meetings of the governing body shall similarly be held at the Bethany Community Center, and two days' notice of the date, time and purpose of the meeting shall similarly be posted. In calculating three- and two-day notice periods, the day of the meeting, Saturdays, Sundays, and legal holidays shall not be counted. Meetings shall not be held on legal holidays, and if a scheduled meeting shall fall on a legal holiday (as defined in Section 2-2-1 of the West Virginia Code) or shall otherwise be rescheduled, the meeting date shall be the first succeeding day which is not a legal holiday and for which three days' or two days' notice (as appropriate) shall have been given as provided in this subsection.

SECOND: This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: December 13, 2005

Second Reading (adopted): January 10, 2006

## **Ordinance No. 131**

**An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 117, which provides for open governmental proceedings, to provide a procedure for citizens' matters to be placed on the agenda**

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST: Section 3 of Ordinance No. 117, adopted December 9, 2003, which ordinance relates to open governmental proceedings, and which ordinance was previously amended by Ordinance No. 126, adopted January 10, 2006, is hereby further amended by the addition of the new subsection, subsection (n), relating to the procedure for placing citizens' matters on the agenda, which subsection shall read in its entirety as follows:

Section 3. Proceedings to be Open; Public Notices.

...

(n) Any person wishing to have a matter placed on the agenda for a decision or recommendation by the governing body shall advise the mayor, if reasonably available, or otherwise the recorder, of such matter at least five days in advance of the meeting, and the mayor or recorder, as the case may be, if such official shall find that the matter is within the municipality's lawful powers to address, shall cause such matter to be placed on the agenda for the meeting, described in subsection (g) above. The proponent of the matter may speak to such matter, in such reasonable manner and for such reasonable time as fixed by the presiding officer or as the governing body shall prescribe by rule.

SECOND: This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: February 7, 2007

Second Reading (adopted): March 7, 2007

## **Ordinance No. 144**

AMENDING ORDINANCE NO. 72

**An ordinance requiring candidates for municipal office to file certificates of candidacy on or before March 15**

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST: Ordinance No. 72, adopted March 17, 1987

Ordinance No. 72, is amended as follows:

That any candidate for the office of Mayor, Recorder or Member of the Town Council shall file a Certificate of Candidacy on or before the 15th day of March in the year of the municipal election.

SECOND: This Ordinance shall take effect from and after the date of its adoption.

Jay A. Eisenhower, MAYOR

First Reading: August 5, 2009

Second Reading (adopted): September 2, 2009

## **Ordinance No. 148**

### **Ordinance choosing to participate in Class IV early voting by mail**

WHEREAS, the State Legislature recently passed a Vote by Mail Pilot Project Phase I for Class IV Voting by Mail, and

WHEREAS, the Town Council for the Town of Bethany desires to conduct early voting by mail.

NOW THEREFORE BE IT ORDAINED BYT THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, THAT:

1. The Town of Bethany hereby expresses its desire to participate in the Vote by Mail Pilot Project Phase 1: Class IV Early Voting by Mail in lieu of early in person Absentee voting.
2. This Ordinance shall take effect from and after its final passage.
3. The Recorder for the Town of Bethany is hereby directed to forward a copy of This Ordinance to the Secretary of State.

PASSED FIRST READING: April 6, 2011

PASSED SECOND READING: May 4, 2011

Cynthia R. Hoffman, Acting Mayor

Cynthia R. Hoffman, Recorder

## **Ordinance No. 151**

SUPERSEDING ORDINANCE NO. 123

### **An ordinance of the Town of Bethany, West Virginia, describing the Municipal Planning Commission**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. General. The municipal planning commission, previously created to serve the needs of the Town of Bethany and its residents, is hereby continued.

Section 2. Members.

- (a) The municipal planning commission shall be comprised of six members, all of whom shall be residents of the town and who shall be qualified by knowledge and experience in matters pertaining to the development of the town.
- (b) At least four of all of the members shall have been residents of the town for at least three years prior to nomination or appointment and confirmation.
- (c) The members of the municipal planning commission shall fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. One member shall be a member of the governing body, and the term of membership for such members shall be the same as his or her term of office. Another member shall be a member of the administrative department of the municipality, and the term of membership for that member shall be the same as his or her term of office or term of employment, as appropriate. (For purposes of this ordinance the administrative department shall include the major, the recorder, the treasurer and persons employed by the town in administrative capacities.)
- (d) The remaining members of the municipal planning commission shall serve three-year terms. Such members shall be divided into three equal classes, and the terms of one class shall expire each year. Such terms shall end on June 30 of the year of termination.
- (e) Members shall be nominated by the mayor and confirmed by the town council. Vacancies shall be filled for the unexpired portion of the term.
- (f) The members of the municipal planning commissions shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (g) A member of the municipal planning commission may also serve as a member of a county planning commission, a multi-county planning commission, a regional planning commission and/or a joint planning commission.
- (h) The governing body by resolution may remove members of the planning commission for inactivity, neglect of duty or malfeasance, but the member sought to be removed shall first be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

Section 3. Meetings.

- (a) The municipal planning commission shall meet at least quarterly and may meet more frequently at the request of its presiding officer or of two or more members.
- (b) Notice for a special meeting shall be in writing; shall include the date, time and place of the special meeting; and shall be sent to all members at least two days before the special meeting, except that written notice of a special meeting shall not be required if the date, time and place of the special meeting were set in a regular meeting.

Section 4. Quorum. The municipal planning commission must have a quorum to conduct a meeting, and a quorum shall consist of a majority of the members. No action of the planning commission shall be valid unless authorized by a majority of the members present at a regular or properly called special meeting.

Section 5. Officers. At its first regular meeting each year, the municipal planning commission shall elect from its members a president, a vice-president and a secretary. The vice-president shall have the power and authority to act as president during the absence or disability of the president.

Section 6. Responsibility of the Governing Body.

- (a) The governing body shall provide the planning commission with (i) suitable officers for the holding of meeting and the preservation of plans, maps, documents and accounts, and (ii) appropriate money to defray the reasonable expenses of the planning commission.
- (b) Should any funds, donations or gifts be awarded or made to the municipal planning commission, the governing body shall cause such funds, donations or gifts to be deposited in a special non-reverting planning commission fund, held and disbursed in accordance with customary municipal procedures, and shall make such funds available for use by the planning commission for the purposes designated by the donors.

Section 7. Planning Commissions' Powers and Duties.

- (a) The municipal planning commission shall have such powers as are authorized by law and shall perform the following duties:
  - (i) Administer the affairs of the commission; keep an accurate and complete record of all planning commission proceeding; and preserve all papers and documents pertaining to the work of the commission.
  - (ii) Propose written rules pertaining to administration, investigation and hearings, which rules shall become effective upon adoption by the governing body.
  - (iii) Make recommendations to the governing body concerning municipal planning.
  - (iv) Make an annual report to the governing body concerning the operation of the planning commission and the status of pending planning.
- (b) The commission may establish advisory committees and/or delegate limited powers to a committee composed of one or more members of the commission.
- (c) The planning commission shall not have the power to incur obligation on behalf of the town by may recommend to the governing body that the town enter into contracts from time to time for such services that the commission shall determine to be advisable.



Section 8. Certain Prior Ordinances Superseded and Repealed. See prior Ordinance No. 123 for a history of ordinances superseded by prior Ordinance No. 123.

Section 9. Effective Date. This ordinance shall be effective upon its adoption.

Jay Eisenhauer, MAYOR

First Reading: February 6, 2013

Second Reading (adopted): March 6, 2013

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This ordinance amends prior Ordinance No. 123. The primary purpose of this ordinance was to reduce the number of members on the municipal planning commission.

**Part II. Revenue: Service Fees and Licenses**

## **Ordinance No. 103**

AS AMENDED BY ORDINANCE NO. 120

### **An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 103, which established the Public Safety and Service Fee, with respect to the general tax rate for property owners**

WHEREAS, by Ordinance No. 7, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a fire protection service fee, the present rate for which is \$16.50 per person per annum;

WHEREAS, by Ordinance No. 8, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a police protection service fee, the present rate for which is \$14.00 per person per annum;

WHEREAS, by Ordinance No. 9, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a street lighting service fee, the present rate for which is \$3.50 per person per annum;

WHEREAS, by Ordinance No. 75, adopted May 9, 1988, the Town of Bethany adopted a service fee for the maintenance and improvement of streets, the present rate for which is \$5.00 per person per annum;

WHEREAS, by Ordinance No. 69, effective July 1, 1985, the Town of Bethany authorized a discount of \$1.00 to any person paying his or her service fees prior to August 1 of each fiscal year; and

WHEREAS, the Town Council now proposes in the interests of fairness of application and ease of administration to consolidate such service fees into a comprehensive fee, to be known as the public safety and service fee, to be collected as provided in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Legislative Intent. It is the intention of the Town Council that the costs of providing the essential municipal services of fire and ambulance protection, police protection, street lighting, and street maintenance and improvement shall be allocated in a fair and efficient manner among (i) residents of the

community; (ii) persons who reside in the community for a significant portion of the fiscal year and who thereby receive a substantial benefit from the provision of essential municipal services; and (iii) other persons who receive a substantial benefit from the provision of municipal services. The Town Council takes cognizance that the present fire protection fee, police protection fee, street lighting fee and street maintenance and improvement fee are not fairly allocated among those classes of users, thus resulting in an unfair burden to some persons and an unfair benefit to others. The Council recognizes the importance of continuing to fund these essential municipal services, and it further recognizes that any public safety and service fee, in addition to attributes of fairness of allocation, must also have the attributes of ease and efficiency of administration.

Section 2. Legislative Finding. The Town Council finds, after due deliberation, that to achieve the goals of (i) fairly allocating the costs of essential municipal services among residents, part-year residents and others receiving benefits, and (ii) ease and efficiency of administration, and having considered alternate proposed structurings for meeting such costs, the methods of allocation described in this Ordinance (which includes both a property charge and per-capita charges, as described below) best accomplish such objectives and are authorized by Section 8-13-13 of the West Virginia Code.

Section 3. Imposition of Service Fee. A service fee for the purpose of raising revenue toward the costs to the municipality of fire and ambulance protection, police protection, street lighting, and street maintenance and improvement is hereby imposed as follows:

(a) General Rule for Property Owners. *For the owner or owners of real property in this municipality, which property is improved with one or more buildings, other than dwellings described in subsection (b) below, the service fee for such owner or owners (including individuals, corporations, partnerships, limited liability companies and similar entities, whether for-profit or nonprofit) shall be an amount equal to the number of square feet contained in all such buildings multiplied by (i) \$0.03 for the fiscal years commencing July 1, 2002, July 1, 2003 and July 1, 2004 and (ii) \$0.04 for fiscal years beginning July 1, 2005 and thereafter. Ownership of property may be determined from the indices and records in the Brooke County Courthouse in Wellsburg, West Virginia. Square footage shall be determined from the records maintained in the office of the Assessor for Brooke County, West Virginia as of July 1 of the fiscal year for which such service fee would be due, but if there be no such record, then as the Recorder and Treasurer of the municipality shall determine.*<sup>1</sup>

(b) General Rule for Resident Adults. For adult residents of the municipality who reside in a dwelling of any kind where one or more of the residents of such dwelling is directly or beneficially the owner of the

dwelling, and who do not qualify for more favorable treatment under subsections (d) or (e) below, the service fee shall be \$35.00 for each such person per annum. For purposes of this Ordinance an "adult" shall mean an individual who shall have attained the age of 18 years on or before July 1 of the fiscal year for which such service fee would be due. A dwelling which is the subject of the service fee under this subsection (b) shall not also be the subject of the charge described in subsection (a) above. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1<sup>st</sup> of each year, to advise the Treasurer of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.

(c) Special Rule for Certain Resident Renters. For adult residents of the municipality who reside in a dwelling of any kind, of which none of the residents of such dwelling is directly or beneficially an owner of the dwelling; who do not qualify for more favorable treatment under subsections (d) or (e) below; and which dwelling is the subject of a charge under subsection (a), the service fee shall be \$25.00 for each such person per annum. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1<sup>st</sup> of each year, to advise the Treasurer of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.

(d) Special Rule for Part-Year Residents. For an adult who resided in the municipality for at least a portion of the prior fiscal year but who can establish (i) that he or she maintained a bona fide place of residence in another community and (ii) that he or she for such prior fiscal year resided in such other residence for not less than five months of such year, the service fee for such person shall be half of the amount described in subsection (b) or subsection (c) above, as appropriate. The burden of establishing qualification for the provisions of this subsection (d) shall be borne by the person being charged.

(e) Special Rule for Students Studying Elsewhere. For an adult whose general place of residence is in this municipality but who can establish (i) that for the fiscal year for which the service fee is due he or she will be a bona fide student at a college or similar institution in another community and (ii) that he or she for such fiscal year will reside at such college or other institution or in such other community for not less than eight months of such year, the service fee for such person shall be \$10.00 per annum. The burden of establishing qualification for the provisions of this subsection (e) shall be borne by the person being charged.

(f) Special Rule for Students Studying in This Community. For an adult whose general place of residence is not in this municipality but who for the fiscal year for which the service fee is due is or becomes a student at a college or similar institution within this municipality, the service fee for such person shall be \$25.00 per annum. It shall be the responsibility of such college or similar institution to collect and account for the service fee for its students and to remit the amounts of such fee to the Recorder in accordance with section 4 below. If the academic year be divided into semesters or similar units, the service fee may be remitted in periodic installments without interest or penalties, so long as such remittances be received in full not later than 15 days after the start of any such semester or other unit.

Section 4. Billing and Collection. As provided more fully in Ordinance No. 50 and Ordinance No. 51, both as previously amended and as hereafter may be amended, relating, respectively, to the Treasurer and the Recorder, the Treasurer shall submit billing statements for amounts due the town pursuant to this Ordinance as promptly as may be practicable after July 1 of each fiscal year (except as provided in section 3(f) above, with respect to installment payments), and remittances of amounts due shall initially be received by the Recorder. The service fee described in this Ordinance shall be a debt due the municipality, and the municipality may enforce payment of the obligation by an action in a court of proper jurisdiction. The municipality may establish reasonable rules, regulations and policies in the billing and collection of such fee.

Section 5. Protests. Any individual or other person believing that he, she or it is aggrieved by such service fee may protest the fee by giving written notice to the Recorder setting forth his, her or its objections not later than 30 days after the date of mailing of the billing statement for such fee. The Recorder shall forward such protest to the Municipal Appeals Board (described in section 6 below) who shall set a time for hearing within 30 days of the filing of such protest. The Municipal Appeals Board shall render its decision based on the record made at the hearing, within a reasonable time, giving notice in writing of its decision to all parties concerned. The amount, if any, due the town under such decision shall be due and payable 30 days after service of the decision. Any individual or other person aggrieved by such administrative decision may within 30 days from such decision file a petition duly verified with the Circuit Court of Brooke County, requesting review by certiorari, but if there be no such filing, the decision of the Municipal Appeals Board shall be final and conclusive.

Section 6. Municipal Appeals Board. A Municipal Appeals Board is hereby established to hear the appeals described in section 5 above. Such board shall consist of three members, one of whom shall be a member of Council or a resident representative of the fire, police or public works departments of the municipality, as the Mayor shall appoint, and the other two of whom shall be residents of the municipality as the Mayor shall appoint with the approval of Council. The terms of board members shall expire on June 30<sup>th</sup> of odd-numbered years, and any vacancies shall be filled for the remainder of the term. With respect to the position

first described above, to be filled by a member of Council or a representative of a municipal department, the Mayor shall declare a vacancy if the holder of such position shall cease being a member of the Town Council or a resident representative of the municipal department, as the case may be.

Section 7. Prompt Payment Discount. Any person paying the service fee in full within 30 days from the date that the billing shall have been mailed (other than payers having the benefit of the installment payments described in section 3(f) above) shall be entitled to a discount of \$1.00.

Section 8. Penalty for Late Payment. If the service fee is not paid in full within 30 days from the date that the billing shall have been mailed, then to such delinquent bill a penalty of 2% of the service fee shall be added, and an additional penalty of 1% shall be added for each succeeding 30 days or portion thereof elapsing before payment is made.

Section 9. Violations. The refusal to comply with any provision of this Ordinance or any rule duly adopted hereunder in connection with this Ordinance shall be deemed to be a violation of the Ordinance, and any person committing such violation shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$100.00.

Section 10. Repeal of Prior Inconsistent Ordinances. Subject to the provisions of section 12 below, Ordinance No. 7 (adopted January 13, 1970), as previously amended by Ordinance No. 14, Ordinance No. 29, Ordinance No. 47, Ordinance No. 64 and Ordinance No. 76 (adopted, respectively, December 12, 1972, May 27, 1975, June 11, 1980, May 9, 1983 and July 12, 1988), relating to the fire protection fee, is declared to be superseded by this Ordinance and is repealed as of the time that the rates and other provisions of this Ordinance finally become effective. Ordinance No. 8 (adopted January 13, 1970), as amended by Ordinance No. 15, Ordinance No. 77 and Ordinance No. 89 (adopted December 12, 1972, July 13, 1988, and June 24, 1994, respectively), relating to the police protection fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 9 (adopted January 13, 1970), as previously amended by Ordinance No. 16, Ordinance No. 49 and Ordinance No. 78 (adopted December 12, 1972, June 11, 1980 and July 13, 1988), relating to the street lighting fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 75 (adopted May 9, 1988), relating to the street maintenance and improvement fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 69 (adopted 1985), relating to the prompt payment discount, is also superseded by this Ordinance and is similarly repealed.

Section 11. Publication. The Recorder shall cause this Ordinance to be published as a Class II legal advertisement in compliance with the provisions of Section 59-3-2 of the West Virginia Code, requiring publication once a week for two successive weeks in a qualified newspaper published in the publication area, and in the event that 30% of the qualified voters of the municipality by petition duly signed by them in their own handwriting and filed with the Recorder of the municipality within 15 days after the expiration of such publication shall protest against such Ordinance as enacted, this Ordinance shall not become effective unless and until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of the municipality at a regular municipal election or a special municipal election, as Council shall direct.

Section 12. Severability. Each section or other provision of this Ordinance is separate from the other sections and provisions, and the invalidity of one section or provision shall not affect the validity of any other section or provision. If section 3 or any part thereof shall be determined to be invalid, then pending further action by Council the prior Ordinances described in section 10 above shall be deemed not to have been repealed, and the Treasurer and the Recorder shall have full power and authority to collect the fees described in such Ordinances, as necessary to defray the costs of essential municipal services, except as a court of proper jurisdiction may otherwise decree.

Section 13. Short Title. This Ordinance may be known as the Public Safety and Service Ordinance, and the service fee described in this Ordinance may be known as the public safety and service fee.

Section 14. Effective Date. Subject to the provisions of section 11 above this Ordinance generally shall be effective from and after the date of its adoption, it being the intention of Council that the service fee hereby established shall be in effect for the fiscal year *commencing July 1, 2004*. *No billings with respect to such fee shall be made, however, until the period of publication and protest described in section 11 shall have run and any necessary municipal election shall have been held. Pending the holding of any such election, the Ordinances described in section 10 above shall be deemed not to have been repealed, and the Treasurer and Recorder for the municipality, in the interests of preserving the public fisc, may submit billing statements under Ordinance No. 103 as enacted June 11, 2002.*

/s/ Sven deJong

MAYOR

First Reading: 5/16/02

Second Reading (adopted): 6/11/02



## **Ordinance No. 44**

REVOKING ORDINANCE NOS. 23, 28, 40

AS AMENDED BY ORDINANCE NO. 90<sup>1</sup>

### **An ordinance amending Ordinance No. 23 to provide for collection of license fees and taxes**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Ordinance No. 23, Ordinance No. 28 and Ordinance No. 40 are hereby revoked and in lieu thereof the following Ordinance is hereby enacted:

(A) A licensee who has obtained a state license pursuant to Chapter 60, Article 7 of the West Virginia Code of 1931, as amended, shall pay an annual license fee or partial license fee, as the case may be, as follows:

(1) For a licensee having less than 1,000 members: \$500.00.<sup>2</sup>

(2) For a licensee having more than 1,000 members: \$1,250.00.

(3) The fee for any such license issued following the 1st day of January of any year, and to expire on the 30th day of June of such year, shall be one-half of those herein above set forth.

(B) There shall be levied an annual municipal license tax on retailers, wholesalers, or brewers of non-intoxicating beer whose place of business is situated within the municipal limits of the Town of Bethany *in the amount of \$200.00*<sup>2</sup> per place of business. The tax for any such license issued following the 1st day of January of any year, and to expire on the 30th day of June of such year, shall be one-half of that herein above set forth.

(C) The Town, by its duly authorized agent, shall submit a statement for the annual municipal license fee for a private club and/or a statement for the municipal license for non-intoxicating beer on such persons covered by this Ordinance as soon after July 1st of each year as is practicable. Said fee or tax shall be paid by such person within 30 days after billing.

(D) No person or organization shall sell alcoholic liquors or non-intoxicating beer without displaying a current receipt for the payment of the applicable license fees as provided in Paragraphs (A) and (B)

of this Ordinance. No receipt for the current year shall be given until the licensee has paid the tax applicable for all previous years.

(E) If any person or organization shall be found to be selling alcoholic liquors or non-intoxicating beer without possessing a current receipt for the payment of the applicable license fee as provided in Paragraphs (A) and (B) of this Ordinance, that person or organization shall be fined a minimum of \$500.00 and a maximum of \$1,000.00. Further, any person or organization found to be in violation of this Ordinance shall be prohibited from selling alcoholic liquors or nonintoxicating beer within the confines of the Town of Bethany until that person or organization possesses a current license receipt as provided in Paragraphs (A) and (B) of this Ordinance.

/s/ Gary E. Larson

MAYOR

First Reading: 11/13/79

Second Reading (adopted): 12/18/79

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<sup>1</sup> Ordinance No. 23, adopted 9/10/74, Ordinance No. 28, adopted 3/11/75 and Ordinance No. 40, adopted 7/17/78.

<sup>2</sup> As amended by Ordinance No. 90, adopted 6/24/94. The text per prior Ordinance read at (A) (1), "For a licensee having less than one thousand (1,000) members: Three Hundred Dollars (\$300.00)"; and at (B) "One Hundred Dollars (\$100.00)".

## **Ordinance No. 54**

### **An ordinance imposing a license tax on distributors and retailers of wine in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. There is hereby imposed an annual license tax upon distributors and retailers of wine within the corporate limits of the Town of Bethany, and to such end, after the effective date of this Ordinance, no person may engage in business in the capacity of distributor or retailer of wine as provided by W. Va. Code Section 60-8-1 et seq. (1981 Cum. Supp.) within the corporate limits of the Town, without first obtaining a license from the Town, nor shall a person continue to engage in such activity after this license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time.

The Town shall collect an annual fee for licenses issued under this Ordinance as follows:

- (a) Two Thousand Five Hundred (\$2,500.00) Dollars per year for a distributor's license.
- (b) One Hundred Fifty (\$150.00) 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, and if the initial license is granted for less than one year, the fee shall be computed in proportion to the number of quarters remaining in 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 2. A copy of this Ordinance shall be certified by the Mayor to West Virginia Alcohol Beverage Control Commission and to the Tax Commissioner.

Section 3. The Mayor of the Town of Bethany shall cause notice of the proposed adoption of this Ordinance to be published as a Class I-0 legal advertisement in compliance with the provisions of W. Va. Code Section 59-3-2 (Cum. Supp.), requiring publication in two qualified newspapers published in the publication area, which notice shall state the subject matter and general title of the proposed Ordinance, the date, time and place of the proposed final vote on adoption, and the place where the proposed Ordinance may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed Ordinance.

Section 4. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 11/10/81

Second Reading (adopted): 12/ 7/81

## **Ordinance No. 55**

### **An ordinance imposing a tax on purchases of intoxicating liquors in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. There is hereby imposed a tax upon all purchases within the corporate limits of the Town of Bethany of intoxicating liquors from the Alcohol Beverage Control Commissioner, or from any person licensed to sell wine at retail to the public under the provisions of Article 8, Chapter 60 of the West Virginia Code. The tax shall be levied upon the purchaser and shall be added to and collected with the price of purchase. Tax shall equal five per cent of the price of purchase.

Section 2. A copy of this Ordinance shall be certified by the Mayor to the West Virginia Alcohol Beverage Control Commissioner and to the Tax Commissioner.

Section 3. The Mayor of the Town of Bethany shall cause notice of the proposed adoption of this Ordinance to be published as a Class I-0 legal advertisement in compliance with the provisions of W. Va. Code Section 59-3-2 (Cum. Supp.), requiring publication in two qualified newspapers published in the publication area, which notice shall state the subject matter and general title of the proposed Ordinance, the date, time and place of the proposed final vote on adoption, and the place where the proposed Ordinance may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed Ordinance.

Section 4. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 11/10/81

Second Reading (adopted): 12/ 7/81

## **Ordinance No. 60**

AS AMENDED BY ORDINANCE NO. 63<sup>1,2</sup>

### **An ordinance imposing a public utilities tax in the Town of Bethany, West Virginia**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY WEST VIRGINIA, AS FOLLOWS:

Section 1. "Public utility" as used in this Ordinance shall mean every entity, which is, or shall hereafter be held to be a public service subject to the jurisdiction of the Public Service Commission of West Virginia.

Section 2. There is hereby imposed an excise tax on the privilege of purchasing, using or consuming, within the corporate limits of the Town of Bethany, public utility services and tangible personal property from public utilities, which tax shall be computed on the basis of an amount equal to two percent of the gross amount of each periodic statement rendered to purchasers or consumers by public utilities: Provided, however, that sales of tangible personal property such as appliances or the like, as distinguished from the public service supplied, shall not be included in the gross amount subject to the measure of this tax.

Section 3. *The tax imposed by this Ordinance shall be collected by each public utility on a monthly basis, and shall be remitted to the Town of Bethany within 30 days of the collection thereof.*<sup>1</sup>

Section 4. Such purchasers or consumers shall pay to such public utilities the amount of the tax levied pursuant to this Ordinance which shall be added to and constitute a part of the cost of the service or property so purchased or consumed and shall be collectible as such by said public utilities who shall account to the Town of Bethany for all tax paid by such purchasers or consumers pursuant to the provisions of this Ordinance.

Section 5. Such tax shall be collected uniformly from all purchasers and consumers of all such services and property within the corporate limits of the Town of Bethany.

Section 6. The tax authorized by this Ordinance shall not be levied upon charges for telephone services, which are paid by the insertion of coins into coin-operated telephones, and specific charges for telephone calls to points outside the Town of Bethany.

Section 7. The tax imposed by this Ordinance shall be collected by the Town Treasurer in the same manner as other taxes are collected, and shall be enforced and collected in the same manner and by the same remedies as are now or may hereafter be provided by law for the enforcement of liens and levies for municipal taxes.

Section 8. The Mayor of the Town of Bethany shall cause notice of the proposed adoption of this Ordinance to be published as a Class 1-0 legal advertisement in compliance with the provisions of W. Va. Code Section 59-3-2 (Cum. Supp.), requiring publication in two qualified newspapers published in the publication area, which notice shall state the subject matter and general title of the proposed Ordinance, the date, time and place where the proposed Ordinance may be inspected by the public. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed Ordinance.

Section 9. This tax shall not be effective until the Town of Bethany gives sixty (60) days written notice by certified mail to any utility doing business therein of the effective date of this Ordinance.

Section 10. *This Ordinance shall take effect from and after July 1, 1983.*<sup>2</sup>

/s/ John O. Cole

MAYOR

First Reading: 3/15/82

Second Reading (adopted): 4/20/82

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<sup>1</sup> As amended by Ordinance No. 63, adopted 4/19/83. The prior text read: "Section 3. The tax imposed by this Ordinance shall be paid by each public utility semiannually as follows: for the period beginning July 1 and ending December 31 of each year, on or before March 1 of the following year; for the period beginning January 1 and ending June 30 of each year, on or before October 1 of the same year."

<sup>2</sup> As amended by Ordinance No. 63, adopted 4/19/83. The prior text read: "This Ordinance shall take effect from and after July 1, 1982."

## **Ordinance No. 127**

**An ordinance of the Town of Bethany, West Virginia, requiring building permits and superseding Ordinance No. 2, as amended by Ordinance No. 100, and Ordinance No. 108, which ordinances are repealed**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. Building Permit Required. No property owner, lessee, tenant or other person and no architect, engineer or contractor for any such person shall undertake the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance (such as regulations to include but not to be limited to the State Fire Code and the State Building Code, adopted respectively as the Fire Code of the Town of Bethany and the Building Code of the Town of Bethany), unless such person or such person's architect, engineer or contractor on such person's behalf shall first have completed an application for a building permit, shall have paid the required fee, and shall have received the signed original of such permit, duly issued by the town recorder.

Section 2. Posting. A building permit, when issued, shall be posted on the property in a conspicuous manner, prior to undertaking the work, and shall readily be visible from the street or other access. The permit holder always shall protect the permit from the weather to the extent possible and shall continue to post the permit until all work and clean-up shall have been completed.

Section 3. Fees. The fees due for the issuance of a building permit shall be the following:

- (i) 0.5% of the first \$100,000 of the costs of the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance; and
- (ii) 0.25% of all such costs in excess of \$100,000.

Section 4. Exceptions to Requirement. Neither building permits nor building permit fees shall be required of the State of West Virginia, a county or other governmental entity, or the contractors, agents or employees of any such entity, for the erection, construction, repair or alteration of any structure or of any equipment or part of a structure designated for use by the state, a county or other governmental entity.

Section 5. Meanings of Terms. Terms used in this ordinance shall have the same meanings as may be found in the State Fire Code (adopted as the Fire Code of the Town of Bethany by Ordinance No. 104, effective September 10, 2002) and the State Building Code (adopted as the Building Code of the Town of Bethany by Ordinance No. 106, effective December 10, 2002) or any other building, fire, health, safety or zoning code properly enforceable in the Town of Bethany.



Section 6. Violation. Any violation of this ordinance shall be a misdemeanor and shall result in the imposition of a fine for not less than \$25.00 nor more than \$100.00 for each separate offense, and each day in which any person be in violation of this ordinance shall constitute a separate offense and may be proceeded against by separate prosecution.

Section 7. Finding. The council finds that the principal object of this ordinance is not the increasing of revenue for the municipality but rather is the restatement in this present ordinance of building permit fees previously established. Accordingly, the council further finds that the procedures of §8-11-4(a)(2) of the West Virginia Code, relating to notice by publication, are not applicable in the present case.

Section 8. Prior Ordinances Superseded and Repealed. Ordinance No. 2 of the Town of Bethany, adopted January 13, 1970, as amended by Ordinance No. 100, adopted March 12, 2002, and Ordinance No. 108, adopted December 10, 2002, are declared to be superseded by this ordinance and are hereby repealed. Any other prior inconsistent legislation is also declared to be superseded by this ordinance and to the extent of such inconsistency is also repealed.

Section 9. Effective Date. This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: February 1, 2006

Second Reading (adopted): March 1, 2006

## Ordinance No. 141

**An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 127, requiring building permits and superseding Ordinance No. 2, as amended by Ordinance No. 100, and Ordinance No. 108, which ordinances are repealed<sup>1</sup>**

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST: Ordinance No. 127, adopted March 1, 2007.

Section 1. Building Permit Required. No property owner, lessee, tenant or other person and no architect, engineer or contractor for any such person shall undertake the erections or construction of a structure, unless such person or such person's architect, engineer or contractor on such person's behalf shall first have completed an application for a building permit, shall have paid the required fee, and shall have received the signed original of such permit, duly issued by the town recorder.

Repair or alteration of any such structure where less than 50% of the total square footage of the structure is being remodeled with no changes being made to the footprint of the structure or its exterior structural appearance does not require a building permit. Furthermore, no permits are required for the replacement of existing porches, fences, sidewalks, driveways or roofs where there is no change to the footprint or structural appearance of the property.

Section 2. Posting. A building permit, when issued, shall be posted on the property in a conspicuous manner, prior to undertaking the work, and shall readily be visible from the street or other access. The permit holder always shall protect the permit from the water to the extent possible and shall continue to post the permit until all work and clean-up shall have been completed.

Section 3. Fees. The fees due for the issuance of a building permit shall be the follow:

- (i) 0.5% of the first \$100,000 of the costs of the erection, construction, or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance; and
- (ii) 0.25% of all such costs in excess of \$100,000.
- (iii) The minimum building permit fee shall be \$25.00 in the event the calculation of the building permit fee pursuant to subsection (i) of this Section results in an amount less than \$25.00.

Section 4. Exceptions to Requirement. Neither building permits nor building permit fees shall be required of the State of West Virginia, a county or other governmental entity, or the contractors, agents or employees of any such entity, for the erection, construction, or alteration of any structure or of any equipment or part of a structure designated for use by the state, a county or other governmental entity.

Section 5. Meetings of Terms. Terms used in this ordinance shall have the same meanings as may be found in the State Fire Code (adopted as the Fire Code of the Town of Bethany by Ordinance No. 104, effective

September 10, 2002) and the State Building Code (adopted as the Building Code of the Town of Bethany by Ordinance No. 106, effective December 10, 2002) or any other building, fire, health, safety or zoning code properly enforceable in the Town of Bethany.

Section 6. Violation. Any violation of the ordinance shall be a misdemeanor and shall result in the imposition of a fine for not less than \$25.00 nor more than \$100.00 for each separate offense, and each day in which any person be in violation of this ordinance shall constitute a separate offense and may be proceeded against by separate prosecution.

Section 7. Finding. The council finds that the principal object of this ordinance is not the increasing of revenue for the municipality but rather is the restatement in this present ordinance of building permit fees previously established. Accordingly, the council further finds that the procedures of §8-11-4(a)(2) of the West Virginia Code, relating to notice by publication, are not applicable in the present case.

Section 8. Prior Ordinances Superseded and Repealed. Ordinance No. 2 of the Town of Bethany, adopted January 13, 1970, as amended by Ordinance No. 100, adopted March 12, 2002, and Ordinance No. 108, adopted December 10, 2002, are declared to be superseded by this ordinance and are hereby repealed. Any other prior inconsistent legislation is also declared to be superseded by the ordinance and to the extent of such inconsistency is also repealed.

Section 9. Effective Date. This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: March 4, 2009

Second Reading (adopted): April 1, 2009

## **Ordinance No. 145**

**A restated ordinance of the Town of Bethany, West Virginia, authorizing the revision of the town's tariff filed with the West Virginia Public Service Commission, specifically related to disconnect, reconnect, and administrative fees**

Be it ordained by the town council of the Town of Bethany, West Virginia:

WHEREAS, to comply with West Virginia Public Service Commission Case No. 09-0178-S-PWD-PC-T recommendations, the Council does hereby authorize the foregoing revision to its tariff.

WHEREAS, to comply with West Virginia Public Service Commission Case No. 09-0178-S-PWD-PC-T recommendations and Outline of Procedure to Change Municipal Water Rates and Check List for Water Utilities, specifically regarding public notice, this Ordinance is being restated and re-enacted in its entirety.

### **DISCONNECT/RECONNECT/ADMINISTRATIVE FEES**

Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service termination agreement with the Ohio County Public Service District (District), a disconnection fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with the District, is reconnected, a reconnection fee of \$20.00 shall be charged.

This ordinance shall become effective forty-five (45) days after its adoption and shall also be approved by the West Virginia Public Service Commission.

Jay Eisenhauer, MAYOR

First Reading: March 3, 2010

Second Reading (adopted): April 7, 2010

## **Ordinance No. 146**

**Floodplain ordinance for the Town of Bethany, WV**

*Please contact the Office of the Town Recorder for access to the full copy.*

Jay Eisenhauer, MAYOR

First Reading: March 9, 2010

Second Reading (adopted): April 7, 2010

## **Ordinance No. 147**

Superseding Ordinance No. 118<sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, amending the rates, fees and charges for use and service of the municipal sewerage and sewerage works, operated by the Bethany Sanitary Board, and superseding prior Ordinance No. 118, adopted January 13, 2004, and any other prior inconsistent legislation**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. The rates, fees and charges for the use and service of the municipal sewerage and sewage works, operated by the Bethany Sanitary Board, which rates, fees and charges, to be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses such works by or through any part of the sewerage system of the Town of Bethany, or that in any way uses or is served by such works:

\$8.26 per 1,000 gallons of water used (as determined from Ohio County Public Service District water meters, including estimates and minimums based on water meter size).

Section 2. The Bethany Sanitary Board shall cause each customer to be billed on a monthly basis, and there shall be a 10% penalty for payments made later than 20 days after the billing date. The minimum monthly charges will be \$24.77 for sewer customers with metered water supplies and \$37.16 for sewer customers with non-metered water supplies.

Section 3. There shall be a charge of \$100.00 for every residential customer tapping into the Bethany sewerage system and \$500.00 for every commercial customer.

Section 4. A charge of \$20.00 shall apply for reestablishing service whenever the supply of water is turned off for violation of rules and regulations, nonpayment of bills or fraudulent use of water. Such charge shall be paid to the Ohio County Public Service District and not to the Town of Bethany or the Bethany Sanitary Board consistent with the provisions of Ordinance No. 145.

Section 5. The Town Council does hereby state its findings, having been advised of its duty to consider such matters, that such rates are just and reasonable, are applied without unjust discrimination or preference, and are based primarily on the costs of providing service.

Section 6. Council finds that after the introduction of this ordinance, but before the ordinance was finally adopted, notice was given of a hearing, at which all the users of the works of the Bethany Sanitary Board and owners of property served or to be served thereby and others interested would have an opportunity to be heard concerning the proposed rates. Such notice was given by the Town of Bethany by publications as a Class II-0 legal advertisement in compliance with the provisions of Section 59-3-1 et seq. of the West Virginia code. The first publication was made at least 10 days before the date fixed in such notice for the hearing, and such hearing

was held on the date and the time and the place specified in the notice, as provided in Section 16-13-16 and other relevant sections of the West Virginia Code.

Section 7. Not later than five calendar days following adoption of this ordinance, the Bethany Sanitary Board shall provide notice to its customers of the pending rate change, in one of three ways, as follows:

- (i) Notice of the pending rate change may be specified on monthly billing statements of all customers within five days after the adoption of this ordinance; or
- (ii) Notice of the pending rate change may be provided to all customers by first class mail within five days after the adoption of this ordinance; or
- (iii) A press release may be issued announcing the adoption of the pending rate change and a Class II legal advertisement may be published, the first such publication to occur within five days after the adoption of this ordinance.

Section 8. The notice provided shall meet the requirements of Section 24-2-4b(c) of the West Virginia Code, Procedural Rule 2.1(c)(4) of the West Virginia Public Service Commission, and other applicable provisions of law. Customers shall have a protest period that shall commence after the adoption of this ordinance and shall continue for 30 days.

Section 9. Also, within five days after the adoption of this ordinance a filing shall be made in the office of the Executive Secretary of the Public Service Commission, in accordance with Procedural Rule 2.1(f). Such filing shall contain the following:

- (i) The new rates and charges;
- (ii) A copy of this ordinance;
- (iii) The justification for such ordinance, including a pro forma income statement showing the costs of providing service and the revenues to be generated by the new rates and charges;
- (iv) An affidavit of publication with respect to the notice described in section 6 above;
- (v) Documentation from the Bethany Sanitary Board verifying that one of the three methods of notice described in section 7 above was given within the five-day period following adoption of this ordinance. If notice was provided by newspaper publication, the Bethany Sanitary Board must within 20 days after adoption of the rate change, file a verification that a press release was issued together with an affidavit of public of legal notice. If a method was used other than newspaper publication, the Bethany Sanitary Board must include with its filing an affidavit that indicated the method used and that notice was given; and
- (vi) A statement of the correct number of customers served by the Bethany Sanitary Board, as determined by the number of bills rendered in the billing cycle last completed before adoption of this ordinance.

Section 10. If no protest be filed with the Public Service Commission under the provisions of Section 24-2-4b of the West Virginia Code, then this ordinance shall take effect upon the commencement of construction of the Sanitary Board's pending Sewer System Improvements Project, or soon thereafter as practicable, as the Sanitary Board by a written determination and notice shall specify, but not earlier than 45 days from the date of adoption of this ordinance.

Section 11. Ordinance No. 118, adopted January 13, 2004, is repealed as of the time that the rates established by this ordinance become effective. Similarly, any other prior inconsistent legislation of the Town Council, is repealed as of such date, to the extent of the inconsistencies.

Jay Eisenhauer, MAYOR

First Reading: April 7, 2010

Second Reading (adopted): May 5, 2010

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<sup>1</sup> Ordinance No. 61, adopted 5/11/1982; Ordinance No. 70, adopted 5/14/1986; Ordinance No. 87, adopted 5/14/1991; Ordinance No. 93, adopted 8/19/1996; Ordinance No. 102, adopted 5/16/2002; Ordinance No. 107, adopted 12/10/2002; Ordinance No. 118, adopted 1/13/2004.



## **Ordinance No. 149**

### **An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 103 and 120, which established the Public Safety and Service Fee, with respect to the general tax rate for property owners**

WHEREAS, by Ordinance No. 7, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a fire protection service fee, the present rate for which is \$16.50 per person per annum;

WHEREAS, but Ordinance No. 8, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a police protection service fee, the present rate for which is \$14.00 per person per annum;

WHEREAS, by Ordinance No. 9, adopted January 13, 1970, as previously amended, the Town of Bethany adopted a street lighting service fee, the present rate for which is \$3.50 per person per annum;

WHEREAS, by Ordinance No. 75, adopted May 9, 1988, the Town of Bethany adopted a service fee for the maintenance and improvement of streets, the present rate for which is \$5.00 per person per annum;

WHEREAS, by Ordinance No. 69, effective July 1, 1985, the Town of Bethany authorized a discount of \$1.00 to any person paying his or her service fees prior to August 1 of each fiscal year;

WHEREAS, by Ordinance No. 103, effective July 11, 2002, the Town of Bethany established the public safety and service fee, with respect to the general tax rate for property owners; and

WHEREAS, the Town Council now proposes in the interests of fairness of application and ease of administrator to consulate such service fees into a comprehensive fee, to be known as the public safety and service fee, to be collected as provided in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Legislative Intent. It is the intention of the Town Council that the costs of providing the essential municipal services of fire and ambulance protection, police protection, street lighting, and street maintenance and improvement shall be allocated in a fair and efficient manner among (i) residents of the community; (ii) persons who reside in the community for a significant portion of the fiscal year and who thereby receive a substantial benefit from the provision of essential municipal services; and (iii) other persons who receive a substantial benefit from the provision of municipal services. The Town Council takes cognizance that the present fire protection fee, police protection fee, street lighting fee and street maintenance and improvement fee are not fairly allocated among those classes of users, thus resulting in an unfair burden to some persons and an unfair benefit to others. The Council recognizes the importance of continuing to fund these essential municipal services, and it further recognizes that any public safety and service fee, in addition to attributes of fairness of allocation, must also have the attributes of ease and efficiency of administration.

Section 2. Legislative Finding. The Council finds, after due deliberation, that to achieve the goals of (i) fairly allocating the costs of essential municipal services among residents, part-year residents and other receiving

benefits, and (ii) ease and efficiency of administration, and having considered alternate proposed structures for meeting such costs, the methods of allocation described in this Ordinance (which includes both a property charge and per-capita charges, as described below) best accomplish such objective and are authorized by Section 8-13-13 of the West Virginia Code.

Section 3. Imposition of Service Fee. A service fee for the purpose of increasing revenue toward the costs to the municipality of fire and ambulance protection, police protection, street lighting, and street maintenance and improvement is hereby imposed as follows:

- (a) General Rule for Property Owners. For the owner or owners of real property in this municipality, which property is improved with one or more buildings, other than dwellings described in subsection (b) below, the service fee for such owner or owners (including individuals, corporations, partnerships, limited liability companies and similar entities, whether for-profit or nonprofit) shall be an amount equal to the number of square feet contained in all such buildings multiplied by (i) \$0.03 for the fiscal years commencing July 1, 2002, July 2, 2003, and July 1, 2004, and (ii) \$0.04 for fiscal years beginning July 1, 2005, and thereafter. Owner of property may be determined from the indices and records in the Brooke County Courthouse in Wellsburg, West Virginia. Square footage shall be determined from the records maintained in the office of the Assessor for Brooke County, West Virginia as of July 1 of the fiscal year for which such service fee would be due, but if there be no such record, then as the Recorder and Treasurer of the municipality shall determine.<sup>1</sup>
- (b) General Rule for Resident Adults. For a adult resident of the municipality who reside in a dwelling of any kind where one or more of the residents or such dwelling is directly or beneficially the owner of the dwelling, and who do not qualify for more favorable treatment under subsections (d) or (e) below, the service fee shall be \$40.00 for each person per annum. For purposes of the Ordinance an "adult" shall mean an individual who shall have attained the age of 18 years on or before July 1 of the fiscal year for which such service fee would be due. A dwelling which is subject of the service fee under this subsection (b) shall not also be the subject of the charge described in subsection (a) above. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1<sup>st</sup> of each year to advise the Recorder of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.
- (c) Special Rule for Certain Resident Renters. For adult residents of the municipality who reside in a dwelling of any kind, of which none of the residents of such dwelling is directly or beneficially an owner of the dwelling; who do not qualify for more favorable treatment under subsections (d) or (e) below; and which dwelling is the subject of a charge under subsection (a), the service fee shall be \$30.00 for each such person per annum. It shall be the responsibility of the owner or owners of such dwelling, prior to July 1<sup>st</sup> of each year, to advise the Recorder of the names and mailing addresses of all residents of the dwelling who are subject to such service fee so that such persons may properly be billed for such fee in accordance with section 4 below; otherwise the responsibility for payment shall rest with the owner or owners of such dwelling.
- (d) Special Rule for Part-Year Residents. For an adult who resided in the municipality for at least a portion of the prior fiscal year but who can establish (i) that he or she maintained a bona fide place of residence in another community and (ii) that he or she for such prior fiscal year resided in such other residence for

not less than five months of such year, the service fee for such person shall be half of the amount described in subsection (b) or subsection (c) above, as appropriate. The burden of establishing qualification for the provisions of this subsection (d) shall be borne by person being charged.

- (e) Special Rule for Students Studying Elsewhere. For an adult whose general place of residence is in this municipality but who can establish (i) that for the fiscal year for which the service fee is due he or she will be a bona fide student at a college or similar institution in another community and (ii) that he or she for such fiscal year will reside at such college or other institution or in such other community for not less than eight months of such year, the service fee for such person shall be \$10.00 per annum. The burden of establishing qualification for the provisions of this subsection (e) shall be borne by the person being charged.
- (f) Special Rule for Students Studying in This Community. For an adult whose general place of residence is not in this municipality but who for the fiscal year for which the service fee is due is or becomes a student at a college or similar institution within this municipality, the service fee for such person shall be \$25.00 per annum. It shall be the responsibility of such college or similar institution to collect and account for the service fee for its students and to remit the amounts of such fee to the Recorder in accordance with section 4 below. If the academic year be divided into semesters or similar units, the service fee may be remitted in periodic installments without interest or penalties, so long as such remittances be received in full not later than 15 days after the start of any such semester or other unit.

Section 4. Billing and Collection. As provided more fully in Ordinance No. 50 and Ordinance No. 51, both as previously amended and hereafter may be amended, relating, respectively, to the Treasurer and the Recorder, the Treasurer shall submit billing statements for amounts due the town pursuant to this Ordinance as promptly as may be practicable after July 1 of each fiscal year (except as provided in section 3(f) above, with respect to installment payments), and remittances of amounts due shall initially be received by the Recorder. The service fee described in this Ordinance shall be a debt due the municipality, and the municipality may enforce payment of the obligation by an action in a court of proper jurisdiction. The municipality may establish reasonable rules, regulations and policies in the billing and collection of such fee.

Section 5. Protests. Any individual or other person believing that he, she or it is aggrieved by such service fee may protest the fee by giving written notice to the Recorder setting forth his, her or its objections not later than 30 days after the date of mailing of the billing statement for such fee. The Recorder shall forward such protest to the Municipal Appeals Board (described in section 6 below) who shall set a time for hearing within 30 days of the filing of such protest. The Municipal Appeals Board shall render its decision based on the record made at the hearing, within a reasonable time, giving notice in writing of its decision to all parties concerned. The amount, if any, due the town under such decision shall be due and payable 30 days after service of the decision. Any individual or other person aggrieved by such administrative decision may within 30 days from such decisions file a petition duly verified with the Circuit Court of Brooke County, requesting review by certiorari, but if there be no such filing, the decision of the Municipal Appeals Board shall be final and conclusive.

Section 6. Municipal Appeals Board. A Municipal Appeals Board is hereby established to hear the appeals described in section 5 above. Such board shall consist of three members, one of whom shall be a member of Council or a resident representative of the fire, police or public works departments of the municipality, as the

Mayor shall appoint with the approval of Council. The terms of board members shall expire on June 30<sup>th</sup> of odd-numbered years, and any vacancies shall be filled for the remainder of the term. With respect to the position first described above, to be filled by a member of Council or a representative of a municipal department, the Mayor shall declare a vacancy if the holder of such position shall cease being a member of the Town Council or a resident representative of the municipal department, as the case may be.

Section 7. Prompt Payment Discount. Any person paying the service fee in full within 30 days from the date that the billing shall have been mailed (other than payers having the benefit of the installment payments described in section 3(f) above) shall be entitled to a discount of \$1.00.

Section 8. Penalty for Late Payment. If the service fee is not paid in full within 30 days from the date that the billing shall have been mailed, then to such delinquent bill a penalty of 2% of the service fee shall be added, and an additional penalty of 1% shall be added for each succeeding 30 days or portion thereof elapsing before payment is made.

Section 9. Violations. The refusal to comply with any provision of this Ordinance or any rule duly adopted hereunder in connection with this Ordinance shall be deemed to be a violation of the Ordinance, and any person committing such violation shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$100.00.

Section 10. Repeal of Prior Inconsistent Ordinances. Subject to the provisions of section 12 below, Ordinance No. 7 (adopted January 13, 1970), as previously amended by Ordinance No.14, Ordinance No. 29, Ordinance No. 47, Ordinance No. 64 and Ordinance No. 76 (adopted, respectively, December 12, 1972, May 27, 1975, June 11, 1980, May 9, 1983, and July 12, 1988), relating to the fire protection fee, is declared to be superseded by this Ordinance and is repealed as of the time that the rates and other provisions of this Ordinance finally become effective. Ordinance No. 8 (adopted January 13, 1970), as previously amended by Ordinance No. 16, Ordinance No. 49, and Ordinance No. 78 (adopted, December 12, 1972, June 11, 1980 and July 13, 1988), relating to the street lighting fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 75 (adopted May 9, 1988), relating to the street maintenance and improvement fee, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 69 (adopted 1985), relating to the prompt payment discount, is also superseded by this Ordinance and is similarly repealed. Ordinance No. 103 is also hereby repealed in its entirety.

Section 11. Publication. The Recorder shall cause this Ordinance to be published as a Class II legal advertisement in compliance with the provisions of Section 59-3-2 of the West Virginia Code, requiring publication once a week for two successive weeks in a qualified newspaper published in the publication area, and in the event that 30% of the qualified votes of the municipality by petition duly signed by them in their own handwriting and filed with the Recorder of the municipality within 15 days after the expiration of such publication shall protest against such Ordinance as enacted, this Ordinance shall not become effective unless and until it shall be ratified by a majority of the legal votes cast thereon by the qualified voters of the municipality at a regular municipal election of a special municipal election, as Council shall direct.

Section 12. Severability. Each section or other provision of this Ordinance is separate from the other sections and provisions, and the invalidity of one section or provision shall not affect the validity of any other section or provision. If section 3 or any part thereof shall be determine to be invalid, then pending further action by Council the prior Ordinances described in section 10 above shall be deemed not to have been repealed, and the Treasurer and the Recorder shall have full power and authority to collect the fees described in such Ordinances, as necessary to defray the costs of essential municipal services, except as a court of proper jurisdiction may otherwise decree.

Section 13. Short Title. This Ordinance may be known as the Public Safety and Service Ordinance, and the service fee described in this Ordinance may be known as the public safety and service fee.

Section 14. Effective Date. Subject to the provisions of section 11 above this Ordinance generally shall be effective from and after the date of its adoption, it being the intention of Council that the service fee hereby established shall be in effect for the fiscal year *commencing July 1, 2012. No billings with respect to such fee shall be made, however, until the period of publication and protest described in section 11 shall have run and any necessary municipal election shall have been held. Pending the holding of any such election, the Ordinance described in section 10 above shall be deemed to have been repealed, and the Treasurer and Recorder for the municipality, in the interests of preserving the public fisc, may submit billing statements under Ordinance No. 103 as enacted June 11, 2002.*

Jay Eisenhauer, MAYOR

First Reading: March 7, 2012

Second Reading (adopted): April 4, 2012

## **Ordinance No. 155**

### **Ordinance of the Town of Bethany, West Virginia, hotel occupancy tax**

Be it ordained by the town council of the Town of Bethany, West Virginia, as follows:

#### Section 1.01 – TAX IMPOSED.

- (a) There is hereby imposed upon hotel rooms located within the Town of Bethany, including hotels owned by the State or by any other political subdivision of the State.
- (b) The tax shall be imposed upon the consumer and shall be collected by the hotel operator as part of the consideration paid for the occupancy of a hotel room; provided, that the tax shall not be imposed on any consumer occupying a hotel room for thirty or more consecutive days.

#### Section 1.02 – DEFINITIONS.

Except where the context otherwise requires, the definitions given in this section govern the construction of this article:

- (a) “Consideration paid” or “consideration” mean the amount received in money, credits, property or other consideration for or in exchange for the right to occupy a hotel room as herein defined.
- (b) “Consumer” means a person who pays the consideration for the use or occupancy of a hotel room. “Consumer” shall not be construed to mean the government of the United States of America, its agencies or instrumentalities, or the government of the State or political subdivisions thereof.
- (c) “Hotel” means any facility, building or buildings, publicly or privately owned, including a facility located in a State, County or Municipal park, in which the public may, for a consideration, obtain sleeping accommodations. “Hotel” shall include, but not be limited to, boardinghouses, hotels, motels, inns, courts, lodges, cabins and tourist homes. “Hotel” shall include State, County and Town parks offering accommodations as herein set forth. “Hotel” shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home, college or university housing unit or any facility providing fewer than three hotel rooms, or any tent, trailer or camper campsites; provided that where a university of college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, “hotel” shall, if otherwise applicable, apply to such accommodations for the purposes of this tax.
- (d) “Hotel operator” means the person who in the proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his function through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liability as his principal. Compliance with the provisions of this article be either the principal or the managing gent shall, however, be considered to be compliance by both.

- (e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. "Hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.
- (f) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.
- (g) "Tax", "taxes" or "this tax" means the hotel occupancy tax authorized by this article.
- (h) "Taxing authority" means the Town of Bethany, a political subdivision of the State, levying or imposing the tax authorized by this article.
- (i) "Taxpayer" means any person liable for the tax authorized by this article.

#### Section 1.03 – RATE.

The rate of tax imposed hereunder shall be six percent (6%) of the consideration paid for the use or occupancy of a hotel room. Such consideration shall not include the amount of State consumer sales tax imposed upon the transaction, or charges for meals, valet service, room service, telephone service or other charges or consideration not paid for the use or occupancy of a hotel room.

#### Section 1.04 – CONSUMER TO PAY TAX.

- (a) The consumer shall pay to the hotel operator the amount of tax imposed by the taxing authority hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separate state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the money so commingled excepting only claims of the State for moneys held by the hotel as consumer sales tax or business and occupation taxes. All taxed collected pursuant to this article shall be deemed to be held in trust by the hotel until the same is remitted to the taxing authority.
- (b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

#### Section 1.05 – OCCUPANCY BILLED TO GOVERNMENT AGENCIES OR EMPLOYEES.

- (a) Hotel room occupancy billed directly to the Federal government shall be exempt from this tax; provided, that rooms paid for by a Federal government employee for which reimbursement is made shall be subject to this tax.
- (b) Hotel room occupancy billed directly to the State or its political subdivisions shall be exempt from this tax; provided that rooms paid for by an employee of this State for which reimbursement is made shall be subject to this tax.

Section 1.06 – COLLECTION OF TAX WHEN SALE ON CREDIT.

A hotel operator doing business wholly or partially on a credit basis shall require the consumer to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty days thereafter.

Section 1.07 – FAILURE TO COLLECT OR REMIT TAX; LIABILITY OF HOTEL OPERATOR.

If any hotel operator fails to collect the tax authorized by this article and levied pursuant to Town ordinance or fails to properly remit such tax to the taxing authority, he shall be personally liable for such amount as he failed to collect or remit; provided, that such hotel operator shall not be held liable for failure to collect such tax if the hotel operator can, by good and substantial evidence, prove the refusal of the purchaser to pay this tax despite the diligent effort in good faith of the hotel operator to collect the tax.

Section 1.08 – TOTAL AMOUNT COLLECTED TO BE REMITTED.

No profit shall accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of such taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy of three percent (3%) for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

Section 1.09. – TAX RETURN AND PAYMENT.

The tax authorized by this article shall be due and payable in monthly installments on or before the fifteenth day of the calendar month next succeeding the month in which the tax accrued; provided that for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty-day payment period set forth in Section 1.06, whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the taxing authority may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.

Section 1.10 – KEEPING AND PRESERVING OF RECORDS.

Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and documents shall be preserved for a period of not less than three years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

Section 1.11 – LIABILITY OF OFFICERS.



If the taxpayer is an association or corporation, the officers thereof actually participating in the management of operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by Town ordinance may be enforced against such officers as against the association or corporation which they represent.

Section 1.12 – PROCEEDS OF TAX; APPLICATION OF PROCEEDS.

- (a) Application of Proceeds. The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the General Revenue Fund of the Town and after appropriation thereof shall be expended only as provided in subsections (b) and (c) hereof.
- (b) Required Expenditures. At least fifty percent (50%) of the net revenue receivable during the fiscal year by the taxing authority pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:
  - (1) If a convention and visitor's bureau is located with the Town, the governing body shall annually appropriate at least the percentage required by this subsection (b) to that bureau. If a convention and visitor's bureau is not located with the Town, but such a bureau is located within Brooke County, then the percentage required by this subsection (b) shall be appropriated to such convention and visitor's bureau located within Brooke County. If a convention and visitor's bureau is not located within Brooke County, then the percentage appropriate required by this subsection (b) shall be appropriated as follows:
    - A. Any hotel located within the Town may apply to the taxing authority for an appropriate to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to the taxing authority, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent (75%) of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section; provided, that prior to appropriate any moneys to such hotel, a budget setting forth the proposed uses of such moneys shall be submitted to, and approved by, the taxing authority.
    - B. The balance of net revenue required to be expended by subsection (b) hereof shall be appropriated to the regional travel council, i.e. the Northern West Virginia Travel Association, a.k.a., The Upper Ohio Valley Travel Council.
  - (2) Legislative finding: Council hereby find that the support of convention and visitor's bureaus, hotel and the regional travel council is a public purpose for which funds may be expended. Local convention and visitor's bureaus, hotels and the relation travel council receiving funds under this subsection (b) may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subsection (b)(1) hereof.
- (c) Permissible Expenditures. After making the appropriation required by subsection (b) hereof, the remaining portion of the net revenues receivable during the fiscal year by the taxing authority, pursuant to this article, may be expended for one or more of the purposes set form in this subsection, but for no

other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

- (1) The planning, construction, reconstruction, establishment, adoption, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly-owned convention facilities including, but not limited to, arenas, auditoriums, and convention centers
- (2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;
- (3) The promotion of conventions;
- (4) The construction or maintenance of public parks, tourist information centers and recreation facilities, including land acquisition; or
- (5) Promotion of the arts.

(d) **Definitions.** For purposes of this section, the following terms are defined:

- (1) "Convention and visitor's bureau" and "visitor's and convention bureau" are interchangeable, and either shall mean a nonstick, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the Town.
- (2) "Convention Center" means a convention facility owned by the State, Brooke County, the Town or other public entity or instrumentality and shall include all facilities, including commercial, office, community service and parking facilities, and publically-owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.
- (3) "Fiscal year" means the year beginning July 1 and ending June 30 of the next calendar year.
- (4) "Net proceeds" means the gross amount of tax collections less the amount of tax lawfully refunded.
- (5) "Promotion of the arts" means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.
- (6) "Recreational facilities" means any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis court or other park and recreation facility, whether of a like or different nature, that is owned by the Town.
- (7) "Regional travel council" means a nonstick, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this State served by the regional travel council.

#### Section 1.13 – EFFECTIVE DATE.

This ordinance shall be effective July 1, 2014.

Jay Eisenhauer, MAYOR

First Reading: March 5, 2014

Second Reading (adopted): April 2, 2014

## **Ordinance No. 157**

**An ordinance of the Town of Bethany, West Virginia, amending the rates, fees and charges for use and service of the municipal sewerages and sewage works, operated by the Bethany Sanitary Board, and superseding prior Ordinance No. 156<sup>1</sup>, adopted October 1, 2014, and any other prior inconsistent legislation**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. The rates, fees and charges for the use and service of the municipal sewerage and sewage works, operated by the Bethany Sanitary Board, which rates, fees and charges were established by Ordinance No. 156, adopted October 1, 2014, are hereby superseded, and there are hereby imposed the following rates, fees and charges, to be paid by the owner or occupant of each and every lot, parcel of real estate, or building that is connected with and uses such works by or through any part of the sewerage system of the Town of Bethany, or that in any way uses or is served by such works:

\$9.26 per 1,000 gallons of water used (as determined from Ohio County Public service District water meters, including estimates and minimums based on water meter size), plus, in addition, a sewer billing/administrative charge of \$3.95 per month for every customer.

Section 2. The Bethany Sanitary Board shall cause each customer to be billed on a monthly basis, and there shall be a 10% penalty for payments made later than 20 days after the billing date. The minimum monthly charges will be \$31.73 for sewer customers with metered water supplies and \$45.10 for sewer customers with non-metered water supplies.

Section 3. There shall be a charge of \$100.00 for every residential customer tapping into the Bethany sewerage system and \$500.00 for every commercial customer.

Section 4. A charge of \$20.00 shall apply for reestablishing service whenever the supply of water is turned off for violation of rules and regulation, nonpayment of bills or fraudulent use of water. Such charge shall be paid to the Ohio County Public Service District and not to the Town of Bethany or the Bethany Sanitary Board consistent with the provisions of Ordinance No. 145.

Section 5. The Town Council does hereby state its findings, having been advised of its duty to consider such matters, that such rates are just and reasonable, are applied without unjust discrimination or preference, and are based primarily on the costs of providing service and the associated sewer billing/administrative expenses.

Section 6. Council finds that after the introduction of this ordinance, but before the ordinance was finally adopted, notice was given of a hearing, at which all the users of the works of the Bethany Sanitary Board and owners of property served or to be served thereby and others interested would have an opportunity to be heard concerning the proposed rates. Such notice was given by the Town of Bethany by publication as a Class II-0 legal advertisement in compliance with the provisions of Section 5903-1 et seq. of the West Virginia Code. The first

publication was made at least 10 days before the date fixed in such notice for the hearing, and such hearing was held on the date and the time and place specified in the notice, as provided in Section 15-13-16 and other relevant sections of the West Virginia Code.

Section 7. Not later than five calendar days following adoption of this ordinance, the Bethany Sanitary Board shall provide notice to its customers of the pending rate change, in one of the three ways, as follows:

(i) Notice of the pending rate change may be specified on monthly billing statements of all customers within five days after the adoption of this ordinance; or

(ii) Notice of the pending rate change may be provided to all customers by first class mail within five days after the adoption of this ordinance; or

(iii) A press release may be issued announcing the adoption of the pending rate change and a Class II legal advertisement may be published, the first such publication to occur within five days after the adoption of this ordinance.

Section 8. The notice provided shall meet the requirement of Section 24-2-4b(c) of the West Virginia Code, Procedural Rule 2.1(c)(4) of the West Virginia Public Service Commissions, and other applicable provisions of law. Customers shall have a protest period that shall commence after the adoption of this ordinance and shall continue for 30 days.

Section 9. Also, within five days after the adoption of this ordinance a filing shall be made in the office of the Executive Secretary of the Public Service Commission, in accordance with Procedural Rule 2.1.(f). Such filing shall contain the following:

(i) The new rates and charges;

(ii) A copy of this ordinance;

(iii) The justification for such ordinance, including a pro forma income statement showing the costs of providing service and revenues to be generated by the new rates and charges;

(iv) An affidavit of publication with respect to the notice described in section 6 above;

(v) Documentation from the Bethany Sanitary Board verifying that one of the three methods of notice described in section 7 above was given within the five-day period following adoption of this ordinance. If notice was provided by newspaper publication, the Bethany Sanitary Board must within 20 days after adoption of the rate change, file a verification that a press release was issued together than an affidavit of publication of legal notice. If a method was used other than newspaper publication, the Bethany Sanitary Board must include with its filing an affidavit that indicates the method used and that notice was given; and

(vi) A statement of the correct number of customers served by the Bethany Sanitary Board, as determined by the number of bills rendered in the billing cycle last completed before adoption of this ordinance.

Section 10. If no protest be filed with the Public Service Commission under the provisions of Section 24-2-4b of the West Virginia Code, then this ordinance shall take effect on April 1, 2015, or soon thereafter as practicable, as the Sanitary Board by a written determination and notice shall specify, but not earlier than 45 days from the date of adoption of this ordinance.

Section 11. Ordinance No. 156, adopted October 1, 2014, is repealed as of the time that the rates established by the ordinance become effective. Similarly, any other prior inconsistent legislation of the Town Council, is repealed as of such date, to the extent of the inconsistencies.

Jay Eisenhauer, MAYOR

First Reading: January 7, 2015

Second Reading (adopted): February 4, 2015

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<sup>1</sup> Ordinance No. 61, adopted 5/11/1982; Ordinance No. 70, adopted 5/14/1986; Ordinance No. 87, adopted 5/14/1991; Ordinance No. 93, adopted 8/19/1996; Ordinance No. 102, adopted 5/16/2002; Ordinance No. 107, adopted 12/10/2002; Ordinance No. 118, adopted 1/13/2004; Ordinance No. 147, adopted 5/5/2010; Ordinance No 156, adopted 10/1/2014.

## **Part III. Property: Regulation and Maintenance**

# Ordinance No. 112

SUPERSEDES ORDINANCE NOS. 1, 58, 62, 80, 84, 85 <sup>1</sup>

## **An ordinance of the Town of Bethany, West Virginia, amending and restating the Bethany Zoning Ordinance (Ordinance No. 1, as previously amended) in its entirety**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, that the prior text of the Bethany Zoning Ordinance, as stated in Ordinance No. 1, adopted January 13, 1970, and as previously amended by Ordinance No. 58, adopted February 9, 1982; Ordinance No. 62, adopted January 11, 1983; Ordinance No. 80, adopted July 12, 1989; Ordinance No. 84, adopted June 12, 1990; Ordinance No. 85, adopted January 8, 1991, and any other prior amendments, is hereby amended and superseded in its entirety, such ordinance as restated (“this ordinance”) to read in its entirety as follows:

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Section 12.	Historic Bethany District (HD)
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Section 14.	Residential/Low-Density (R-1) Zone
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Section 1. PURPOSE.

(a) General. The purposes of this zoning ordinance are as follows: (i) protection of the health, safety and general welfare of the present and future citizens of the Town of Bethany; (ii) promotion of the economic stability and growth of the community; (iii) preservation of the historic landscape and structures; and (iv) provision for appropriate, efficient and compatible land use.

(b) Special Findings. The council finds, on the advice of the planning commission and as a consequence of the citizen input and participation in the development of this amendment:

(i) That Bethany is amply endowed with historic buildings, structures and sites which represent the historical, architectural and cultural heritage of the community and which ought to be preserved;

(ii) That the preservation and protection of historic buildings, structures and sites aid economic development, improve property values, enhance the community's attractiveness to tourists and visitors; aid the



development of education by preserving such heritage for future generations; and promote the prosperity and general welfare of the people; and

(iii) That it is in the public interest of Bethany to engage in a comprehensive program of historic preservation to the extent feasible and that this ordinance should be broadly construed and liberally applied in order to accomplish the purposes set forth herein.

Section 2. JURISDICTION. The provisions of this ordinance will govern all lands within the corporate limits of Bethany.

Section 3. ESTABLISHMENT OF DISTRICTS. The following zoning districts are hereby established and are hereby declared to be delineated as such on the Zoning Map of Bethany, dated January 28, 2003, which map was introduced with, is adopted as a part of, and is incorporated into this ordinance and which bears the contemporaneous dates and signatures of the town recorder and mayor:

- (i) Historic Bethany District (HD), described in Section 12 below;
  
- (ii) Residential/Commercial (RC) Zone, described in Section 13 below; and
  
- (iii) Residential/Low Density (R-1) Zone, described in Section 14 below.

Section 4. BOUNDARIES OF DISTRICTS. Unless otherwise indicated on the Zoning Map, the boundary lines of the districts follow lot lines, center lines of streets and alleys or such center lines extended, center lines of creeks, corporate boundaries at the adoption of this ordinance, and measured lines.

Section 5. APPLICATION OF REGULATIONS.

(a) General. No buildings or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations for the district or districts in which it is located.

(b) Zoning of Annexed Areas. All territory which may be annexed to the town shall from the time of annexation be considered as being in the RC Zone until changed by ordinance, unless the resolution of annexation by the town council provides for other district classification or classifications.

(c) Location of Zoning Line in Vacated Street. Whenever the town council vacates a street or alley, adjacent districts shall extend to the center line of the vacation.

(d) Redesignation of Public Use Properties. Whenever a property which has been designated as public-use property on the Zoning Map shall cease to be devoted to such use, the property shall, from the date of cessation of such use (as determined by the board of zoning appeals in case of any question) be considered as being in the same zoning district as that in which the predominant number of abutting properties are classified. "Public use" is defined as the main use of land or buildings owned or used by any department or branch of federal, state, county or municipal government and which is supported in whole or in part by public funds, including tax revenues and charitable contributions.

Section 6. CONTINUANCE OF NON-CONFORMING USES. Any lawful use of land or structures existing at the time of the adoption of this ordinance, or any lawful use existing at the time of any amendment, may be continued subject to the following limitations:

(i) Any non-conforming use which has been discontinued for a period of two years or longer shall not be re-established. Vacating of premises or a building or non-operative status shall be evidence of discontinued use.

(ii) If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or a more restricted classification if approved by the board of zoning appeals. Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

Section 7. OFF-STREET PARKING REQUIREMENTS.

(a) General. Off-street parking shall be provided on any lot on which any use is hereafter established. Each space shall have access to a street or alley. For purposes of computing, each space will be not less than 9 feet wide or 20 feet long.

(b) Minimum Requirements for Specific Uses:

(i) For dwellings, there shall be one space on the lot for each living unit in the building. For lodging houses, there shall be one space on the lot for each lodging unit in the dwelling. Such spaces may be contained in a garage or carport so long as the lot coverage provisions set forth below are not violated. "Lodging house" is defined as a dwelling in which for compensation, lodging is furnished to any number of guests. A lodging house shall not be deemed to be a home occupation.

(ii) For churches erected on new sites, there shall be one parking space on the lot for each 10 seats in the main auditorium, but existing churches and additions to or enlargements of churches existing at the time of passage of this title shall be exempt from this requirement.

(iii) For all schools except post-secondary institutions, there shall be two spaces for each classroom.

(iv) For institutions, clubs, lodges and other public and semi-public buildings, there shall be three spaces for each 1,000 square feet of floor area.

(v) For all other places of public assembly, including auditoriums and theaters, there shall be one space for each 10 seats provided.

(vi) For all other commercial uses, including post-secondary education, there shall be 1 space for each 1,000 square feet of commercial floor area. For commercial and residential uses located on the same lot in the RC District, there shall be one space for each dwelling unit and one space for each 1,000 square feet of commercial floor area, with a minimum of two spaces required.

(c) Exceptions. Existing buildings not complying with off-street parking requirements may be remodeled, repaired or structurally altered, but any enlargement must result in the required parking spaces for the building as enlarged. A building permit application for any such enlargement shall describe the manner in which the project will conform to the provisions of this ordinance.

## Section 8. SIGNS.

(a) General Provisions and Definitions. No sign shall exceed 30 square feet in area, except as the board of zoning appeals shall approve by variance, and upon such terms and conditions as the board of zoning appeals shall determine to be appropriate FOR the protection of other properties. Signs that are directional, informational, or warning in character, and involve no advertising, shall not exceed six square feet in area. This provision shall not apply to traffic signs erected by the Town of Bethany, the West Virginia Division of Highways or any other governmental entity. The following definitions apply:

(i) Sign. Any structure, part thereof, or device attached thereto or represented thereon or any material or thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, trademark or other representation used as, or in the nature of, an announcement, advertisement, direction, or designation of any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry which is located upon any land, or any building, in or upon a window, or indoors in such a manner as to attract attention from outside the building.

(ii) Commercial Sign. A sign which directs attention to a business, commodity, service or other activity conducted upon the premises upon which the sign is located, other than historical markings, service organization emblems, signs indicating the town name, and signs identifying buildings and directions on the campus of Bethany College.

(iii) Directional Sign. A sign describing the location of a community or institution of public or quasi-public nature or the opening of an event of public interest, but not including signs pertaining to real estate.

(b) Special Provisions for Commercial Signs. The following provisions shall apply to commercial signs:

(i) All commercial signs must be located at least 10 feet from the curb of any road or street and may not block or hinder a pedestrian walkway.

(ii) No such sign may contain wording, pictures or symbols which are vulgar, obscene or offensive to community standards, as the board of zoning appeals shall determine.

(iii) The total area for all commercial signs shall not exceed 30 square feet, not including a frame extending no more than six inches around the sign.

(iv) All free-standing signs shall be so located and shall be so placed as to allow ample visual sight lines for driveways, streets and alleys. Commercial establishments shall have no more than one such sign per 50 feet of frontage.

(v) Any sign which no longer advertises a bona fide business conducted upon the premises shall promptly be removed.

(c) Permits Required. Permits shall be required for all commercial signs and shall be issued by the town recorder upon payment of any prescribed fee and a finding that the sign for which the permit is sought conforms to the provisions of this ordinance.

(d) Signs in the Historic District. In addition to all other requirements, no permit shall be issued for a sign or proposed sign within the Historic District (HD) except upon a finding by the town council that the appearance, color, size, position, method of attachment, texture of materials and design conform to the period sought to be preserved in the Historic District and to the distinctive character of the building or structure to which such sign relates and that such signs do not impair the value to the community of buildings having historic and/or architectural worth.

(e) Good Condition. All signs shall be maintained in good condition and appearance. The town, after due notice, may cause to be removed any sign which shows gross neglect or becomes dilapidated or where the area immediately around such sign is not well maintained.

Section 9. PROHIBITED USES. The following uses are prohibited in all districts: junkyards (including those for storage and sale of scrap materials) and mobile and manufactured homes. The prohibition on mobile and manufactured homes shall not apply to those mobile homes situated within the corporate limits on or before passage of this section.

(a) Definitions. For purposes of this section, the term "mobile home" shall have the meaning ascribed to it in Section 37-15-2(h) of the West Virginia Code, and shall also include a vehicle or similar portable structure having no foundation other than wheels, jacks or skirting and so designed or constructed as to permit occupancy for dwelling or sleeping purposes. The term shall not include camping, travel or recreational trailers or modular homes. "Manufactured home" shall have the meaning ascribed to it in Section 37-15-2(g) of such Code. "Modular home" shall have the meaning ascribed to it in Section 37-15-

2(i) of the Code. "Junkyard" is defined as any land or building used for the abandonment, storage, keeping, collecting or baling of paper, rags, scrap metal, other scrap or discarded materials.

(b) Permit. A permit granting exemption from the mobile and manufactured home prohibition will be issued by the town recorder to property owners applying for same and having a mobile home or a mobile home park situate upon their property as of the said date.

(c) Abandonment. In the event that a mobile home is removed from the property for which a permit has been issued, the use of that space for a mobile home shall be considered abandoned, and the permit for that mobile home will be revoked and will not be reinstated.

(d) Transfer of Real Estate. In the event that title to the real estate upon which a mobile home is located is transferred to another owner, the town recorder will reissue the permit to the new owner upon proper application.

Section 10. SATELLITE STATIONS, DISH ANTENNAS AND WIRELESS TELECOMMUNICATIONS TOWERS. The following provisions are specifically adopted in order to safeguard, preserve and protect the historic character and value of the town, its culture and heritage:

(a) Definitions. "Satellite station" and "dish antenna" mean any special apparatus, dish antenna, receiver, transmitter and/or power supply which is designed to transmit television to or receive television signals from man-made satellites traveling in orbits of the earth. "Wireless telecommunications tower" means a structure intended to support equipment used to transmit and/or receive telecommunications signals, including monopoles and guyed-and-lattice-construction steel towers. Such structures are also commonly known as cellular telephone towers.

(b) Limitations.

(i) Within the corporate boundaries of the town no satellite station and/or dish antenna in excess of one meter in diameter shall be erected on any residential property, except that satellite stations and/or dish antennas erected for commercial, educational or institutional purposes may exceed one meter in diameter as the board of zoning appeals shall approve, and upon such terms and conditions as the board of zoning appeals shall determine to be appropriate for the protection of other properties. All satellite station and/or dish antennas erected in accordance with this ordinance must be located out of public view from the front of the property.

(ii) Within the corporation boundaries of the town no wireless telecommunications tower shall be erected within 1,000 meters of any existing single-family dwelling. Any such tower or facility shall be located, whenever possible, on existing structures. All setback requirements of the zoning district in which the tower is to be located must be complied with. Landscaping and finishing of such tower must be compatible with the residential uses of the area. No such tower shall be constructed or erected without the express approval of town council, upon a finding of compliance with the provisions of this ordinance.

Section 11. SWIMMING POOLS.

(a) Application. The following shall apply to swimming pools, whether built in or above ground, having a capacity for water depth of greater than 24 inches.

(b) Requirements. Every owner of a swimming pool shall keep the pool completely enclosed with fences or walls not less than five feet in height with no openings greater than four inches. Every pool owner shall equip gate or door openings to the pool with self-enclosed and self-latching devices capable of keeping such gate or door securely closed at all times.

Section 12. HISTORIC DISTRICT (HD).

(a) Declaration of Public Purpose. Council declares that the preservation of structures of historic and architectural value together with appurtenances and environmental landscape is a public purpose of Bethany. Council in creating this district as delineated on the Zoning Map intends:

(i) To safeguard the heritage of the town by preserving the district therein which reflects elements of the town's cultural, social, economic, political or architectural history;

(ii) To stabilize and improve property values in such district;

(iii) To foster civic beauty;

(iv) To strengthen the local economy; and

(v) To promote the use and preservation of such district for the education, welfare and pleasure of the residents of the town.

(b) Historic District Defined. The Historic District shall include the area bounded by West Virginia Route 67; Pendleton, Richardson, Cramblet and Roosevelt Streets; and the Bethany College main campus.



(c) Historic Landmarks Commission; Duties. A Bethany historic landmarks commission is hereby established in accordance with Section 8-26A-2 of the West Virginia Code, which commission shall consist of five (5) town residents designated by the mayor. Such commission shall be authorized but not required to:

(i) Make a survey of, and designate as historic landmarks, buildings, structures and districts within the town limits which constitute the principal historical and architectural sites which are of local, regional, statewide or national significance;

(ii) With the consent of the property owners, mark with appropriately designed markers, buildings, structures and sites as historic landmarks;

(iii) Aid and encourage the Town of Bethany to adopt ordinances and resolutions for the preservation of landmarks and historic districts, their buildings, structures and character;

(iv) Seek the advice and assistance of individuals, groups and departments and agencies of government who or which are conducting historical preservation programs and coordinate the same insofar as possible;

(v) Seek and accept gifts, bequests, endowments and funds from any and all sources for the accomplishment of the functions of the commission; and

(vi) Adopt rules and regulations concerning the operation of this commission, the functions and responsibilities of its members and such other matters as may be necessary to carry out its purposes.

### Section 13. RESIDENTIAL/COMMERCIAL (RC) ZONE.

(a) Declaration of Public Purpose. Council declares that the purpose of the Residential/Commercial (RC) Zone is to reinforce the economic base of the town by preserving the central business uses unique to Bethany. Secondly, the RC Zone is intended to complement the R-1 Zone by preserving more effectively the residential setting of the town while safeguarding the town's cultural, social, economic, political and architectural history. Council intends that stores and other commercial facilities be grouped in a convenient

manner with particular emphases on adequate circulation of pedestrians and vehicles, accessibility from both the central community and the area, off-street parking and loading, and protection of adjoining areas of other use.

(b) RC Zone Defined. The RC Zone shall consist of properties fronting West Virginia Route 88, Main Street (West Virginia Route 67), Fair Way, Ross Street and College Street to Bayard Alley to the north and Sayer Alley to the south.

(c) Definitions. For purposes of this ordinance, terms or words used herein shall have their usual and customary meanings, except that the following definitions shall specifically apply:

(i) Automobile Repair and Service. A building, lot, or both in or upon which the business of general motor vehicle repair and service is conducted, but excluding junk and/or auto wrecking businesses.

(ii) Bed-and-Breakfast Establishment. A residence occupied by the owner or resident manager in which rooms are let for transients and in which no meal other than breakfast is served for payment.

(iii) Hotel. Any building containing 10 or more guest rooms where, for compensation, lodging, meals, or both are provided, excluding a fraternity or sorority house, school or college dormitory, or bed-and-breakfast establishment.

(iv) Professional Office. Rooms and/or buildings used for the office purposes by a member of any recognized profession, including doctors, dentists, lawyers, accountants engineers, and the like, but not including clinics at which more than one practitioner is engaged in such profession.

(d) Uses Permitted in the RC Zone. The following uses shall be permitted if comprising not more than 3,000 square feet of floor area:

(i) Any use permitted in the R-1 Zone.

(ii) Transient lodgings, including hotels, inns and bed-and-breakfast establishments.

(iii) Retail outlets, including furniture, department, clothing, dry goods, shoe and variety stores and hardware, electrical appliance, paint and wallpaper stores.

(iv) Specialty shops, including gift shops, jewelry stores, art galleries or studios, magazine, book and stationery outlets, florist shops, camera and photography shops and studios, sporting goods and antique shops.

(v) Food, drug and beverage facilities, including grocery, fruit and/or vegetable stores, delicatessens, drug stores, bakeries, restaurants, coffee shops, and the like.

(vi) Service and recreation facilities, including nursery school or child-care centers, Laundromats, barber and beauty shops, clothing shops, shoe repair and tailor shops, commercial recreation facilities, repair shops for appliances and small articles, furnace, heating and plumbing shops, gas stations and automobile repair shops.

(vii) Business and professional offices, including but not limited to medical and dental offices, clinics, architectural and engineering offices, law offices, banks, finance companies, utility company offices, and insurance and real estate offices.

(viii) Public service buildings, including libraries, museums, and community centers.

(ix) Rest and nursing homes, provided, that one off-street parking space is provided for each attendant or worker and for each three patients to be cared for therein, and provided further, that yard requirements shall conform to those of a multi-family structure.

(x) Multi-family dwellings.

(xi) Accessory uses or buildings not used for dwelling.

(d) Special Uses. By special exception, as the board of zoning appeals shall approve, and upon such terms and conditions as the board of zoning appeals shall determine to be appropriate for the protection of other properties and other owners, commercial ventures requiring more than 3,000 square feet of floor area may be allowed.

\_\_\_\_\_ (e) Lot Requirements in the RC Zone. The following minimum lot requirements shall apply in the RC Zone:

(i) Lot size must be at least 60 feet in width and 120 feet in depth for newly created lots.

(ii) Buildings fronting on Main Street must be set back no further from the right-of-way of Main Street than the structure on the adjoining property that is closest to the right-of-way, except as authorized by the board of zoning appeals by variance. Buildings along Church Street, College Street, Ross Street and Fair Way shall be set back a minimum of 25 feet.

(iii) At least one side yard shall be provided, at a minimum depth of 10 feet.

(iv) For a single-family use which may include two commercial uses, minimum lot size shall be 5,000 square feet.

(v) For a two-family use which may include two commercial uses, minimum lot size shall be 5,000 square feet.

(vi) For townhouse use which may include one commercial use per unit, minimum lot size shall be 3,000 square feet per unit.

(vii) For multi-family use which may include one commercial use per unit, minimum lot size shall be 2,500 square feet per unit.

(viii) For commercial use without residential use, minimum lot size shall be 5,000 square feet.

(f) Building Height Regulations in RC Zone. No structure in the RC Zone shall exceed three stories or 45 feet in height.

(g) Off-Street Parking and Loading. Adequate off-street parking and loading areas shall be provided in the RC Zone in accordance with the requirements of section 7 above.

Section 14. RESIDENTIAL/LOW-DENSITY (R-1) ZONE.

(a) Declaration of Public Purpose. The Residential/Low-Density (R-1) Zone is intended to provide an attractive, pleasant living environment at a sufficient density to preserve and encourage the development of single-family residential neighborhoods free from land usage which might adversely affect such development. The R-1 Zone consists of all areas not designated to be within the RC Zone.

(b) Permitted Uses in the R-1 Zone. The following uses shall be permitted in the R-1 Zone:

(i) Single-family, duplex dwellings, and/or single family dwellings of no less than 1,500 square feet with one apartment of no less than 1,000 square feet, which apartment shall contain not more than three additional persons not members of the family residing in the dwelling unit.

(ii) Townhouses, each having its own lot and housing no more than one family.

(iii) Accessory uses and buildings.

(c) Special Uses. By special exception, as the board of zoning appeals shall approve, and upon such terms and conditions as the board of zoning appeals shall determine to be appropriate for the protection of other properties and other owners, the following special uses shall be allowed:

(i) Bed-and-breakfast establishments, provided, that off-street parking of one space per rental unit is provided, and provided further, that yard requirements shall conform to those of a multi-family structure.

(ii) Nursery school or child-care centers, provided, that such property contains an adequately sized play area, fully fenced and enclosed, and that the main structure is no closer than 20 feet from any adjacent district line or lot line.

(iii) The office of a resident physician, dentist, architect, engineer, accountant, attorney, or similar professional person located in that person's home, provided:

(1) That there is no exterior evidence, other than a permitted sign, to indicate that the building is being used for any purpose other than that of a dwelling;

(2) That the structure does not contain windows designed for display purposes;

(3) That sufficient off-street parking is provided with three spaces being considered minimal;  
and

(4) That the total area devoted to the office does not exceed 30 percent of the square footage of the dwelling unit.

(iv) Home occupations, defined for the purposes of this section as an occupation conducted entirely within a dwelling or accessory structure by a member or members of the immediate family residing therein, provided:

(1) That in connection with which there is used no display except one sign affixed to the building not exceeding a total area of four square feet, and not illuminated, and that will indicate from the exterior that the building is being utilized in whole or in part for purposes other than that of a dwelling;

(2) That in connection with which no more than two persons are employed in the conduct of the home occupation;

(3) That equipment used in the course of the occupation does not emit uncomfortable or harmful amounts of noise, vibration, heat, glare, smoke, odor or other obnoxious elements;

(4) That no product is sold on the premises, unless it is produced in whole or in part on the premises;

(5) That in connection with which no more than 30 percent of the square footage of the structure is dedicated to the occupation; and

(6) That boarding and rooming houses, tourist homes, beauty parlors, barber shops, private educational institutions, and restaurants shall not be deemed home occupations.

(v) Fraternity and sorority houses.

(d) Lot Requirements in R-I Zone.

(i) The minimum lot width in the R-1 Zone shall be 60 feet, and the minimum lot depth shall be 120 feet.

(ii) No new construction shall be closer to any street than 25 feet. No new construction shall be closer to any rear lot line than 25 feet rear building line, nor to any side lot line than 10 feet.

(iii) No such lot shall contain more than one structure, and no structure ( including porches, car ports and integral garages) shall cover more than 30 percent of such lot.

(e) Building Height Regulations in the R-1 Zone. No single, two-family or townhouse dwelling shall exceed 2 ½ stories or 35 feet in height, and no multi-family dwelling shall exceed 3 stories or 45 feet in height.

(f) Off-Street Parking and Loading. Adequate off-street parking and loading shall be provided in the R-1 Zone in accordance with the requirements of section 7 above.

Section 15. LOT OF RECORD; VARIANCES. If any lot of record at the time of adoption of this ordinance fails to meet the requirements of this ordinance for lot width and lot depth, the board of zoning appeals, on application, notice and hearing, as required by law, may grant a variance from the requirements of this ordinance to the minimum degree necessary to avoid hardship and to permit such new construction as may comply with applicable building, fire and health codes.

Section 16. VIOLATION. Any violation of this ordinance shall be a misdemeanor and shall result in the imposition of a fine for not less than \$25.00 nor more than \$100.00 for each separate offense, and each day in which any person, firm, co-partnership, association or corporation be in violation of this ordinance shall constitute a separate offense and may be proceeded against by separate prosecution.

Section 17. COMPREHENSIVE PLAN. As provided in Section 8-24-47 of the West Virginia Code, the amendments to the zoning ordinance made by this ordinance shall be considered to be amendments to the comprehensive plan, and the comprehensive plan shall hereafter be deemed to be reflected and stated in this ordinance.

Section 18. FURTHER AMENDMENT.

(a) Procedure. The town council may from time to time, on its own motion or on petition, further amend, supplement or repeal by ordinance the boundaries of districts, or the regulations or restrictions herein established. As provided in Section 8-24-1 et seq. of the West Virginia Code, no regulation, restriction, boundary or amendment thereto shall become effective until after at least one public hearing in relation thereto, at which



parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the town.

(b) Proposed Change of Zoning Classification. As provided in Section 8-24-45 et seq. of the West Virginia Code, where the purpose and effect of a proposed amendment is to change one or more zoning classifications, the town council shall make findings of fact in each specific case including, but not limited to, the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendation of the planning commission, and the relationship of such proposed amendment to the town's plan. Council may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. A complete record of the hearing and the votes of all members of the council shall be kept.

(c) Concerning Prior Decisions. An application for reclassification shall not be accepted for filing by the council if the application is for the reclassification of the whole or any part of land the reclassification of which has been denied by the council on the merits within 12 months from the date of the council's decision.

(d) Approval of Planning Commission. No amendment shall be considered or acted upon by the town council unless it is first submitted to the planning commission for hearing (as required by law) and report. If the report shall contain a recommendation, a majority vote of the entire town council shall be required to take action different from that recommended by the planning commission. Failure of the planning commission to return a report within 90 days shall be deemed to be an approval of the proposed amendment.

(e) Fee. A filing fee of \$100.00 shall be charged for processing an application for a change in zoning.

Section 19. SEVERABILITY. Council declares its intention that this ordinance shall be applied and enforced in such manner as best gives effect to its stated purposes, and any ambiguity shall be resolved consistently with such purposes to the extent possible. If, however, one or more of the terms of this ordinance nevertheless be found to be invalid, unlawful or unenforceable, and if such term or terms cannot equitably be reformed in a reasonable manner to become valid, lawful and enforceable, such provision or provisions shall be

severed from the ordinance, and the other portions of this ordinance shall continue to be given their full force and effect.

Section 20. SHORT TITLE. This ordinance shall be known as the Bethany Zoning Ordinance.

Section 21. EFFECTIVE DATE. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 4/ 8/03

Second Reading (adopted): 5/13/03

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<sup>1</sup> Supersedes Ordinance Nos. 1, adopted 1/13/70, Ord. No. 58, adopted 2/9/82 Ord. No. 62, adopted 1/11/83, Ord. No. 80, adopted 7/12/89, Ord. No. 84, adopted 6/12/90, Ord. No. 85, adopted 1/8/91.

## **Ordinance No. 2**

AS AMENDED BY ORDINANCE NO. 100<sup>1,2</sup>

### **An ordinance establishing fees for building permits and requiring building permits**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

1. No building or structure shall be erected, added to, or structurally altered until an approved permit, therefore has been issued by the *Recorder, who shall have full authority to require certification from the applicant's engineer or architect that such building or structure, as planned, conforms to all applicable building codes. All applications for such permit shall be in accordance with the requirements of this Ordinance and all other relevant ordinances of the Town of Bethany and shall be accompanied by a fee payable to the Town as established from time to time by ordinance.*<sup>1</sup>

2. The permit shall be secured at least thirty (30) calendar days prior to the commencement of any construction work.

3. Fees – The amount of fees due for the issuance of a permit in accordance with this ordinance shall be governed by a schedule developed by the Town Council and made public.

4. *If the Recorder shall decline to issue a permit, the Recorder shall state the reasons for such denial in writing. Appeals and any other disputes regarding the issuance of permits shall be heard by the Town Council except as the Town's then-applicable building code might otherwise provide. Similarly, the Recorder may present an issue to the Town Council for a ruling.*<sup>2</sup>

/s/ Roger N. Pauls

MAYOR

First Reading: 12/ 9/69

Second Reading (adopted): 1/13/70

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<sup>1</sup> As amended by Ordinance No. 100, adopted 3/12/02. The text per prior Ordinance read: “No building or structure shall be erected, added to, or structurally altered until an approved permit, therefore has been issued by the Town Clerk upon the direction of the Town Council. All applications for such permit shall be in accordance with the requirements of this Ordinance and shall be accompanied by a fee payable to the Town of Bethany as stipulated below”.

<sup>2</sup> As amended by Ordinance No. 100, adopted 3/12/02. The text per prior Ordinance read: “Exceptions – Exceptions to this ordinance may be permitted by a majority vote of Town Council only after a public hearing has been held in response to said request of exemption”.

## **Ordinance No. 115**

**An ordinance of the Town of Bethany, West Virginia, revoking and repealing Ordinance No. 30, relating to building permits**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Ordinance No. 30, adopted June 10, 1975, relating to building permits, is hereby revoked and repealed in its entirety.

Section 2. This ordinance of revocation and repeal shall be effective upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 8/12/2003

Second Reading (adopted): 9/ 9/ 2003

## **Ordinance No. 106**

SUPERSEDES ORDINANCE NO. 95, AS AMENDED <sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, adopting the state building code as the building code of the Town of Bethany and declaring prior inconsistent legislation, including Ordinance No. 95, adopted March 13, 2001, to be superseded and repealed**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. The State Building Code, adopted as such by the State Fire Commission of West Virginia under the authority of Section 29-3-5b of the West Virginia Code, with an effective date of May 1, 1998, which code now appears in Title 87 of the Code of State Regulations as Series 4 (87 CSR 4), is hereby adopted in its entirety to the fullest extent applicable as the Building Code of the Town of Bethany, and the erection, construction, repair or alteration of any structure or of any equipment or part of a structure within the corporate limits of the municipality shall conform to such code. As the State Building Code is amended from time to time by the State Fire Commission, the Building Code of the Town of Bethany shall similarly be deemed to be amended, without separate action by the Town Council, to the fullest extent applicable, unless the Town Council shall expressly ordain otherwise.

Section 2. Council recognizes and acknowledges that the State Building Code incorporates certain standards and requirements as set out and published by the Building Officials and Code Administrators International, Inc. (BOCA) and the Council of American Building Officials, Inc. (CABO). Council further recognizes that subsequent to May 1, 1998, the effective date of the State Building Code, BOCA joined with two other developers of model building codes to form the International Code Council, Inc., which organization has now published the *2000 International Building Codes*. Accordingly, the erection, construction, repair or alteration of any structure or of any equipment or part of a structure which is regulated by state law or municipal ordinance within the Town of Bethany shall conform also to the *2000 International Building Codes* to the extent permitted by state law. In any question, the decision of the State Fire Commission shall determine the relative priority of any such state law or other requirement, any county rule or regulation, any municipal ordinance, and any building codes adopted or purported to be adopted or in effect in this municipality.

Section 3. The Building Code of the Town of Bethany shall be enforced in the municipality in the same manner and to the same extent as other ordinances are enforced, and town officials shall have such enforcement powers as may be granted by law, reasonably implied, or necessary under the circumstances. Without limiting the current authority of town officials, officials may call upon the State Fire Commission as may be reasonable or necessary in matters relating to enforcement of applicable rules and ordinances. Enforcement powers in appropriate cases may include the seeking of injunctive relief and/or penalties of fines and/or imprisonment as provided in such codes or other applicable law.

Section 4. With respect to the application of the Building Code to renovations of existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of Section 29-1-8 of the West Virginia Code or the National Register of Historic Places pursuant to 16 USCS Section 470a, the town shall consult with the State Historic Preservation Office of the Division of Culture and History, and the final decision in any question shall rest with the State Fire Commission. Additions constructed on a historic building are not excluded from complying with the State Building Code.

Section 5. Council finds that the adoption of this ordinance was preceded by the publication of notice as a Class I-0 legal advertisement, in compliance with the provisions of Section 59-3-1 et seq. of the West Virginia Code, which notice stated the subject matter and general title 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 and codes could be inspected by the public. Such notice also advised that interested parties could appear at the meeting and be heard with respect to the proposed ordinance.

Section 6. As provided in Section 29-3-5b(g) of the West Virginia Code and Section 87-4-5.1 of the Code of State Regulations, the town shall notify the State Fire Commission in writing of the adoption of this ordinance. Such notification shall be given within 30 days from the effective date of this ordinance and shall include a copy of this ordinance.

Section 7. Prior inconsistent legislation of the Town of Bethany, including but not limited to Ordinance No. 95, adopted March 13, 2001, is declared to be superseded by this ordinance and to the extent of such inconsistencies is hereby repealed.

Section 8. This ordinance shall be effective immediately upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 11/12/02

Second Reading (adopted): 12/10/02

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<sup>1</sup> Supersedes Ordinance No. 95, adopted 3/13/01.

## **Ordinance No. 104**

### **An ordinance adopting the state fire code as the fire code for the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. The State Fire Code, adopted as such by the State Fire Commission of West Virginia under the authority of Section 29-3-5 of the West Virginia Code, with an effective date of May 1, 2002, which code now appears in Title 87 of the Code of State Regulations as Series 1 (87 CSR 1), is hereby adopted in its entirety to the fullest extent applicable as the Fire Code of the Town of Bethany. As the State Fire Code is amended from time to time by the State Fire Commission, the Fire Code of the Town of Bethany shall similarly be deemed to be amended, without separate action by the Town Council, to the fullest extent applicable, unless the Town Council shall expressly ordain otherwise.

Section 2. The Fire Code of the Town of Bethany shall be enforced in the municipality in the same manner and to the same extent as other ordinances are enforced, and town officials shall have such enforcement powers as may be granted by law, reasonably implied, or necessary under the circumstances. Without limiting the current authority of town officials, officials may call upon the State Fire Marshal as may be reasonable or necessary in matters relating to prevention or investigation of fires or enforcement of rules and ordinances, and municipal officials may accept deputization by the State Fire Marshal, as provided by law, in any matter for which such deputization may be deemed proper.

Section 3. This ordinance shall be effective from and after the date of its adoption.

/s/ Sven deJong

MAYOR

First Reading: 8/13/02

Second Reading (adopted): 9/10/02



## **Ordinance No. 67**

### **An ordinance for the Town Council of the Town of Bethany providing a housing and property maintenance code for the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

#### SECTION I.

There is hereby adopted a Housing and Property Maintenance Code of the Town of Bethany, to read as follows:

#### HOUSING AND PROPERTY MAINTENANCE CODE OF THE TOWN OF BETHANY

Item 1. Purpose – The purpose of this Code is to regulate the repair, alteration and improvement, and the vacating and closing or removal or demolition, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public welfare.

#### Item 2. Housing and Property Maintenance Enforcement Agency

A. Establishment – There is hereby established a Housing and Property Maintenance Enforcement Agency, which shall consist of the Mayor, the Building Inspector and one member at large to be selected by and to serve at the will and pleasure of the Mayor. The Chief of the Volunteer Fire Company of the Town of Bethany shall serve as an ex-officio member of the agency. All members of the agency shall serve without pay.

B. Power and Authority – The Agency shall exercise the power and authority conferred upon the Town of Bethany by W.Va. Code Section 8-12-16 (1976 Replacement Vol.) to require the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, situated in the Town of Bethany, which are unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or

sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public welfare.

C. Investigations – The Agency, and its duly authorized agents, shall have the authority to enter any dwelling or building for the purpose of making any investigation, inspection or examination that may be necessary in order for it to determine whether such dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public welfare. However, any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession. In the event that the owner in possession of such dwelling or building objects to such entrance upon the premises for the purpose of making examination, the Agency, or its duly authorized agent, may obtain a warrant permitting such entrance from the judge of the Town of Bethany or other magistrate or judge of competent jurisdiction, upon a showing consistent with the requirements of Article III, Section 6 of the Constitution of West Virginia, and the Fourteenth Amendment of the United States Constitution.

D. Notice and Hearing – If, upon examination of any dwelling or building, the Agency finds that there is probable cause to believe that such dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public welfare, it shall order that notice be served on the holder of recorded title to that dwelling or building that a hearing shall be held at a specified time and place, but in no event sooner than 30 days from the date of service on said owner, as to whether the dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public welfare, and, if so, whether it should be repaired, altered or improved, or vacated and closed or removed or demolished, or any combination thereof. Said notice shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the notice. At the hearing, the owner of the premises, and any other person or persons having an interest therein, may appear and offer evidence concerning whether the dwelling or other building is unsafe, unsanitary, dangerous or detrimental to the public welfare, and if so, whether it should be repaired, altered, or improved, or vacated and closed or removed and demolished, or any combination thereof.

E. Orders – If, after notice and hearing, the Agency finds that the dwelling or building is unsafe, unsanitary, dangerous or detrimental to the public welfare, it shall order the repair, alteration or improvement, or the vacating or closing or the removal or demolition, or any combination thereof, of such dwelling or building, and shall fix the time within which the owner of such dwelling or building shall comply with that order.

F. Repair, etc., by the Agency – In the event that the owner of such dwelling or building fails to comply with the order of the Agency, the Agency may procure such repairs, alterations or improvements, or such vacating and closing or removal or demolition, or any combination thereof, specified in its order, and the costs

of any such action, after the sale of any and all salvaged material is credited to the account, shall be a lien against the real property upon which such costs were incurred.

G. Injunction – Any person affected by an order of the Agency shall have the right to apply to the Circuit Court of Brooke County, West Virginia, for a temporary injunction restraining the Agency pending final disposition of the cause. In the event such application is made, a hearing thereon shall be had within 20 days, or as soon thereafter as possible, and the Court shall enter such final order or decree as the law and justice may require. Costs shall be imposed in such manner as in the discretion of the Court shall seem meet and proper.

SECTION II. VIOLATION

Any person who willfully violates any provision of this Code, or who knowingly fails to comply with an order of the Agency, within the time required by such order, shall be fined an amount not to exceed One Hundred Dollars (\$100.00).

SECTION III. SEVERABILITY

If any provision of this Code is declared invalid, such invalidity shall not affect the remaining portion of the Code, which shall continue in full force and effect, and to this end, the provisions of this Code are hereby declared to be severable.

SECTION IV. EFFECTIVE DATE

This ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 12/13/83

Second Reading (adopted): 1/14/84

## **Ordinance No. 3**

### **An ordinance regulating to the parking of mobile vehicles in the Town of Bethany**

WHEREAS, the Town of Bethany desires to maintain the serenity, beauty and character of a residential environment;

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Bethany, West Virginia:

Section 1. It shall be unlawful for any person to park within the city limits of Bethany any vehicle the primary purpose of which is habitation, and which is popularly referred to by such names as trailers, or mobile homes.

Section 2. This ordinance is not to be construed as making unlawful the parking of camping trailers whose primary purpose is for recreational use.

Section 3. Any person violating Section I of this ordinance shall be fined at least \$100 and not more than \$500 for the first offense, and \$1,000 for all subsequent offenses.

/s/ Roger N. Pauls

MAYOR

First Reading: 12/ 9/69

Second Reading (adopted): 1/13/70

## **Ordinance No. 6**

### **Ordinance providing for the removal of weeds, grass, deleterious and unhealthful growths and other noxious matter on private property**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY this 13th day of January, 1970 as follows:

(1) Weeds: No owner of any lot, place or area within the Town, or the agent of such owner, shall permit on such lot, place or area, or upon any sidewalk abutting the same, any weeds, grass, or deleterious, unhealthful growths, or other noxious matter, that may be growing, lying or located thereon.

(a) Notice to Destroy: The Mayor is hereby authorized and empowered to notify, in writing the Town or the agent of such owner, to cut, destroy, and/or remove such weeds, grass, or deleterious, unhealthful growths, or other noxious matter found growing, lying or located on such owner's property, or upon the sidewalk abutting same. Such notice shall be by Registered Mail, addressed to said owner, at his last known address.

(b) Action Upon Non-compliance: Upon the failure, neglect, or refusal of any owner or agent so notified, to cut, destroy, and/or remove weeds, grass, or deleterious, unhealthful growths, or other noxious matter, growing, lying, or located upon such owner's property, or upon the side-walk abutting same, within 15 days after receipt of the written notice provided for in sub-section (a) above, or within 15 days after the date of such notice, in the event the same is returned to the Post Office Department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner, or agent, the Mayor is hereby authorized and empowered to pay for the cutting, destroying and/or removal of such weeds, grass, or deleterious, unhealthful growths or other noxious matter or to order the removal by the Town.

(c) Charge Included in Tax Bill: When the Town has effected the removal of such obnoxious growth or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of six per cent per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular sewage bill forwarded to such owner by the Town, and said charge shall be due and payable by said owner at the time of payment of such sewage bill.

(d) Where the full amount due the Town is not paid by the owner within 30 days after the billing for cutting, destroying, and/or removal of such weeds, grass, or deleterious or unhealthful growths or other noxious matter as set forth hereinbefore, then the Mayor shall cause suit to be instituted on behalf of the Town of

Bethany against such owner for the full cost, principal, and interest, plus court costs if any. In the alternative, said Mayor may cause to be filed in the County Court of Brooke County a sworn statement of the cost and expense incurred for the work, the date, place, and property on which the work was accomplished, and the recordation of such statement shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection until final payment has been made. Such sworn statement shall be prima facie evidence that all formalities have been complied with, and that the work has been done properly and satisfactorily, and shall constitute full notice to the persons interested of the charge against the property.

(e) In the event that any portion of the foregoing ordinance shall be deemed invalid, the remaining portions of the ordinance shall remain in full force and effect.

/s/ Roger N. Pauls

MAYOR

First Reading: 12/ 9/64

Second Reading (adopted): 1/13/70

## **Ordinance No. 39**

### **An ordinance providing for the removal of hedges, bushes, trees, and other growth within the rights of way**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY on this 20th day of February, 1978, as follows:

(1) No owner or occupant of any lot, place, or area within the Town shall permit any hedge, bush, tree, or other growth, within the designated right of way area of any street or highway, to interfere with the proper movement or visibility of any pedestrian or vehicular traffic. All hedges, bushes, or other growth within the designated right of way area of any street or highway and located between the street or highway and the sidewalk, shall be trimmed so as to be no higher than two feet from ground level.

(a) Notice to Destroy: The Mayor is hereby authorized and empowered to notify in writing the owner or occupant, to cut, destroy, and/or remove such hedge, bush, tree, or other growth within the designated right of way area of any street or highway and located between the street or highway and the sidewalk. Such notice shall be by Registered Mail, addressed to said owner, at his last known address.

(b) Action Upon Non-Compliance: Upon the failure, neglect, or refusal of any owner or occupant so notified, to cut, destroy, and/or remove such hedge, bush, tree, or other growth within the designated right of way area of any street or highway and located between the street or highway and the sidewalk, within 15 days after receipt of the written notice provided for in sub-section (a) above, or within 15 days after the date of such notice, in the event the same is returned to the Post Office Department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or occupancy, the Mayor is hereby authorized and empowered to pay for the cutting, destroying and/or removal of such hedge, bush, tree, or other growth or to order the removal by the Town.

(c) Where the full amount due the Town is not paid by the owner within 30 days after the billing for cutting, destroying, and/or removal of such hedge, bush, tree, or other growth as set forth hereinbefore, then the Mayor shall cause suit to be instituted on behalf of the Town of Bethany against such owner for the full cost, principal, and interest, plus court costs if any. In the alternative, said Mayor may cause to be filed in the County Court of Brooke County a sworn statement of the cost and expense incurred for the work, the date, place, and property on which the work was accomplished, and the recordation of such statement shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection until final payment has been made. Such sworn statement shall be prima facie

evidence that all formalities have been complied with, and that the work has been done properly and satisfactorily, and shall constitute full notice to the persons interested of the charge against the property.

(d) In the event that any portion of the foregoing ordinance shall be deemed invalid, the remaining portions of the ordinance shall remain in full force and effect.

/s/ Joseph M. Kurey

MAYOR

First Reading: 1/16/78

Second Reading (adopted): 2/20/78



## **Ordinance No. 124**

SUPERSEDES ORDINANCE NOS. 10A AND 26 <sup>1</sup>

**An ordinance of the Town of Bethany, West Virginia, regulating the repair, maintenance and use of sidewalks, curbs and driveway crossings and superseding Ordinances 10A and 26, which are repealed**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Findings. The Council finds that under the Municipal Code of West Virginia, Section 8-1-1, et seq. of the West Virginia Code, and related provisions of law, the municipality has full power and authority to regulate the construction, repair and maintenance of sidewalks for the use of the public; to have sidewalks kept free from obstructions; to order that they be paved, repaved, curbed, recurbed and kept in good order by the owners or occupants of the adjacent properties; to act to prevent or minimize injury or annoyance to the public from things that are dangerous; to provide for the abatement of hazards to public safety; and to provide recourse for violations.

Section 2. Meanings of Terms. (a) The term “owner” includes any person who has an interest in real property as determined from the indices and related records maintained in the office of the Clerk of the County Commission of Brooke County, West Virginia.

(b) The term “occupant” includes any person who alone or with others is in actual possession of real property or who has responsibility for and control over the condition of the property or the activities conducted on that property and who is allowed to enter the property.

(c) The term “person” includes individuals, corporations, partnerships, firms, trusts, other organizations and their successors and can also include the heirs, executors, administrators or other legal representatives of a person.

(d) The term “sidewalk” can include that part of a street or highway especially adapted for or ordinarily used by pedestrians, and depending on the circumstances, may include that part of a street or highway between a curb (if any) and an adjacent property line, whether or not such part be partially or fully paved or improved.

Section 3. Duty to Repair and Maintain Sidewalks, Curbs and Driveway Crossings. It shall be the duty of the abutting property owner or occupant of any house or other real property in the Town of Bethany, for the use of the public, to repair and maintain sidewalks and curbs, including any driveway crossings, adjoining his or her property; to keep sidewalks free from obstructions, including any glass, debris, litter or other matter likely to cause injury; and generally, to keep such sidewalks clean and in good order.

Section 4. Failure to Repair or Maintain. If any abutting property owner or occupant shall fail to repair or maintain any sidewalks, curbs or driveway crossings adjoining his or her property, the Town shall cause written notice to be given such owner or occupant requiring such person to repair or maintain such sidewalk, curb or driveway crossing in accordance with the provisions of this ordinance. If such owner or occupant shall fail or refuse to repair or maintain such sidewalk, curb or driveway crossing within thirty days of the giving of such notice, the Town may cause such repair or maintenance of the sidewalk, curb or driveway crossing to be made, and the costs shall be a lien against the abutting property, as provided by law. Notice of such lien shall be recorded (as provided by law), and the claim may be enforced in a court of proper jurisdiction.

Section 5. Removal of Snow and Ice. In particular it shall be the duty of the abutting owner or occupant within a reasonable time after the falling of any snow or the formation of any ice to remove or cause the removal of such snow or ice from the sidewalks adjacent to such owner's or occupant's house or property.

Section 6. Specifications for Construction and Repair. All sidewalks, curbs and driveway crossings constructed or repaired within the Town of Bethany shall conform to such standard specifications as may be found in applicable building codes, but in the absence of standard specifications, then all such work shall conform to good building practices regularly employed in Brooke County, West Virginia. No such work shall be undertaken without the issuance of a building permit as otherwise required by applicable ordinances.

Section 7. Liability. In the event of any claim asserted against the Town of Bethany for personal injury or property damage relating to any sidewalk, curb or driveway crossing, the Town shall promptly give the abutting property owners and occupants written notice of such claim and shall demand that the Town be defended, indemnified and saved and held harmless against all consequences of such claim, including damages, court costs and legal fees and expenses. In the event that the abutting owners or occupants, or any of them, shall fail or refuse to comply with such demand, the Town may enforce its claims for indemnity or contribution in a court of proper jurisdiction.

Section 8. Penalty. Any person found to be in violation of any of the duties described in sections 3 and 5 above shall be fined in an amount not to exceed \$200.00.

Section 9. Prior Ordinances Superseded and Repealed. Ordinance No. 10A and 26 of the Town of Bethany, as previously adopted and/or amended, are declared to be superseded by this ordinance, and both such ordinances are accordingly repealed. Any other prior inconsistent legislation is also declared to be superseded by this ordinance and to the extent of such inconsistency is also repealed.

Section 10. Effective Date. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

MAYOR

First Reading: 12/14/2004

Second Reading (adopted): 1/11/ 2005

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<sup>1</sup> Supersedes Ordinance No. 10A, adopted (unknown) and Ordinance No. 26, adopted 10/8/74.

## **Ordinance No. 59**

### **An ordinance prohibiting the expansion of coin operated amusement machines in the Town of Bethany**

WHEREAS, the proliferation of coin operated amusement machines, including, but not limited to, coin operated video games and pinball machines, has reached a point where an increase in the number of those machines would become injurious and annoying to the public, and dangerous, offensive and unwholesome; and

WHEREAS, in the opinion of the majority of the Town Council the increase in the number of coin operated amusement machines would be a public nuisance.

THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. No person shall locate on any property in the Town of Bethany a number of coin operated amusement machines in excess of the number existing on that property as of the effective date of this ordinance.

Section 2. This ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 3/8/82

Second Reading (adopted): 5/20/82

**Ordinance No. 71**

REVOKING ORDINANCE NO. 56<sup>1</sup>

**An ordinance of the Town Council of the Town of Bethany requiring households in the Town of Bethany to contract for garbage service and revoking the garbage collection fee of the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. Each household in the Town of Bethany is hereby required to contract for weekly garbage collection service with a common carrier authorized by the Public Service Commission of West Virginia to provide solid waste removal services in the Town of Bethany.

Section 2. A representative of each household in the Town of Bethany shall inform the Recorder of the Town of Bethany as to which common carrier the household has selected. Should a household desire to change such service, a member thereof will inform the Recorder of that change. The Recorder will provide a form for the reporting of the selection of a common carrier.

Section 3. Ordinance No. 56, imposing a garbage collection fee, is hereby revoked.<sup>1</sup>

Section 4. The head of any household in violation of this Ordinance shall be fined an amount not to exceed \$100.

Section 5. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 9/9/86

Second Reading (adopted): 10/14/86

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<sup>1</sup> Ordinance No. 56, adopted 12/7/81.

## **Ordinance No. 83**

### **An ordinance of the Town of Bethany, Brooke County, West Virginia, regulating commercial signs**

WHEREAS, in the opinion of the majority of the Town Council regulating commercial signs would preserve the beauty of the town and restrict unsightly signs.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. Commercial signs shall be designated as all signs other than street signs, historical markings, service organization emblems, signs indicating the town name and signs placed by the College of Bethany identifying buildings and directions.

Section 2. All commercial signs shall be of wood construction, framed by either wood or brick/stone.

Section 3. All commercial signs must be limited to 20 square feet, not including a frame extending no more than six inches around the sign. Maximum height for all signs supported on the ground shall be ten feet, including the frame. There shall be no limit to the height of signs attached to buildings. However, the sign cannot extend above the lower roof line, nor protrude more than two feet from the edge of the building.

Section 4. All lighted signs must be illuminated by an external spotlight located on the ground and aimed on the sign or a light extending no more than two feet out from the top or bottom of the sign. No neon or internally lighted signs are permitted.

Section 5. All commercial signs must be located at least ten feet from the curb of any road or street and may not block or hinder a pedestrian walkway.

Section 6. All wording, pictures and symbols on signs must be socially acceptable, as determined by Town Council.

Section 7. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 5/30/90

Second Reading (adopted): 6/12/90

## **Ordinance No. 91**

### **An ordinance of the Town of Bethany regulating the discharge of rain water into the sanitary sewer system**

WHEREAS, the State of West Virginia has imposed strict requirements on the capacity and monitoring of sanitary sewer systems in the State of West Virginia;

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE COUNCIL OF THIS TOWN:

Effective sixty (60) days from the passage of this Ordinance, no rain water collected from improvements on real property, including, but not limited to, homes, garages, apartments, or commercial buildings, shall be discharged or allowed to drain into the sanitary sewer system of the Town of Bethany.

Violation of this Ordinance will result in the imposition of a fine of \$5.00 per day for each day of violation or noncompliance.

/s/ John O. Cole

MAYOR

First Reading: 10/11/94

Second Reading (adopted): 11/15/94

## **Ordinance No. 122**

### **An ordinance of the Town of Bethany, West Virginia, regulating the use of sewers**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

#### ARTICLE I. LEGISLATIVE PURPOSE

The provisions of this ordinance are intended to implement and shall be applied, interpreted and construed consistently with the provisions of §§ 16-13-1 *et seq.* of the West Virginia Code, Sewage Works and Stormwater Works; 150 CSR 5, Rules for the Government of Sewer Utilities, by the Public Service Commission; other provisions of law with respect to the use of sewers and the public health; and other ordinances of the Town of Bethany as respects such matters. In the event of any conflict between any law of this state (including rules duly adopted by the Public Service Commission and other offices or agencies of state government) and the provisions of this ordinance, the former shall control.

#### ARTICLE II. SHORT TITLE

This ordinance shall be known as the Sewer Use Ordinance.

#### ARTICLE III. DEFINITIONS

Section 1. Terms used in this ordinance (and related terms, as appropriate) shall have the following meanings:

"Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys such discharge to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

"Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal. The place of connection between the building sewer and the building drain is the house connection.



"Combined sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.

"Customer" means any individual, partnership, corporation, association or group who receives sewer service from the Town under either an express or implied contract requiring payment to the Town for such service.

"Easement" shall mean an acquired legal right for the specific use of land owned by others.

"Floatable oil" is oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

"Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

"Health Department" shall mean the Brooke County Health Department, having offices in Wellsburg, West Virginia.

"Industrial wastes" shall mean the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.

"Natural outlet" shall mean any outlet, including storm sewers and combined sewer overflows, into a water course, pond, ditch, lake or other body of surface or groundwater.

"Person" shall mean any individual, firm, company, association, society, corporation or group.

"pH" shall mean the logarithm of the reciprocal of the hydrogen ion concentration. The hydrogen ions concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7.

"Properly shredded garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than ½ inch (1.27 centimeters) in any dimension.

"Public sewer" shall mean a common sanitary sewer or storm sewer controlled by a governmental agency or public utility.

"Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

"Sewage" is the spent water of a community. Sewage is synonymous with "wastewater" (below).

"Sewer" shall mean a pipe or conduit that carries wastewater, stormwater or other drainage water.

"Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

"Storm sewer" (or "storm drain") shall mean a sewer or drain for conveying stormwater, groundwater, subsurface water or unpolluted water from any source.

"Superintendent" shall mean the superintendent of wastewater facilities, wastewater treatment works and water pollution control for the Town or his authorized representative.

"Suspended solids" shall mean total suspended matter (referred to as non-filterable residue) that either floats on the surface of or is in suspension in water, wastewater or other liquids and that is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation (WEF).

"Town" shall mean the Town of Bethany, a municipal corporation having the powers of such under West Virginia law, or, where appropriate, and so long as the Municipal Sanitary Board, previously established, shall have responsibility for the construction, acquisition, improvement, equipment, custody, operation and maintenance of the municipality's works for the collection, treatment and disposal of sewage; the collection and control of stormwater; and the collection of revenues from such works, such term shall mean the Municipal Sanitary Board.

"Unpolluted water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefitted by discharge to the sanitary sewers and wastewater treatment facilities provided.

"Wastewater" shall mean the spent water of a community. The source of wastewater may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants (if any) and institutions, together with any groundwater, surface water and stormwater that may be present.

"Wastewater facilities" shall mean the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

"Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Synonymous terms include "waste treatment plant", "wastewater treatment plant" or "water pollution control plant".

"Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

Section 2. Terms not otherwise defined shall have the meanings attributed to them in the latest edition of *Standard Methods for the Examination of Water and Wastewater*.

#### ARTICLE IV. USE OF PUBLIC SEWERS REQUIRED

Section 1. No person shall place, deposit or permit to be deposited in any unsanitary manner on public or private property within the Town, or in any area under the jurisdiction of the Town, any human excrement, garbage or other objectionable waste.

Section 2. No person shall discharge to any natural outlet within the Town or in any area under the jurisdiction of the Town, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this ordinance or other applicable lawful standards.

Section 3. Except as expressly permitted by this ordinance or other applicable lawful standards, no persons shall construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

Section 4. The owners of all houses, buildings and other properties used for human occupancy, employment, recreation and other purposes, situated within the Town and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer, are hereby required, at each such owner's expense, to install suitable toilet facilities in such houses, building and other properties and to connect such facilities directly with the proper public sanitary sewer in accordance with the provisions of this ordinance and other applicable lawful standards, within 30 days after date of official notice to do so, provided, that such public sewer is within 250 feet of the premises.

Section 5. Each day's failure to comply with such notice and to connect with such sewer by such owner or owners shall be a misdemeanor and a separate and new offense under this article, and each such offense shall be punishable by a fine of not less than \$5 nor more than \$25. Jurisdiction to hear, try, determine and sentence for any violation of this article is vested in the municipal court when the lot or parcel of land is within the Town, or if the lot or parcel is located outside the municipality, then jurisdiction shall be in the Circuit Court of Brooke County, as provided by law.

#### ARTICLE V. PRIVATE WASTEWATER DISPOSAL

Section 1. Where a public sanitary sewer is not available as provided in Article IV above, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this article.

Section 2. Before commencement of construction of a private wastewater disposal system the owner or owners of the property shall first obtain a written permit. The application for such permit shall be made on a form furnished by the Health Department which the applicant shall supplement by any plans, specifications and other information deemed necessary by the Health Department.

Section 3. A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Health Department. The Health Department shall be allowed to inspect the work at any state of construction, and in any event, the applicant for the permit shall notify the

Health Department when the work is ready for final inspection and before any underground portions are covered.

Section 4. The type, capacities, location and layout of a private wastewater disposal system shall comply with all standards and instructions of the Health Department.

Section 5. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Article IV above, a direct connection shall be made to the public sewer within 30 days, in compliance with this ordinance and other applicable lawful standards, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

Section 6. The owner or owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town.

Section 7. No provision contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Health Department.

#### ARTICLE VI. BUILDING SEWERS AND CONNECTIONS

Section 1. No unauthorized person or persons shall uncover, make any connections with or openings into, use, alter or disturb any public sewer or appurtenances without first obtaining a written permit from the Town.

Section 2. There shall be two classes of building sewer permits, one for residential and commercial service and the other for service to establishments producing industrial wastes (if any). In either case the owner or owners, or the representative of such owner or owners, shall make application on a form furnished by the Town. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Town or the superintendent. The appropriate tap fee as recognized by the West Virginia Public Service Commission in the current tariff shall be paid to the Town at the time the application is filed.

Section 3. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the property owner or owners. Such owner or owners shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

Section 4. A separate building sewer shall be provided for every building. If, however, one building stands at the rear of another or on an interior lot and no private sewer is available or can be constructed to such building through an adjoining alley, court, yard or driveway, the front building sewer may be extended to the other building, and the whole sewer shall be considered as one building sewer. The Town shall have no obligation or responsibility for damage caused by or resulting from any such single connection.

Section 5. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this ordinance and other applicable lawful standards.

Section 6. The size, slope, alignment and materials of construction of a building sewer and the methods used in excavating, placing of the pipe, jointing, testing and back-filling the trench shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the Town. In the absence of code provisions the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and WEF *Manual of Practice No. 9* shall apply.

Section 7. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

Section 8. No person shall make or continue any connection of roof down spouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which is connected directly or indirectly to a public sanitary sewer. With respect to any such connections previously made, the superintendent shall have full authority to cause or compel disconnections, as appropriate, by any lawful means, including but not limited to a proceeding in Circuit Court for injunctive relief and/or money damages, with attorneys' fees and other costs to be borne by the owner or owners of the property, to the extent permitted by law.

Section 9. The connection of the building sewer into the public sanitary sewer shall conform to the requirements of the building and plumbing codes and other applicable rules and regulations of the Town and if not in conflict, with the procedures set forth in appropriate specifications of ASTM and the *Manual of Practice No. 9*. All such connections shall be gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the superintendent before installation.

Section 10. The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent.

Section 11. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. The owner or owners of the property shall bear full responsibility for determining the existence and location of all underground utilities and other subterranean conditions. Roadways, berms, sidewalks and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town.

## ARTICLE VII. USE OF THE PUBLIC SEWERS

Section 1. No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, groundwater, roof runoff, subsurface drainage or cooling water to any sanitary sewer, except that stormwater runoff from limited areas (even if such water be polluted at times) may be discharged to the sanitary sewer with the express written permission of the Town.

Section 2. Stormwater (other than that properly excepted under Section 1 above), and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Town or other regulatory agencies. Unpolluted industrial cooling water or process waters (if any) may be discharged on approval of appropriate state authorities, to a storm sewer or natural outlet.

Section 3. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(i) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.

(ii) Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process, or to constitute a hazard to humans or animals, or to create a public nuisance, or to create any hazard in the receiving waters of the wastewater treatment plant.

(iii) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater works.

(iv) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings and entrails and paper dishes, cups, milk containers, and the like, either whole or ground by garbage grinders.

Section 4. The following described substances, materials, waters or waste shall be limited in discharges to public systems to concentrations or quantities which will not harm either the sewers, wastewater treatment process or equipment; will not have an adverse effect on the receiving stream; will not otherwise endanger lives, limb or property; or may constitute a nuisance.

(i) Wastewater having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).

(ii) Wastewater containing more than 25 milligrams per liter of petroleum oil, non-biodegradable cutting oils, or product of mineral oil origin.

(iii) Wastewater from industrial plants containing floatable oils, fat or grease.

(iv) Any garbage that has not been properly shredded as described in Article III above. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers.

(v) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the Town or other applicable lawful standards for such materials.

(vi) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Town or other applicable lawful standards.

(vii) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Town or other applicable lawful standards adopted in compliance with applicable state or federal regulations.

(viii) Quantities of flow, concentrations, or both which constitute a slug (as defined in Article III above).

(ix) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(x) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release obnoxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

Section 5. The Town by express regulation may set limitations different from those described in Section 4 above if in its opinion such altered limitations are necessary to meet the objectives described in Section 4. Such altered limitations, however, shall comply with other applicable lawful standards. In forming its opinion, the Town will consider such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other pertinent factors.

Section 6. If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4 of this Article, and which in the judgment of the Town, may have a deleterious effect upon the wastewater facilities, processes,



equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Town may:

- (i) Reject the wastes;
- (ii) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (iii) Require control over the quantities and rates of discharge; and/or
- (iv) Require payment to cover added cost of handling and treating the wastes not covered by existing fees or sewer charges.

When considering the above alternatives, the Town shall give consideration to the economic impact of each alternative on the discharger. If the Town permits the pretreatment or equalization of waste flows, the design, and installation of the plants and equipment shall be subject to the review and approval of the Town.

Section 7. Grease, oil and sand interceptors shall be required when, in the opinion of the Town they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Town and shall be located as to be readily and easily accessible for cleaning and inspection. In maintaining these interceptors, the owner or owners shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal, which such record shall be subject to review by the Town. Any removal and hauling of the collected materials not performed by the owner or owners must be performed by currently licensed waste disposal firms.

Section 8. Where pretreatment or flow equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner or owners, at such owner's expense.

Section 9. When required by the Town, the owner or owners of any property served by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structure, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Town. The structure shall be installed by the owner or owners, at such owner's expense, and shall be maintained by the owner or owners so as to be safe and accessible at all times.

Section 10. The Town may require a user of sewer services to provide information needed to determine compliance with this ordinance and other applicable lawful standards. Such information may include:

- (i) Wastewater's discharge peak rate and volume over a specified time period.
- (ii) Chemical analysis of wastewaters.

(iii) Information on raw materials, processes and products affecting wastewater volumes and quality.

(iv) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control.

(v) A plot plan of sewers of the user's property showing sewer and pretreatment location.

(vi) Details of wastewater pretreatment facilities.

(vii) Details of systems to prevent and control the losses of materials through spills to the public sewer.

Section 11. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*. Sampling methods, locations, times, durations and frequencies of measurements, tests and analyses are subject to approval by the Town.

Section 12. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment.

#### ARTICLE VIII. DISORDERLY CONDUCT

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be guilty of disorderly conduct.

#### ARTICLE IX. POWERS AND AUTHORITY OF INSPECTORS

Section 1. The superintendent and any other representatives of the Town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this ordinance.

Section 2. The superintendent or other duly authorized representative of the Town is authorized to obtain information concerning industrial processes (if any) which have a direct bearing on the kind and source of discharge to the wastewater collection system. The user may withhold information considered confidential, but

the user must establish that revealing such information to the public might result in an advantage to the user's competitors.

Section 3. The superintendent and other duly authorized representatives of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within such easement. All entry and subsequent work, if any, on such easement, shall be done in accordance with the terms of the easement.

#### ARTICLE X. VIOLATIONS

Section 1. Any person found to be violating any provision of this ordinance (except Article VIII above) shall be served with a written notice stating the nature of the violation and providing a reasonable time for the satisfactory correction of such matter, and the offender shall, within such period, permanently cease all violations.

Section 2. Any person violating any of the provisions of this ordinance shall be liable to the Town for any expense, loss or damage, including attorneys' fees and costs, by reason of such violation.

#### ARTICLE XI. DUTY TO PAY FOR SERVICE

Section 1. Customers shall have a duty to pay the rates, fees and charges established by ordinance for the use and service of the public sewers, wastewater facilities and wastewater treatment works. The Town or the superintendent, as appropriate, may notify the Ohio County Public Service District, as the provider of the municipality's water service, of any users who are delinquent in the payment of sewer service rates and charges, and as provided by law and any contract with such district may require the district to discontinue water service to any of such users. Any disconnection of service must comply with the rules, regulations and orders of the Public Service Commission.

Section 2. Whenever any rates and charges for such services or facilities remain unpaid for a period of 30 days after such rates and charges have become due and payable, the user shall be delinquent and shall be held liable at law until such time as all such rates and charges are fully paid.

Section 3. All rates and charges whenever delinquent shall, when notice of delinquency is recorded in the Office of the Clerk of the County Commission of Brooke County, West Virginia, be liens upon the real property served for the amounts of such rates and charges. Such liens shall as provided by law, be of equal

dignity, rank and priority with the liens on such premises for state, county, school and municipal taxes, and the Town or superintendent, as appropriate, shall have plenary power and authority from time to time to enforce such liens in civil actions to recover the money due for such services rendered, plus court fees, costs and reasonable attorneys' fees, provided, that an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attached to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the Town to purchase such services or facilities.

Section 4. As provided by law, the Town shall have a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the Town shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

Section 5. The Town may not foreclose upon the premises served for delinquent rates and charges for which a lien is authorized except through the bringing and maintenance of a civil action for such purpose in the Circuit Court. The court in any such action, as provided by law, shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. Foreclosure proceedings shall not be instituted by the Town unless such delinquency has been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being instituted.

#### ARTICLE XII. INVALIDITY

In the event that any provision of this ordinance be determined to be invalid, such invalidity shall not affect other provisions of this ordinance which can be given effect without such invalid provision.

#### ARTICLE XIII. ORDINANCE EFFECTIVE

This ordinance shall be effective upon its adoption. All prior ordinances in conflict with this ordinance are hereby repealed, to the extent of such conflicts.

/s/ Helen Moren

Acting Mayor

First Reading: July 13, 2004

Second Reading (adopted): August 10, 2004

## **Ordinance No. 130**

### **An ordinance of the Town of Bethany, West Virginia, vacating the southerly extension of Fair Street and authorizing the issuance of one or more quitclaim deeds, as appropriate**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. Southerly Extension of Fair Street Vacated. The southerly extension of Fair Street in the Town of Bethany, being an alley 10 feet in width, extending 262.19 feet in a southerly direction from Roosevelt Street and lying east of a 0.521 acre parcel of land now said to be owned by Theodore N. Pauls and Rebecca K. Pauls, as shown on the portion of a map attached to this ordinance, is hereby vacated as a municipal way. Such vacating, however, shall be subject to the rights and interests of all other persons, including but not limited to holders of utility easements, if any, and to all exceptions, reservations, restrictions, conditions, mining rights, rights-of-way, other easements and other interests of other parties, whether or not appearing in prior deeds and plats of record.

Section 2. Quitclaim Deeds Authorized. The party or parties benefitting from the vacating of the public way may submit one or more quitclaim deeds in proper and recordable form, as the town solicitor shall approve, by which the beneficiaries' rights and interests may be recognized in the public deed records in the office of the Clerk of the County Commission of Brooke County, West Virginia, and upon such submission and payment of related costs, the mayor and the town recorder, on behalf of the municipality, shall have full authority to execute and deliver such deed or deeds for recordation. Any such deed shall recite that the described property is subject to the rights and interests for others, as provided in Section 1 above.

Section 3. Authority. Council finds that the vacating of public ways is authorized by Section 8-12-5 of the West Virginia Code. Council further finds that the property vacated by this ordinance serves no public purpose, but rather represents a potential source of liability or expense for the municipality, and accordingly, ought to be vacated.

Section 4. Effective Date. This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: October 4, 2006

Second Reading (adopted): November 1, 2006

## **Ordinance No. 140**

### **Ordinance of the Town of Bethany, West Virginia, regulating livestock and large animals upon public streets and other public areas**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. Purpose. In efforts of promoting and preserving the public health, safety, and welfare, the Town Council of the Town of Bethany believe that livestock and other large animals such as horses, cattle, sheep, goats, oxen, mules and other similar and/or related animals shall not be permitted in and upon public property an streets unless certain conditions be met.

Section 2. Regulation of Livestock and Other Large Animals. Livestock and other large animals such as horses, cattle, sheep, goats, oxen, mules and other similar and/or related animals shall not be permitted upon the streets, alleys, sidewalks, public parks, and playgrounds, within the Town of Bethany unless both of the following conditions are met;

- (a) Such animals are fitted with a device which intercepts, collects, and stores the feces from such animal and prevents such feces from being deposited upon the ground, street, or other protected areas.
- (b) Such animals are part of an approved public even, including, but not limited to a parade, fair, circus, festival, or other similar public activity, or, such animals are a part of and used in conjunction with a valid business which is permitted by the Town of Bethany.

Section 3. Penalties. Any violation of this ordinance shall be a misdemeanor and shall result in the imposition of a fine of not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00) for each offense.

Section 4. Effective Date. This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: March 4, 2009

Second Reading (adopted): April 1, 2009

## **Ordinance No. 143**

### **Ordinance amending Ordinance No. 6 providing for the removal of nuisance weeds, grass, deleterious and unhealthful growths and other noxious matter on private property**

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST: Ordinance No. 6, adopted January 13, 1970

Ordinance No. 6, is amended as follows:

Section 1. Purpose. Well kept land and landscapes with the Town of Bethany add diversity and richness in the quality of life. There are reasonable expectations regarding the Town of Bethany's appearance which, if not met, may tend to decrease the value of properties with the in the Town of Bethany, degrade the natural environment, and/or become detrimental to the public's health, safety, and welfare. It is in the public interest and with the scope of this ordinance to provide standards for the maintenance of all land within the Town of Bethany.

The Town of Bethany encourages each land owner to create and sustain conditions of ecological stability on his or her land so as to accomplish a state of good health, cleanliness, and vigor and to deter a state of neglect which may lead to decline. It is not the intent of this ordinance to pose a threat to agricultural activity and nothing in this ordinance shall be construed to accomplish that end.

Section 2. Definition of Nuisance Weeds. Any vegetation consisting of weeds and/or grasses over twelve inches (12") in higher located within the Town of Bethany, excluding specifically, corn, ornamental grasses, landscaping shrubs, trees, and other ornamental plants.

Section 3. Nuisance Weeds, and Other Noxious Growths. No owner of any land within the Town of Bethany, or such owner's agent, or occupant, shall permit on such land, or any sidewalk adjacent thereto, any nuisance weeds, deleterious, unhealthy growth, or other noxious growth to grown or remain.

Section 4. Notice to Remove Nuisance Weeds, Deleterious, Unhealthy, or Other Noxious Growth at Owner's Expense; Lien. The Town of Bethany administration and/or law enforcement are authorized and empowered to give written notice to land owners, land owners' agents, and/or occupants, to cut and remove any such nuisance weeds, deleterious, unhealthy growth, or other noxious growth being on or growing on such land or upon a sidewalk adjacent to such land.

Such notice may be personally served upon the owner, his or her agent, or the occupant of the land, and/or may be mailed by registered mail to such owner, agent, or occupant at their last known address.

After being provided with proper notice, if the person or persons provided with notice pursuant to the proceeding paragraph of this section shall neglect, refuse, or otherwise fail to remove such nuisance weeds, deleterious or unhealthy growth, or other noxious growth upon such land within seven (7) days after receipt of

the written notice, the Town of Bethany shall have the option to cause a citation and/or summons to be issued against the owner and/or occupier of such land within the Town of Bethany, and/or order the removal of such growth at the expense of the owner of such land.

- (a) Interest shall accrue at a rate of six percent (6%) per year for any unpaid balance for any charges incurred by the Town of Bethany incident to enforcing this ordinance and shall be levied against the owner of such land which was in violation.
- (b) Lien for charges: If the total amount due the Town of Bethany is not paid by the owner, agent, or occupant of the land within sixty (60) days after such enforcement of this ordinance was accomplished by the Town of Bethany, the Recorder shall be duly authorized to record in the Office of the Clerk of the Brooke County Commission, a sworn statement indicating the expenses incurred incident to the work necessary to accomplish enforcement of this ordinance along with the date, place, and approximate time in which the work was accomplished. Recordation of such sworn statement shall constitute a lien upon the property in favor of the Town of Bethany and the enforcement of such lien may be pursued pursuant to West Virginia law.

Section 5. Penalty. Whoever violates any provision of this ordinance shall be fined not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00).

SECOND: This ordinance shall be effective upon its adoption.

Jay A. Eisenhower, MAYOR

First Reading: June 3, 2009

Second Reading (adopted): July 1, 2009



## **Ordinance No. 152**

### **Land use ordinance for locating video lottery establishments 2014**

#### Section 1 – General.

Section 1.1 Title. The ordinance shall be known as the “Land Use Ordinance for Locating Video Lottery Establishments 2014.”

Section 1.2 Findings. In considering the enactment of the Ordinance, the Town of Bethany makes the following findings of fact:

WHEREAS, the Town has a substantial government interest in protecting the public health, safety, and welfare of its citizens; and

WHEREAS, Video Lottery Establishments, by their very nature, have objectionable operational characteristics, particularly when they are located proximately to each other, thereby contributing to blight and the degradation of the quality of life in adjacent areas; and

WHEREAS, the regulation of the location of Video Lottery Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable number of transients; to deflate real property values; to blight residential and commercial areas; and to impeded the development of businesses and residences; and

WHEREAS, the Cities of Parkersburg, Vienna, and Williamstown, Wood County, West Virginia, have recently enacted or are considering the enactment of an ordinance that would regular the location of Video Lottery Establishments within those jurisdictions; and

WHEREAS, the Town of Bethany benefits from enacting an ordinance complementary with that of the Cities of Parkersburg, Vienna, and Williamstown.

#### Purpose:

It is the purpose of the Ordinance to regulate the location of Video Lottery Establishments within Territorial Limits to curtail the secondary effects thereof in accordance with community standards and to implement a permanent land use ordinance with respect to the location of Video Lottery Establishment upon due notice to the citizens pursuant to W.Va. §8-24-40 through 47.

It is not the purpose of the Ordinance to permanently bar any Video Lottery Establishment that is an Existing Use within the Territorial Limits, or to regulate the number of Video Lottery Establishments within the Territorial Limits.

#### Section 2 – Authority.

Section 2.1 Grant of Power. The authority to enact the Ordinance is established under W.Va Code §8-24-1 et seq., and the laws of the State of West Virginia.

Section 2.2 Territorial Limits. The Ordinance shall apply to and be effective within the Territorial Limits.

Section 3 – Definitions. For purposes of the Ordinance, the following words or terms shall have the meanings designated to them thereafter except when the context suggests other:

Section 3.1 “Abandonment” or “Abandoned” shall mean that the use with respect to a Premises, regardless of the intent of the user, has ceased or has discontinued for a period of more than sixty (60) consecutive days, or an explicit declaration by the user of a Premises that is has ceased a use with respect to the Premises that is nonconforming with the Ordinance.

Section 3.2 “Applicant” shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Town in an attempt to obtain or re-obtain a Certificate of Compliance with respect to the Premises.

Section 3.3. “Application” shall mean the form or forms provided by the Town and completed by an Applicant, together with all required documents and items that are required, by which the Applicant seeks to obtain a Certificate of Compliance.

Section 3.4 “Certificate of Compliance” shall mean a written document or renewals or amendments thereto based on an Application issued to an Applicant with respect to a Premises by the Town that evidences that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 3.5 “Town” means the Town of Bethany, West Virginia.

Section 3.6 “Effective Date” means the date on which the Ordinance becomes effective.

Section 3.7 “Existing Use” means the use or uses as a Video Lottery Establishment to which a parcel or parcels or land (or part thereof) within the Territorial Limits, or part of all of any Improvement thereon, that are lawfully pursued by a Video Lottery Permittee under local, State and Federal law and that exist before the Effective Date, or, if not lawfully pursued under local State and Federal law before the Effective Dave, the use or uses as a Video Lottery Establish to which a parcel or parcels of land (or part thereof) within the Territorial Limits, or part of all of any Improvement thereon before the Effective Date if such use or uses as a Video Lottery Establishment have been authorized for a Video Lottery Permittee for a particular Improvement within the Territorial Limits by the State Lottery Commission under W.Va. Code § 29-22B-101 before the Effective Date.

Section 3.8 “Improvement” means any structure or building with the designated use being a Video Lottery Establishment, whether or not existing, on the Effective Date located or, if there is a vested right to erect such structure or building with the designated use being a Video Lotter Establishment, to be located within the Territorial Limits.

Section 3.9 “Person” means any natural person or any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

Section 3.10 “Responsible Person” shall mean the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Section 3.11 “Territorial Limits” shall mean those portions of land or area within the boundaries of the Town that are not situated within the limits of municipal corporations within Brooke County.

Section 3.12 “Video Lottery” means an electronically simulated game of chance that is approved, owned and controlled by the State Lottery Commission under W.Va. Code § 29-22B-101 et seq., and which is further defined under W.Va. Code § 29-22B-332.

Section 3.13 “Video Lottery Establishment” means any Improvement existing or to be constructed together with the lot, tract or parcel on which it is situate within the Territorial Limits that contains or is intended by a Video Lottery Permittee to contain one or more Video Lottery Terminals for public or private use.

Section 3.14 “Video Lottery Permittee” means any licensed person, including an operator or a video lottery retailer, that has a permit to own, lease or operate for profit of otherwise Video Lottery Terminals issued under W. Va. Code § 29-22B-1101 through 29-22B-1113.

Section 3.15 “Video Lottery Terminal” means a State Lottery Commission-approved machine or device that is compatible with the State Lottery Commission’s central computer system and that is used for the purpose of playing video lottery games authorized by the State Lottery Commissions by no more than one player at a time.

Section 3.16 “School” means a building or group of buildings housing an educational institution, including a college or university, in which regular instruction (i.e. weekly during which the school-year is in session) is given to students for academic credit. Support buildings such as college housing units located off-campus and physical plant related building are excluded from this definition of school.

#### Section 4 – Land Use Provisions.

On and after the Effective Date, it shall be unlawful for any person to locate or establish a Video Lottery Establishment in or an any Improvement (or part thereof) within 300 horizontal feet, structure to structure by straight horizontal line measurement of the shortest distance between any portion of both buildings (i.e., the VLT) and of any church, school, playground, park, recreational area, motel, library, state highway interchange or corridor or any other state facility except if such person is a Video Lottery Permittee with a license or license to operate Video Lottery Terminal in or on a specific Improvement or Improvements within the Territorial Limits before the Effective Date. The method of measurement for playground, park, recreational area, shall be from the outmost bounds of said playground, park, and recreational area closest to the proposed Video Lottery Establishment closest to the closest point on the structures (or bounds in the case of a playground, park or recreational area) adjacent thereto.

In the case of a multiple-use structure, the distance shall be from the closest point on that portion of the multiple-use structure leased (or owned) for the purposes of doing business as a proposed Video Lottery Establishment to the closest point on the structures (or bounds in the case of a playground, park, or recreational area) adjacent thereto.

#### Section 5 – Administration and Enforcement.

Section 5.1 It shall be the duty of the Town Recorder, or his/her duly authorized agent, to administer and enforce the provisions of the Ordinance, except that any application for a Video Lottery Terminal Permit shall be

considered a “conditional use” and therefore, the Bethany Board of Zoning Appeals (BZA) shall review the application and make a determination to approve or deny the application subject to further review, if necessary, by the Bethany Town Council.

Section 5.2 Upon approval of a Video Lottery Establishment by the BZA it shall be the duty of the Town Recorder to:

- (a) Receive and further process the Applications; and
- (b) Issue a Certificate of Compliance upon an Application; and
- (c) Conduct, in consultation with BZA and if necessary with Town Council, investigations as necessary to determine compliance with or violation of the Ordinance;
- (d) Abate any violation of the Ordinance;
- (e) Seek the assistance of the office of the Chief of Police or the Office of the Prosecuting Attorney of the Town, as the case may be, to abate or prosecute any violation of the Ordinance;
- (f) Assist law enforcement officer to abate or prosecute any violation of the Ordinance; and
- (g) Provide information about the Ordinance upon request of citizens and Public agencies.
- (h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- (i) Administer the Ordinance in all respects, upon guidance from BZA and/or Town Council.

#### Section 6 – Application.

Section 6.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application to the Town Recorder, or his or her designated agent, in accordance with the Ordinance.

An application shall include, without limitation, a copy of the site plan of the Premises and the existing or proposed Improvement or Improvements, together with a letter describing the proposed Video Lottery Establishment.

The site plan shall be drawn to a scale of one-inch (1”) equals fifty feet or larger and shall include the following data:

- (a) Name and address of the individual who prepared the site plan; the date of preparation, north point, and scale; a metes and bounds description of the site; tax district, map and parcel number, and the names and addresses of the Applicants and the Responsible Person; and
- (b) Existing and proposed contours of the Premises; and
- (c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and location of all easements are right-of-ways with respect to the Premises; and
- (d) Number and type of proposed Improvement on the Premises along with gross floor area of each Improvement on the Premises; and
- (e) Location, shape, exterior dimensions, and number of stories of each Improvement on the Premises; and
- (f) Location, grade, and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads, and highways abutting the premises; and
- (g) Complete traffic circulation and parking plan; and
- (h) Signage plan; and
- (i) Sediment and Erosion Control Plan by the State of West Virginia, if required; and

- (j) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
- (k) Certification of distances from adjacent properties.

Section 6.2 The Town Recorder shall notify the Bethany Board of Zoning Appeals of the application and BZA shall review the application to make sure of its compliance with Section 6.1 Sections (a) thru (k) and any other applicable Town ordinance and the Town Recorder shall then accept no Application unless the Responsible Person shall attest that all of the statements contained in the Application and all documents attached thereto are true and accurate in all material respects.

Section 6.3 The fee for the Application shall be \$100.00.

### Section 7 – Procedures for Violations.

Section 7.1 Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complain stating fully the causes and basis therefore shall be filed with the Town Recorder. The Town Recorder, or his or her designated agent, shall record properly such complaint, and in coordination with BZA and/or Town Council shall conduct an appropriate investigation, and take action thereon as the Ordinance provides.

Section 7.2 if the Town Recorder/BZA/Town Council finds that any of the provisions of the Ordinance are violated, whether they are reported by citizens or by any commission, board, agency, officer or employee of the Town, or by his or her own observation, The Town Recorder on behalf of BZA and/or Town Council shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the Chief of Police of the Town.

(a) Any such notice of a violation of the Ordinance shall include the following:

- i. Street address of legal description of the property involved, including identification by the tax district and tax map and parcel numbers;
- ii. A statement of the nature of the violation;
- iii. A description of the action required to correct the violation;
- iv. A statement of the time within which compliance with the Ordinance must be accomplished; and
- v. A statement that upon failure to comply with the requirements of the notice, the Town Recorder/BZA and/or Town Council shall take such enforcement actions as the Ordinance authorizes.

(b) The individual responsible for the violation shall have thirty (30) days to appropriately rectify the violation and comply with all terms of the Ordinance. If said individual is in compliance with the Ordinance within the thirty day period, there shall be no penalty assess against that individual.

(c) If the Town Recorder/BZA and/or Town Council may order discontinuance of any use of a parcel or parcels of land of any Improvements that does not conform to the Ordinance by issuing a written order. The Town

Recorder/BZA, and/or Town Council may seek other remedies provided by law, including without limitation, injunction, abatement by judicial proceeding in the appropriate court of Brooke County.

(d) The Town of Bethany may impose a monetary fine not to exceed \$1,000.00 a day against any person or persons who violate the Ordinance or any order or decree issued thereunder.

(e) Nothing contained in the Ordinance shall be deemed to prevent the Town of Bethany from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 8 – Appeal.

Section 8.1 Any person who is aggrieved by any order, requirement, decision or determination made by any administrative officer of body charged with the enforcement of the Ordinance may appeal the same to the Town Recorder/BZA/Town Council within the time and manner prescribed by law and other similarly enacted Ordinances.

Section 9 – Abandonment of Non-conforming Use.

Notwithstanding anything in the Ordinance to the contrary, if an existing use that is nonconforming with the Ordinance has been abandoned, any future use of such land or Improvement shall conform with the Ordinance.

Section 10 – Severability.

If any clause, paragraph, subparagraph, section or subsection of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, and shall remain in full force and effect.

Jay Eisenhauer, MAYOR

First Reading: January 8, 2014

Section Reading (adopted): February 5, 2014

## **Part IV. Personal Conduct**

## **Ordinance No. 4**

### **An ordinance regulating loitering and annoying conduct in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

(1) It shall be unlawful for persons to assemble or loiter on the streets, sidewalks, street corners or alleys, or in any public place, automobile, motorcycle, or other motor conveyance in such a manner as to obstruct the streets, sidewalks or alleys, or to conduct themselves in a manner annoying to persons passing by, or to occupants or residents of adjoining buildings.

(2) Any person or persons found to be in violation of Section (1) shall be fined a minimum of \$25.00 and a maximum of \$100.00.

/s/ Roger N. Pauls

MAYOR

First Reading: 12/ 9/69

Second Reading (adopted): 1/13/70



## **Ordinance No. 5**

### **Ordinance imposing a curfew on children under the age of seventeen years in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

(1) It shall be unlawful for any child under the age of seventeen years to be on the streets or in other public places of the town after the hour of 11:00 p.m., unless accompanied by the parents, guardian, or some adult person lawfully in charge of such child.

(2) It shall be unlawful for any parent, guardian, or other person having the custody of a child under the age of seventeen years to allow such child to be on the streets or in other public places in the town after 11:00 p.m., unless accompanied by the parents, guardian or some adult person lawfully in charge of such child.

(3) This Ordinance shall not be construed to prohibit children under the age of seventeen years from attending places of religious worship, functions held by or under the auspices of the public schools, Boy Scouts, Girl Scouts, Bethany College, or other like organizations, unaccompanied by the parents, guardian or other adult person.

(4) Violation of any provision of the ordinance will result in the imposition of a fine of not less than ten dollars (\$10.00) and not more than \$25.00.

/s/ Roger N. Pauls

MAYOR

First Reading: 12/ 9/69

Second Reading (adopted): 1/13/70

## **Ordinance No. 25**

AS AMENDED BY ORDINANCE NO. 52 <sup>1</sup>

AS AMENDED BY ORDINANCE NO. 73 <sup>2</sup>

### **An ordinance prohibiting noise animals, dogs running at large, abandonment of dogs, and the keeping of vicious animals**

1. Noisy Animals: No person shall keep or harbor upon or about his premises any animals which shall, by continuously or frequently howling, squalling, crying or in any other manner whatsoever, disturb the comfort or quiet of any neighborhood within the limits of the Town.

2. Dogs Running at Large: No owner or any person in charge of any dog, whether or not such dog has attached to it a license tag or whether or not it has been vaccinated in compliance with West Virginia Code, Article 19-20A, shall cause or permit such dog to run or be upon a street, sidewalk or public place within the Town, unless such dog is accompanied by its owner or some other person in charge of such dog.

3. Fines and/or Impounding of Dogs: If any dog is found running at large in the Town in violation of the above, the owner or any person in charge of said dog shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than Five Dollars nor more than Twenty Dollars, or said dog shall be impounded in the County Dog Pound or a pound provided by the Town for such purpose, by the County Dog Catcher or any police officer or by any person so authorized by the Police Chief, and securely kept subject to the provisions of this article, or both impoundment and a fine shall be effective and assessed.

4. Notification to Owner When Licensed Dog Impounded: *When any dog which has been licensed is impounded pursuant to the time of this article, the County Dog Catcher shall notify the owner by informing the owner in person, by telephone, or by mail, or by informing a person over the age of fourteen years residing at the same location as the owner in person, by telephone, or by mail, which notice by mail shall be sent to the address as shown on the records of the County Assessor, that the dog has been impounded and that the owner may redeem the dog by paying the penalty for the violation of this article, plus any additional sum imposed by the county for the impounding of such dog. Notice shall be given at least five days prior to the disposition of the dog.*<sup>1</sup>

5. Disposal of Unlicensed Dogs: When any dog not licensed is impounded, it shall be disposed of as provided for in West Virginia Code, Article 19-20.

6. Abandoning Dogs Within the Town: No person shall abandon any dog within the Town limits.

7. Vicious, Rabid or Dangerous Animals: No person shall own, keep or harbor any animal known by him, or which in the exercise of reasonable diligence, he should know to be vicious, dangerous or in the habit of biting or attacking persons. *A vicious animal is one not only of a disposition to attack every person or animal it may meet, but it includes as well an animal of a natural fierceness or disposition to mischief, as might occasionally lead it to attack human beings, or animals, without provocation. An example of an animal of such vicious propensity is the breed of dog known as the American Pit Bull Terrier.* <sup>2</sup>

8. No person shall own, keep or harbor any animal known by him, or which, in the exercise of reasonable diligence, he should know to be suffering with rabies.

9. Vicious or dangerous animals are hereby declared to be public nuisances and a menace to the public safety.

10. Violations of Provisions: Any person who shall violate any of the provisions of this article for which no specific penalty is prescribed shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined nor more than \$20.00.

*The Town Council of the Town of Bethany hereby declares that there exists a pressing public emergency making procedure in accordance with West Virginia Code Section 8-11-4 (1976 Replacement Vol.) dangerous to the public health and safety for the reason that the running at large of licensed and unlicensed dog has created such a danger, which may be abated through the efforts of the County Dog Warden, pursuant to the terms of this article, as amended.*

*This Ordinance shall be in effect from and after the date of its adoption.* <sup>1</sup>

/s/ Roger N. Pauls

MAYOR

First Reading: 9/10/74

- <sup>1</sup> As amended by Ordinance No. 52, adopted 4/14/81. The text per prior ordinance read: "When any dog which has been licensed is impounded in violation of this article, the Town Recorder shall notify the owner, in writing, by mailing a registered notice, return receipt requested, to the owner of such dog at his address as shown on the Assessor's records and the owner may redeem the dog by paying the penalty for the violation of this article, plus an additional sum of fifty cents (50¢) for each day that such dog has been impounded. The written notice shall be mailed fourteen (14) days prior to the intended disposition of the dog." Additional text in 10. Violations of Provisions was added.
  
- <sup>2</sup> As amended by Ordinance No. 73, adopted 10/19/87. This text was added.

## **Ordinance No. 34**

### **Door-to-door solicitation**

I. No person, organization, corporation, business or association shall conduct any door to door solicitation or cause any such solicitation to be made on their behalf for the purpose of selling any product or service, or seeking any monetary contributions for any purpose or to conduct any survey or poll within the town limits of the Town of Bethany, West Virginia, unless such person, organization, corporation, business or association first provides the town recorder of the Town of Bethany with a written notice that such a solicitation will be made at least twenty-four hours in advance of said solicitation.

II. The notice provided for in Section I. above shall be sufficient if it provides the name and address of the person, organization, corporation, business or association which proposes to conduct the solicitation and the purpose for which said solicitation will be made, together with a signature of the individual seeking a permit for said solicitation or an agent of any organization, corporation, business or association seeking such a permit.

III. Upon receipt of the notice as here before provided, the town recorder shall make such necessary investigation as he deems proper to verify the facts set out in said notice and thereupon issue to any such person, organization, corporation, business or association a permit to conduct a door to door solicitation, provided, however, that no such investigation shall take an excess of twenty-four hours.

/s/ Joseph M. Kurey  
MAYOR

First Reading: 12/9/75

Second Reading (adopted): 1/13/76

## **Ordinance No. 38**

### **An ordinance prohibiting the keeping of animals, swine, or fowl within the Town**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY this 20th day of February, 1978, as follows:

(1) No person shall keep or harbor any animals, swine, or fowl within the Town, except upon written permission from the Mayor, who shall with the advice and consent of Council, prescribe the conditions under which such animals, swine, or fowl may be kept within the Town. This section shall not apply to domesticated dogs, cats, or birds.

(2) Any person violating this provision shall be fined not more than \$100.00 or imprisoned not more than ten days.

/s/ Joseph M. Kurey

MAYOR

First Reading: 1/16/78

Second Reading (adopted): 2/20/78

## **Ordinance No. 41**

### **An ordinance making public intoxication and the drinking of non-intoxicating beer in public unlawful and prescribing penalties for violation thereof**

BE IT ENACTED AND ORDAINED BY THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, and it is hereby enacted and ordained by the authority of the same as follows:

#### I. PUBLIC INTOXICATION PROHIBITED.

It shall be unlawful for any person to be drunk in public or to be found intoxicated on any street or alley or in any public place; it shall be unlawful for any person to profanely curse or swear, or use any indecent or obscene language on any street or alley or in any public place. Any person found guilty of violating this provision shall be fined \$25.00.

#### II. DRINKING ALCOHOLIC BEVERAGES OR NON-INTOXICATING BEER IN PUBLIC PROHIBITED.

It shall be unlawful for any person to drink alcoholic beverages of any kind or non-intoxicating beer on the public streets or roadways or in any public place. Any person found guilty of violating this provision shall be fined \$25.00.

/s/ Joseph M. Kurey

MAYOR

First Reading: 7/17/78

Second Reading (adopted): 8/28/78

## **Ordinance No. 42**

REVOKING ORDINANCE NO. 10<sup>1</sup>

### **An ordinance prohibiting unnecessary noise**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Ordinance No. 10<sup>1</sup> is hereby revoked and in lieu thereof the following ordinance is hereby enacted:

(A) The making and creation of loud, unnecessary, or unusual noises within the limits of the Town of Bethany is a condition which has existed for some time and the extent and volume of such noises is increasing, all of which tends to infringe upon the comfort, convenience, health, safety, welfare, and prosperity of the residents of the Town of Bethany. Therefore, it is hereby declared to be in the public interest that the following provisions be enacted for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, and peace and quiet of the Town of Bethany and its inhabitants.

(B) It shall be unlawful for any person or persons to make, continue, or cause to be made or continued, any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the limits of the Town.

(C) The following acts are hereby declared to be loud, disturbing and unnecessary noises in violation of this ordinance, but this enumeration shall in no way be deemed to be exclusive:

(1) The sounding of any horn or device on any automobile, motorcycle, vehicle on any street or public place of the city; except as a danger warning; the creation by means of any such signaling device of an unreasonably loud or harsh sound; and sounding of any such device for an unnecessary and unreasonable period of time.

(2) Yelling, shouting, hooting, whistling, or singing on the public streets, particularly between the hours of 11 p.m. and 7 a.m. or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, in any dwelling or other type of residence, or of any persons in the vicinity.



(3) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(4) The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in such manner as to create loud and unnecessary grating, grinding, rattling, or other noise.

(5) The squealing of any tire or the signaling or other of the creation of any the causing of any other noise as the result of accelerating an automobile, motorcycle, or other vehicle from a slow rate of speed or a stopped position except in an emergency situation.

(6) Using, operating, or permitting to be played, used, or operated, any radio, musical instrument, phonograph, stereo set, television, or other machine or device for the production or reproduction of sound, in such a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or in such a manner at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle, or chamber, in which such machine or device is located and who are voluntary listeners thereto. The operation of any radio, musical instrument, phonograph, stereo set, television, or other machine or device for the production or reproduction of sound between the hours of one o'clock A.M. and nine o'clock A.M. on Saturday and Sunday and ten o'clock P.M. Sunday to seven o'clock A.M. Monday, ten o'clock P.M. Monday to seven o'clock A.M. Tuesday, ten o'clock P.M. Tuesday to seven o'clock A.M. Wednesday, ten o'clock P.M. Wednesday to seven o'clock A.M. Thursday, ten o'clock P.M. Thursday to seven o'clock A.M. Friday in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(D) Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding \$100.00.

(E) This ordinance shall be reviewed by the Town Council six months from the date of enactment.

/s/ Joseph M. Kurey

MAYOR

First Reading: 10/10/78

Second Reading (adopted): 11/14/78

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<sup>1</sup> Ordinance No. 10, adopted 1/13/70.

## **Ordinance No. 43**

REVOKING ORDINANCE NO. 12 <sup>1</sup>

### **An ordinance making it a crime to turn in false alarms and penalties**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Ordinance No. 12 <sup>1</sup> is hereby revoked and in lieu thereof the following ordinance is hereby enacted:

(A) No person shall make, give out, or cause to be made or given out any false alarm of fire emergency, or any other false call by any means whatsoever that would cause the Fire Department to respond with any emergency vehicle or apparatus.

(B) Any person who violates the provisions of this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than \$100.00.

(C) If any false alarm of fire emergency is placed from any dwelling, residence hall, or apartment building under such circumstances as make it impossible or difficult to determine who placed such false alarm, the residents of the dwelling, residence hall, or apartment building shall be jointly and severally liable for a civil penalty of not less than \$100.00.

/s/ Joseph M. Kurey

MAYOR

First Reading: 3/13/79

Second Reading (adopted): 4/10/79

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<sup>1</sup> Ordinance No. 12, adopted 6/13/72.

## **Ordinance No. 45**

### **An ordinance prohibiting the destruction of property in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

(A) No person, without authority from the owner thereof or from some authorized agent of such owner, shall cut down, mutilate, deface, tear down, destroy, or injure any fence, tree, shrub, plant, building, or structure or any real or personal property whatsoever, lawfully upon the land of another within the Town of Bethany. The enforcement of Ordinance 6 (Providing for the Removal of Weeds, Grass, Deleterious, and Unhealthy Growths and other Noxious Matter on Private Property) shall not be deemed to be a violation of this provision.

(B) No person shall destroy, injure, break, deface, place any filth or harmful substance of any kind, write, mark, draw or paint any word, sign or figure on any public property in the Town, or on any public building, statue, monument, office, drinking fountain, or structure of any kind whatsoever.

(C) Any person found guilty of violation of the provisions of this Ordinance shall be punished by a fine of \$100.00 plus the reasonable costs of restoring the vandalized property to its previous condition. No fine under this provision shall exceed \$1,000.00.

(D) The Town or any person or organization of any kind or character shall be entitled in any Magistrate Court or court of competent jurisdiction, to recover damages in an amount not to exceed \$300.00 from the parent or parents of any minor child under the age of 18 years, living with the parent or parents, who maliciously or willfully destroys property, real, personal, or mixed, situated within the Town and belonging to the Town or to any person or organization of any kind or character.

The recovery hereunder shall be limited to the actual damages in addition to taxable court costs provided, however, that the right of action and remedy therefor granted herein shall be in addition to, and not exclusive of any rights of action and acts of his, her or their minor children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this Ordinance, except that this right of action shall not be in addition to that certain cause of action set forth in West Virginia Code Section 55-7A-2.

/s/ Gary E. Larson

MAYOR

First Reading: 11/13/79

Second Reading (adopted): 12/11/79

## **Ordinance No. 57**

### **An ordinance prohibiting the depositing of litter in public places**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. No person shall throw, deposit or permit to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, organic garbage, or other litter, or anything likely to injure the feet of individuals or animals or the tires of vehicles.

Section 2. Any person found guilty of violating this ordinance shall be fined an amount not to exceed \$200.00.

Section 3. This ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 1/12/82

Second Reading (adopted): 2/9/82

## **Ordinance No. 65**

### **An ordinance concerning trespass in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

#### Section 1. DEFINITIONS AS USED IN THIS ARTICLE:

1. "Structure" means any building of any kind, either temporary or permanent, which has a roof over it, together with the cartilage thereof.

2. "Conveyance" means any motor vehicle, vessel, car, railroad engine, trailer, aircraft, or sleeping "to enter a conveyance" includes taking apart any of the conveyance.

3. An act is committed "in the course of committing" in an attempt to commit the offense or in the attempt or commission.

4. "Posted land" is that land upon which reasonably maintained signs are placed not more than five hundred feet apart along and at each corner of the boundaries of the land, upon which signs there appears prominently in letters of not less than two inches in height the words "no trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in areas on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

5. "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

6. "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

7. Where lands are posted, cultivated or fenced as described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

8. "Trespass" under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(a) Entry by the State, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(b) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

(c) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

(d) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

(e) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner's property.

## Section 2. TRESPASS IN STRUCTURE OR CONVEYANCE:

Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of section 61-7-1 of the West Virginia Code, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00, or be confined in the county jail for a period not to exceed 12 months or both such fine and imprisonment.

### Section 3. TRESPASS ON PROPERTY OTHER THAN STRUCTURE OR CONVEYANCE:

(a) Any person who knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.00.

(b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction, or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00 or imprisoned in the county jail for a period not to exceed six months, or both such fine and imprisonment.

(c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall notwithstanding the provisions of section 61-7-1 of the West Virginia Code, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county jail for a term not to exceed six months, or fined not more than \$100.00, or both such fine and imprisonment.

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

### Section 4. TRESPASS ON STUDENT RESIDENCE PREMISES OR STUDENT FACILITY PREMISES OF AN INSTITUTION OF HIGHER EDUCATION:



(a) For the purposes of this section:

(1) "Residence hall" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education.

(2) "Student facility" means a facility owned, operated or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold or served to students enrolled at such institution, but shall not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(3) "Institution of higher education" means any state university, state college or state community college under the control, supervision and management of the West Virginia board of regents, or any other university, college or any other institution of higher education in the State subject to rules and regulations for accreditation under the provisions of section 13a-26-18 of the West Virginia Code.

(4) "Person authorized to have access to a residence hall or student facility" means:

(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian, or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by his employment by such institution to be in the residence hall or student facility and who is acting within the scope of his employment; or

(E) A delivery man, repairman or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who resides acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by his presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility he may be asked to leave such residence hall or student facility. If a person other than a person authorized to have access to a residence hall or student facility enters such a residence hall or student facility, he may be asked to leave such residence hall or student facility notwithstanding the fact that he has not interfered with the peaceful or orderly operation of such residence hall or student facility or otherwise committed a breach of the peace or violated any statute or ordinance. Such request to leave may be made by the president of the institution of higher education, an employee designated by the president to maintain order in the residence hall or student facility, a security officer appointed pursuant to the provisions of section 18-26-8a of the West Virginia Code, or a municipal police officer, a sheriff or deputy sheriff, or a member of the department of public safety.

(c) It shall be unlawful for a person to remain in a residence hall or student facility after being asked to leave as provided for in subsection (b) of this section.

(d) Any person who violates the provisions of subsection (c) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined fifteen dollars. For any second or subsequent conviction for a violation occurring within one year after a previous violation for similar conduct, such person shall be fined an amount not to exceed one hundred dollars.

(e) This section shall not be construed to be in derogation of the common law, nor shall the provisions of this section contravene or infringe upon existing statutes related to the same subject.

Section 5. This ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 9/18/83

Second Reading (adopted): 10/11/83

## **Ordinance No. 66**

### **An ordinance of the Town Council of the Town of Bethany prohibiting cruelty to animals, and providing penalties thereof**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. No person within the corporate limits of the Town of Bethany shall cruelly, unnecessarily or needlessly beat, torture, torment, mutilate, kill, overload or overdrive, or willfully deprive of necessary sustenance, or commit any other act of cruelty to, any domestic animal.

Section 2. Acts of cruelty to a domestic animal shall include, but not be limited to, the following:

(A) Failure to provide adequate shelter, appropriate to the size of the animal, which, in the summer shall be in a shaded area, unless the animal has other access to shade, and, which in the winter shall include adequate bedding and protection from weather. Adequate shelter shall not include cardboard boxes or metal barrels.

(B) Failure to provide adequate exercise, by confining the animal with a chain less than four times the length of the animal, or by enclosing the animal in an area less than four times its length.

(C) Abandonment of an animal.

(D) Failure to provide adequate food and clean water for an animal.

(E) Failure to keep a female dog confined in a building or secure enclosure for 2-5 days during the period of estrus.

Section 3. Any person convicted of a violation of this ordinance shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$25.00 nor more than \$100.00. In addition, upon such conviction, the Town of Bethany may seize the animal, and surrender it to the Humane Officer of Brooke County, West Virginia, for disposal as permitted by the West Virginia code. The costs of such disposal shall be taxed against the offender.

Section 4. This ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 12/13/83

Second Reading (adopted): 1/10/84

## **Ordinance No. 69A**

### **An ordinance prohibiting gambling in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. No person shall gamble or keep any gaming table, commonly called "A,B,C," or "E,O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise. No person shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value.

Section 2. Any person violating this Ordinance shall be guilty of a misdemeanor, and shall be fined an amount not exceeding \$100.00.

Section 3. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 1/14/86

Second Reading (adopted): 3/ 3/86

## **Ordinance No. 74**

### **An ordinance concerning bonfires and other outdoor fires in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

Section 1. All bonfires and other outdoor fires shall be regulated by the provisions of this Ordinance. No person shall kindle or maintain any bonfire or other outdoor fire or authorize any such fire to be kindled or maintained on private or public property without a permit. Where kindling or maintaining a bonfire or other outdoor fire is prohibited by state statute or local ordinance, no permit shall be issued.

Section 2. No person shall kindle or maintain any bonfire or other outdoor fire or authorize any such fire to be kindled or maintained unless:

(a) The location is not less than 50 feet from any structure and adequate provision is made to prevent the fire from spreading to within 50 feet of any structure; or

(b) The fire is contained in an approved waste burner with closed top, located safely not less than 15 feet from any structure.

Section 3. A permit for a bonfire or other outdoor fire shall be obtained from the Fire Chief or the Assistant Fire Chief, who may prohibit any or all bonfires and other outdoor fires when atmospheric conditions or local circumstances make such fires hazardous. In light of such conditions or circumstances, he may impose additional restrictions on such fires. He may require that a bond, not to exceed \$100.00, be posted, and shall require that all ashes and other debris from such fires be safely disposed of in a timely fashion.

Section 4. The refusal to comply with any provision of the Ordinance shall be deemed a violation of the Ordinance, and any person or group committing such a violation shall be levied a fine not to exceed \$100 00.

Section 5. This Ordinance shall take effect from and after the date of its adoption.

/s/ John O. Cole

MAYOR

First Reading: 3/15/88

Second Reading (adopted): 4/19/88

## **Ordinance No. 96**

### **An ordinance making public indecency unlawful and prescribing penalties for violation thereof**

WHEREAS the Town of Bethany and the council thereof have plenary power and authority by ordinance and other appropriate action to prevent annoyance to the public or individuals from anything offensive or unwholesome; to prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent; to abate or cause to be abated anything which in the opinion of a majority of the council is a public nuisance; to protect and promote the public morals, welfare and good order; and to provide penalties for offenses and violations of law;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, AS FOLLOWS:

(A) No person shall recklessly do any of the following, under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household:

- (1) Expose his or her private parts, or engage in masturbation;
- (2) Engage in sexual conduct;
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) Whoever violates this ordinance is guilty of public indecency and shall be punished by a fine of not less than \$50.00 and no more than \$100.00.

/s/ John O. Cole

MAYOR

First Reading: 3/13/01

Second Reading (adopted): 4/17/01

## Ordinance No. 105

### An ordinance prohibiting racial profiling

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Policy. As required by Section 30-29-10 of the West Virginia Code, the Town of Bethany does hereby declare that racial profiling is contrary to the public policy of the municipality and shall not be used as a law-enforcement investigative tactic. No law-enforcement officer employed by the town shall engage in racial profiling. Law-enforcement officers shall, however, without resort to racial profiling, patrol in a protective and proactive manner, shall aggressively investigate matters requiring investigation in accordance with good law-enforcement practice, and shall enforce all laws.

Section 2. Definitions.

(a) Racial Profiling. The term "racial profiling" means the practice of a law-enforcement officer relying, to any degree, on race, ethnicity or national origin in selecting which individuals to subject to routine investigatory activities or in deciding upon the scope and substance of law-enforcement activity following the initial routine investigatory activity. Racial profiling does not include reliance on race, ethnicity or national origin in combination with other identifying factors when the law-enforcement officer is seeking to apprehend a specific suspect whose race, ethnicity or national origin is part of the description of the suspect.

(b) Reasonable Suspicion. Also known as articulable suspicion, reasonable suspicion means suspicion that is more than a mere hunch but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. Reasonable suspicion can have its basis in the observations of a trained and experienced law-enforcement officer, or it can have its basis in other sources on which a trained and experienced officer would reasonably rely.

Section 3. Operating Guidelines. Without limiting the discretion and responsibility of the chief of police to manage the law-enforcement department in an effective manner, the following policies and guidelines shall apply generally in the operation and oversight of the department:

(a) Patrol officers shall be assigned to areas where there is the highest likelihood that motor-vehicle accidents will be reduced and/or crimes prevented through proactive patrol.

(b) Officers shall receive training in proactive enforcement tactics, including training in officer safety, courtesy, cultural diversity, the laws governing search and seizure, and interpersonal communication skill.

(c) Training programs shall emphasize the need to respect the rights of all citizens to be free from unreasonable government intrusion or police action.

(d) Supervisory oversight shall be provided in a consistent manner to insure that all officers comply with the policy of avoiding racial profiling.

(e) Citizens shall only be subject to traffic stops, stop-and-frisk, questioning, and/or search and seizure upon reasonable suspicion that the citizen has committed, is committing or is about to commit an infraction.

(f) The municipality recognizes that with experience, an officer may develop his or her own methods for avoiding or minimizing conflict when approaching an alleged violator. Such methods, however, shall be consistent with the following protocol generally: (i) the officer shall give a greeting; (ii) the officer shall state the reason why the person was stopped; (iii) the officer shall politely ask for identification and any required documents; (iv) after reviewing documents, the officer shall inform the citizen of the action being taken and what, if anything, the person must do as a result of such action; and (v) the officer shall remain polite, to a reasonable degree, while remaining alert to matters of officer security.

(g) No citizen, once cited or warned, shall be detained beyond the point where no reasonable suspicion exists of further criminal activity, and no person or vehicle shall be searched in the absence of a warrant, or a legally recognized exception to the warrant requirement, or the person's voluntary consent. In each case where a search is conducted, whether by a member of the town's police department or by another law-enforcement officer in the presence of the town's officer, the legal basis for the search and the results of the search shall be recorded on a proper report-of-search form.

(h) In the absence of a specific, credible report containing a physical description that includes race, a person's race shall not be a factor in determining probable cause for an arrest or a reasonable suspicion for a stop.



(i) If at any time the citizen expresses concern about or alludes to racial profiling, the officer shall continue in his or her search or other duties and in addition (i) the officer shall notify his or her immediate supervisor of the incident as soon as possible and (ii) the officer shall explain to the citizen the process for filing a complaint of racial profiling.

#### Section 4. Complaint of Racial Profiling.

(a) Any person may file a complaint if he or she believes that he or she has been subjected to racial profiling, and no person shall be discouraged, intimidated, or coerced from filing such a complaint or be discriminated against because he or she has filed such a complaint. Complaints shall be in writing, shall state the grievance with particularity, and shall be dated and signed. Complaints may be filed with the chief of police, the mayor or the town recorder.

(b) An officer upon request shall provide the citizen with the names and addresses of the persons authorized to receive the complaint. The officer shall make an effort to obtain the name and address of the citizen requesting the information, and such information shall be given to the chief of police before completion of the officer's shift, when possible.

(c) All racial profiling complaints shall be reviewed by the receiving official, who shall order an independent investigation of the matters complained of. The complainant shall be notified in writing of the results and findings of the investigation, and copies of the report, including the investigator's conclusion, shall be filed with the chief of police, the mayor and the recorder.

(d) The chief of police and mayor shall review all such reports, and if an investigator shall have determined that a particular complaint had merit, the chief of police or mayor, as appropriate, shall take appropriate remedial action, including an appropriate disciplinary response.

(e) The chief of police or mayor, as appropriate, shall periodically monitor compliance with the policy expressed in this ordinance and among other things shall periodically review samplings of in-car video tapes of stops, reports of stops as filed by law-enforcement officers, and reports filed by back-up officers. The chief of

police and mayor, as appropriate, shall remain alert to the possibility of any pattern or practice of racial profiling and shall take appropriate action as warranted under the circumstances.

(f) If the mayor shall delegate responsibility under this ordinance to the chief of police for compliance and enforcement, the mayor shall nevertheless retain the duty of oversight and shall promptly investigate or cause an investigation of all allegations of racial profiling that are brought to his or her attention from any credible source.

Section 5. This ordinance shall be effective from and after the date of its adoption.

/s/ Sven deJong

MAYOR

First Reading: 8/13/02

Second Reading (adopted): 9/10/02

## **Ordinance No. 137**

**An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 41, making public intoxication and the drinking of non-intoxicating beer in public unlawful and prescribing penalties for violation thereof**

Be it ordained by the Town Council of the Town of Bethany, West Virginia:

FIRST: Ordinance No. 41, adopted August 28, 1978.

### **I. PUBLIC INTOXICATION PROHIBITED.**

It shall be unlawful for any person to be drunk in public or to be found intoxicated on any street or alley or in any public place; it shall be unlawful for any person to profanely curse or swear, or use any indecent or obscene language on any street or alley or in any public place. Any person found guilty of violating this provision shall be fined \$25.00.

### **II. DRINKING ALCOHOLIC BEVERAGES OR NON-INTOXICATING BEER IN PUBLIC/OPEN CONTAINER PROHIBITED.**

It shall be unlawful for any person to drink alcoholic beverages of any kind or non-intoxicating beer in any public place, or have an open container of alcohol, liquor, or non-intoxicating beer in or on any public sidewalk, walkway, entranceway, street, lane, or other public place. Any person found guilty of violating this provision shall be fined \$50.00 for the first offense; \$75.00 for the second offense; \$100.00 for third and subsequent offenses.

SECOND: This ordinance shall be effective upon its adoption.

Cynthia R. Hoffman, ACTING MAYOR

First Reading: October 1, 2008

Second Reading (adopted): November 5, 2008

## Ordinance No. 150

### **An ordinance prohibiting noisy animals, dogs running at large, abandonment of dogs, and the keeping of vicious animals**

An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 25<sup>1</sup>

Be it ordained by the town council of the Town of Bethany, West Virginia:

1. Noisy Animals: No person shall keep or harbor upon or about his premises any animals which shall, by continuously or frequently howling, squalling, crying or in any other manner whatsoever, disturb the comfort of quiet of any neighborhood within the limits of the Town.
2. Dogs Running at Large: No owner or any person in charge of any dog, whether or not such dog has attached to it a license tag or whether or not it has been vaccinated in compliance with West Virginia Code, Article 19-20A, shall cause or permit such dog to run or be upon a street, sidewalk or public place within the Town, unless such dog is accompanied by its owner or some other person in charge of such dog.
3. Fines and/or Impounding of Dogs: If any dog is found running at large in the Town in violation of the above, the owner or any person in charge of said dog shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than Five Dollars nor more than Twenty Dollars, or said dog shall be impounded in the County Dog Pound or a pound provided by the Town for such purpose, by the County Dog Catcher or any police officer or by any person so authorized by the Police Chief, and securely kept subject to the provisions of this article, or both impoundment and a fine shall be effective and assessed.
4. Notification to Owner When Licensed Dog Impounded: *When any dog which has been licensed is impounded pursuant to the time of this article, the County Dog Catcher shall notify the owner by informing the owner in person, by telephone, or by mail, or by informing a person over the age of fourteen years residing at the same location as the owner in person, by telephone, or by mail, which notice by mail shall be sent to the address as shown on the records of the County Assessor, that the dog has been impounded and that the owner may redeem the dog by paying the penalty for the violation of this article, plus any additional sum imposed by the county for the impounding of such dog. Notice shall be given at least five days prior to the disposition of the dog.*
5. Disposal of Unlicensed Dogs: When any dog not licensed is impounded, it shall be disposed of as provided for in West Virginia Code, Article 19-20.
6. Abandoning Dogs Within the Town: No person shall abandon any dog within the Town limits.
7. Vicious, Rabid or Dangerous Animals: No person shall own, keep or harbor any animal known by him, or which in the exercise of reasonable diligence, he should know to be vicious, dangerous or in the habit of biting or attacking persons. *A vicious animal is one not only of a disposition to attack every person or animal it may meet, but it includes as well an animal of a natural fierceness or disposition to mischief, as might occasionally lead it to attack human beings, or animals, without provocation. An example of an animal of such vicious propensity is the breed of dog known as the American Pit Bull Terrier.*
8. No person shall own, keep or harbor any animal known by him, or which, in the exercise of reasonable diligence, he should know to be suffering with rabies.

9. Vicious or dangerous animals are hereby declared to be public nuisances and a menace to the public safety.
10. Violations of Provisions: Any person who shall violate any of the provisions of this Ordinance for which no specific penalty is prescribed shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined as follows: First (1<sup>st</sup>) offense = \$25.00; Second (2<sup>nd</sup>) offense = \$100.00; Third (3<sup>rd</sup>) and subsequent offenses = \$500.00.

*The Town Council of the Town of Bethany hereby declares that there exists a pressing public emergency making procedure in accordance with West Virginia Code dangerous to the public health and safety for the reason that the running at large of licensed and unlicensed dog has create d such a danger, which may be abated through the efforts of the County Dog Warden, pursuant to the terms of this article, as amended.*

*This Ordinance shall be in effect from and after the date of its adoption.*

Jay Eisenhower, MAYOR

First Reading: February 6, 2013

Second Reading (adopted): March 6, 2013

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<sup>1</sup>This ordinance supersedes prior Ordinance No. 25. The purpose of this ordinance was to amend the fines contained in section 10 of this ordinance.

## **Ordinance No. 154**

### **An Ordinance amending Ordinance No. 69A, prohibiting gambling in the Town of Bethany<sup>1</sup>**

Be it ordained by the town council of the Town of Bethany, West Virginia:

Section 1. No person shall gamble or keep any gaming table, commonly called "A, B, C," or "E, O," table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise. No person shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value. This section shall not be construed to in any way limit or prohibit video lottery establishments as permissible pursuant to Ordinance No. 153.

Section 2. Any person violation this Ordinance shall be guilty of a misdemeanor, and shall be fined an amount not exceeding \$100.00.

Section 3. This Ordinance shall take effect from and after the date of its adoption.

Jay Eisenhauer, MAYOR

First Reading: March 5, 2014

Section Reading (adopted): April 2, 2014

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<sup>1</sup>Amending Ordinance No. 69A, Adopted 3/3/1986.

## **Part V. Motor Vehicles**

## **Ordinance No. 11**

AS AMENDED BY ORDINANCE NOS. 24, 36, 81<sup>1</sup>

### **An ordinance for the regulation of motor vehicles and traffic in the Town of Bethany**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT

#### 11-1. SIGNS, SIGNALS AND MARKERS

##### (a) Stop Signs

(1) The Town Council shall cause to be erected, at such points along the streets in the Town as they shall deem necessary, signs on which shall be inscribed the word "STOP".

(2) It shall be unlawful for the driver or operator of any vehicle approaching any street in the Town at which a stop sign erected to pass such sign without first bringing such vehicle to a stop.

*(3) Any person found guilty of violating subsection (a) of Section 11-1 shall be fined an amount not less than \$20.00 and no more than \$30.00.*<sup>1</sup>

##### (b) One Way Street Signs

(1) The Town Council shall cause to be erected, at such points along the streets in the Town as they shall deem necessary, signs on which shall be inscribed the words "ONE WAY" or "ONE WAY STREET," together with an arrow or other designation of the direction in which traffic is permitted to move along such street.



(2) It shall be unlawful for the driver or operator of any vehicle to enter or proceed along any street at which a "ONE WAY" or "ONE WAY STREET" sign with an arrow or other designation of the direction in which traffic is permitted to travel has been erected in any direction other than is indicated by the arrow or other designation on such sign.

*(3) Any person found guilty of violating subsection (b) of Section 11-1 shall be fined an amount not less than \$25.00 and no more than \$35.00. <sup>1</sup>*

## 11-2. SPEED LIMITS

(a) No person shall drive a vehicle on a highway or street of the Town at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed in compliance with subsection (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

(1) 15 miles per hour when passing a school building or the grounds thereof during school recess or while children are going to or leaving school during opening or closing hours;

*(2) 15 miles per hour in any business or residential district. <sup>1</sup>*

*(3) 25 miles per hour on West Virginia Route 67 between Mile Post 6.03 and Mile Post 7.05 and on West Virginia Route 68 between Mile Post 2.37 and Mile Post 2.81. <sup>1</sup>*

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a), drive at an appropriate reduced speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

### 11-3. RECKLESS DRIVING

Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. *Any person found guilty of violating Section 11-3 shall be fined an amount not less than Twenty-Five Dollars (\$25.00) and no more than Five Hundred Dollars (\$500.00).* <sup>1</sup>

### 11-4. STOPPING, STANDING AND PARKING

#### (a) Method of Parking Generally

Except when necessary in obedience to traffic signs or signals, the operator of a vehicle shall not stop, stand or park such vehicle in a roadway other than parallel with the edge of the roadway and with the curbside wheels of the vehicle within 18 inches of the edge of the roadway, except in places where, and at hours when, stopping for the loading or unloading of merchandise or materials is permitted, vehicles may back into the curb to take on or discharge loads.

#### (b) Stopping, Standing or Parking Prohibited in Specified Places

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;

- (3) Within an intersection;
- (4) Within 15 feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within 20 feet of a crosswalk at an intersection;

(7) Within 30 feet upon the approach to any beacon, stop sign or traffic-control signal located at the side of a roadway;

(8) Within feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance, when properly sign posted;

(9) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(10) On the roadway side of a vehicle stopped or parked at the edge or curb of a street;

(11) At any place where official signs or yellow or red marked curbs prohibit stopping;

(c) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

*(d) Any person found guilty of violating Section 11-4 (a) shall be fined an amount of \$10.00, and that any person found guilty of violating Section 11-4 (b) shall be fined an amount of \$5.00 except for a violation of 11-4 (b)(4) for which a fine of \$15.00 shall be imposed. Any person found guilty of violating Section 11-4 (c) shall be fined \$10.00. <sup>1</sup>*

#### 11-5. PLACES WHERE PARKING PROHIBITED OR LIMITED -- DESIGNATION BY TOWN COUNCIL; NOTICE TO PUBLIC

(a) The Town Council may, by resolution or motion, designate certain streets and other public places, or portions thereof, as places where standing or parking is prohibited:

- (1) At all times;
- (2) For longer than a specified time; or
- (3) During any specified period of time.

(b) Each such resolution or motion shall indicate clearly the streets or other public places, or portions thereof, where parking is prohibited or limited as provided in subsection (a) of this section, and the prohibitions and limitations thereby imposed.

(c) Upon the passage of any such resolution or adoption of any such motion it shall be the duty of the Street Commissioner to cause suitable signs, stating tersely the prohibitions or limitations imposed by such resolution or motion to be erected at such places and in such number as may be necessary to give reasonable notice thereof to the public; but any curb where parking is prohibited at all times may be painted yellow or red and such painting shall be deemed sufficient notice that parking at such curb is prohibited at all times. Signs such as "NO PARKING", or "ONE HOUR PARKING", "30 MINUTE PARKING" and "NO PARKING 4:00 P.M. to 6 P.M." shall be deemed to comply with the provisions of this section.

#### 11-6. LICENSE REQUIRED

No person shall drive or operate any motor vehicle upon any highway, street or alley within the Town unless such person has a valid license as an operator or chauffeur issued under the provisions of chapter 17B of the Code of West Virginia, or the licensing law of some other state.

*Any person found guilty of violating this section shall be fined an amount no less than \$25.00 and no more than \$50.00.*

#### 11-7. DRIVING ON RIGHT SIDE OF STREET; EXCEPTIONS

*Upon all streets, except one-way streets, the operator of a vehicle shall drive upon the right half of the streets and shall drive as close as possible to the right-hand edge or curb of the street unless it is impracticable to travel on such side of the street, and except when overtaking and passing another vehicle subject to the limitations applicable by law in overtaking and passing.*

*The foregoing provisions of this section shall not be deemed to prevent the marking of lanes for traffic upon any street and the allocation of designated lanes to traffic moving in a particular direction or at designated speeds. Any person found guilty of violating this section shall be fined an amount not less than \$25.00 and not more than \$35.00.*

#### **11-8. OVERTAKING AND PASSING A VEHICLE**

*(a) The operator of any vehicle overtaking another vehicle proceeding in the same direction shall, after giving suitable and audible signal, pass at a safe distance to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle.*

*(b) The operator of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety. The foregoing provision of this section shall not apply upon one-way streets or upon streets laned for traffic, in which latter event vehicles traveling in lanes shall move in the direction permitted in such lanes.*

*(c) The operator of a vehicle shall not pass or attempt to pass another vehicle proceeding in the same direction within any area or portion of a street or highway properly marked and designated by signs as a "No Passing Zone".*

*(d) The operator of a vehicle shall not overtake and pass another vehicle proceeding in the same direction at any railroad grade crossing, nor at any intersection of streets or highways, nor approaching the crest of a hill.*

*(e) The operator of a vehicle upon a highway about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. Any person found guilty of violating this section shall be fined an amount not less than \$25.00 and not more than \$50.00.*

#### 11-9. ASSURED CLEAR DISTANCE

*The operator of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicles and the traffic upon, the condition of the highway. Any person found guilty of violating this section shall be fined an amount not less than \$20.00 and not more than \$50.00.*

#### 11-10. RIGHT OF WAY RULES GENERALLY

*The operator of a vehicle approaching an intersection shall yield the right of way to a vehicle which has first entered the intersection. When two vehicles enter an intersection at the same time, the operator of the vehicle on the left shall yield the right of way to the vehicle on the right.*

*The operator of a vehicle within an intersection intending to turn to the left across the path of any vehicle approaching from the opposite direction may make such left turn only after giving a signal as required by law, and after affording a reasonable opportunity to the operator of such other vehicle to avoid collision.*

*The operator of a vehicle entering a public street or highway from a public alley or private road or drive shall yield the right of way to all vehicles approaching on such public street or highway. Any person found guilty of violating this section shall be fined an amount not less than \$25.00 and not more than \$35.00.*

#### 11-11. UNLAWFUL RIDING

*No person shall ride on any vehicle upon any portion thereof not designated or intended for the use of passengers when the vehicle is in motion. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise. Any person found guilty of violating this section shall be fined an amount not less than \$25.00 and not more than \$50.00.*

#### 11-12. OBSTRUCTION OF OPERATOR'S VIEW OR DRIVING MECHANISM

*No operator of any vehicle shall drive when such vehicle is so loaded or when there are in the front seat of such vehicle more than three persons so as to obstruct the view of the operator to the front or side, or interfere with the operator's control over the driving mechanism of the vehicle; provided that this shall not apply to commercial vehicles so constructed as to provide space for more than three persons in the front seat.*

*No passenger in a vehicle shall ride in such position as to interfere with the operator's view ahead, or the side, or interfere with the operator's control over the driving mechanism of the vehicle. Any person found guilty of violating this section shall be fined an amount not less than \$20.00 and not more than \$30.00.*

#### **11-13. LAMPS ON FOUR-WHEEL MOTOR VEHICLES**

*Four-wheeled motor vehicles shall be equipped with two front lamps and at least one rear lamp. These lamps shall be burning at all times while the vehicles are upon the alleys, streets or driveways, when moving, between the time commencing 30 minutes after sunset and ending thirty minutes before sunrise. The front lamps, when burning, must render clearly discernible a person two hundred feet ahead, but shall not project a glaring or dazzling light to persons in front of such head lamps. The rear lamp, when burning, must display a red signal visible at a distance of five hundred feet, and so arranged that a white light is thrown upon the license plate so that the numbers of the license may be read at a distance of 50 feet. Any person found guilty of violating this section shall be fined an amount not less than \$25.00 and not more than \$50.00.*

*11-14. For any violation of any provision of this Ordinance for which no specific penalty is provided, any person found guilty of violating same shall be punishable by a fine not to exceed \$100.00.*

#### **APPLICABILITY OF STATE LAW**

*Any violation other than those covered in this article shall be treated under the state law regarding traffic, and the state law is declared to be the law applicable to the regulation of traffic within the corporate limits of the Town. <sup>1</sup>*

/s/ Roger N. Pauls

MAYOR

First Reading: 2/8/72

Second Reading (adopted): 2/23/72

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<sup>1</sup> As amended by Ordinance No. 24, adopted 7/9/74, Ordinance No. 36, adopted 7/13/76, and Ordinance No. 81, adopted 2/13/90.



## **Ordinance No. 33**

### **Abandoned vehicles**

#### **I. ABANDONMENT OF VEHICLES -- PROHIBITED.**

No person shall abandon any vehicle within the city and no person shall leave any vehicle at any place within the city for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned.

#### **II. SAME -- LEAVING WRECKED, ETC., VEHICLES ON STREET.**

No person shall leave any licensed or unlicensed motor vehicle of any kind, or parts thereof, which is rusted, wrecked, junked, partially dismantled, or inoperative, whether attended or not, upon any street or highway, within the city for a period of time in excess of 48 hours.

#### **III. DISPOSITION OF WRECKED OR DISCARDED VEHICLES.**

No person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee or otherwise shall allow any licensed or unlicensed motor vehicle of any kind or part thereof which is in a rusted, wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, to remain on such property longer than forty-eight hours unless such vehicle or part thereof is completely enclosed within a building or is stored in connection with a licensed junk yard, or in a legally licensed auto repair garage, established pursuant to this Code or other ordinance of the city and with approval of the city council.

#### **IV. IMPOUNDMENT OF ABANDONED, ETC., VEHICLES.**

The mayor or chief of police or other appropriate official designated by the mayor or chief of police is authorized to remove or have removed any vehicle left at any place within the city which reasonably appears to be in violation of this ordinance or lost, stolen or unclaimed. Such vehicle shall be impounded and stored in any garage or licensed junk yard by such officials for a period of seven days. It may be reclaimed by its legal owner, however, within the seven-day period upon the payment of lawful storage, towing and other legal costs. If such vehicle or part thereof is not claimed within such seven day period, it shall be sold at public or private sale by any constable of the county who shall be governed in such sale by the law applicable to execution of personal property of the state.

V. CONDITIONS UNDER WHICH POLICE MAY REMOVE VEHICLES TO GARAGES, ETC.

Members of the police department are authorized to remove a vehicle from a city street or alley to the nearest garage or other place of safety, or to a garage designated or maintained by the police department, or otherwise maintained by this city under any of the following circumstances:

(a) When any vehicle is left unattended and constitutes an obstruction to traffic on any city street, alley, or other city property.

(b) When a vehicle upon a city street is so disabled as to constitute an obstruction to traffic, and the person in charge of the vehicle is unable to or refuses to provide for its custody or removal.

(c) When a vehicle is left unattended upon a street or upon city property, and is parked illegally as to constitute a hazard to or obstruction to normal traffic.

(d) When the owner of the vehicle is known, the police department shall give notice in writing to the owner of the removal, the reasons for the removal, and of the place to which the vehicle has been removed. In the event the police department is unaware of the name of the owner, and the vehicle is unclaimed at the end of 48 hours, a notice shall be prepared, including the foregoing information, together with such additional description of the vehicle as is reasonably necessary for its identification, and such notice shall be mailed to the department of motor vehicles, Charleston, West Virginia.

(e) All charges and costs incurred by virtue of such removal shall be charged to the owner of the vehicle.

/s/ Joseph M. Kurey

MAYOR

First Reading: 12/ 9/75

Second Reading (adopted): 1/13/76

## Ordinance No. 35

### An ordinance regulating criminal procedure for violations of the traffic laws of the Town of Bethany, West Virginia

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA THAT:

I. Upon the issuance of a citation for any violation of Ordinance Number 11, as amended, the arresting officer shall promptly take the individual arrested before the Judge of the Municipal Court of the Town of Bethany, who shall set a reasonable bond to insure the appearance of said offender at a judicial hearing, which hearing shall be held no later than 14 days from the alleged offense.

II. In the event that the Municipal Court Judge is unavailable at the time of the offense for which a citation pursuant to Ordinance Number 11, as amended, is issued, the arresting officer of the Town of Bethany, West Virginia, may accept an amount of money equal to the amount of fine provided by law for the offense for which the citation has been issued pursuant to Ordinance Number 11, as amended, as bond to insure the appearance of the offender as aforesaid. All monies collected by said arresting officer shall promptly be accounted for to the Municipal Court of the Town of Bethany, West Virginia, and all police officers employed by the Town of Bethany shall give any bond or security required by law to be given prior to handling any money belonging to the Town of Bethany or to any individuals. Any arresting officer accepting any payment from an alleged offender shall at the time of receiving said money issue a receipt to said alleged offender which states:

“Payment in the amount of \_\_\_\_\_ (\$ ) is hereby accepted as bond to insure your appearance in the Municipal Court of the Town of Bethany on the \_\_\_\_ day of \_\_\_\_\_. Such amount will be returned to you at that time unless such bond is forfeited by your non-appearance at the hearing time as hereinbefore stated.”

This Ordinance is not meant to change any existing provisions for criminal procedure in the State of West Virginia but is merely supplementary thereto and is intended to constitute authority for the taking of an obligation by an officer as referred to in Section 6-2-21 of the West Virginia Code as amended.

/s/ Joseph M. Kurey

MAYOR

First Reading: 7/13/76

Second Reading (adopted): 8/10/76

## **Ordinance No. 128**

### **An ordinance of the Town of Bethany, West Virginia, adopting the state traffic laws and superseding Ordinance No. 24, which ordinance is repealed**

Be it ordained by the town council of the Town of Bethany, West Virginia:

#### Section 1. FINDINGS.

The council finds that under the municipal laws of West Virginia, found largely in Chapter 8 of the West Virginia Code, and also under the provisions for the state's traffic laws, found largely in Chapters 17, 17A, 17B, 17C, 17D, 17E and 17F of such Code, a municipality may adopt traffic regulations and rules of the road and establish fines and other penalties for violations, as provided in this ordinance.

#### Section 2. ADOPTIONS OF STATE TRAFFIC LAWS.

(a) Generally. All laws, offenses, rules and regulations set forth in Chapters 17, 17A, 17B, 17C, 17D, 17E and 17F of the West Virginia Code, relating to the user of streets, roads and highways; the registration and licensing of motor vehicles; the licensing of drivers; the regulation of traffic (including serious traffic offenses); motor vehicle safety and responsibility; commercial drivers' licenses; and the regulation of all-terrain vehicles, as such laws, offense, rules and regulations may be amended or added to from time to time, shall be deemed to be incorporated into the municipal code of the Town of Bethany the same as if such provisions, to the extent applicable to municipalities (and as amended from time to time), were restated in this ordinance. Further, all provisions for fines and other penalties and all procedures, administrative provisions and directives shall be similarly incorporated, and to the extent applicable to municipalities such as fines, other penalties and other matters shall be the same as those found in Chapters 17, 17A, 17B, 17C, 17D, 17E and 17F of such Code.

(b) Special Provision for All-Terrain Vehicles. In addition to the provisions of Chapter 17F of the West Virginia Code, incorporated into the municipal code of the Town of Bethany by subsection (a) above, no all-terrain vehicle may be operated upon any street, road or avenue within the municipal corporate limits. Any person who violates the provision of this subsection (b) or who owns or has control over an all-terrain vehicle and knowingly permits it to be used in violation of such provision is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100.00 or such other amount as may then be provided by Chapter 17F of such Code.

#### Section 3. MEANS OF CITATION.

A police officer issuing a citation or warrant under a provision of the West Virginia Code incorporated into the municipal code of the Town of Bethany may identify such offense by the chapter, article, section and subsection numbers used in the West Virginia Code, and the municipal court of Bethany shall take cognizance that such means of identifying the offense shall charge the defendant with a violation of this municipal code. The council

states its intention and hereby declares that fines and other penalties for offenses shall always be the maximum amounts permitted to municipalities under West Virginia law, and if the fines and penalties in the state's traffic laws be increased or otherwise amended, then such increased or amended fines and penalties shall thereupon become applicable to violations of Bethany's municipal code, even if the council shall not expressly have adopted such increased or amended fines or other penalties.

#### Section 4. SEVERABILITY

If any application of this ordinance to any violation of any of the state's traffic laws be held to be unlawful, unconstitutional or otherwise invalid, such holding shall not affect the application of this ordinance to violations of any other laws, offenses, rules or regulations found in the state's Code, and only the parts or provisions held invalid shall be deemed to be severed from further application and enforcement of this ordinance.

#### Section 5. PRIOR ORDINANCES SUPERSEDED AND REPEALED

Ordinance No. 24 of the Town of Bethany, adopted July 9, 1974, is declared to be superseded by this ordinance, and such ordinance accordingly is repealed. Any other prior inconsistent legislation is also declared to be superseded by this ordinance and to the extent of such inconsistency is also repealed.

Sven de Jong, MAYOR

First Reading: April 5, 2006

Second Reading (adopted): May 3, 2006

## Ordinance No. 135

### An ordinance of the Town of Bethany, West Virginia, amending Ordinance No. 11, for the regulation of motor vehicles and traffic in the Town of Bethany

Be it ordained by the town council of the Town of Bethany, West Virginia:

FIRST:

Ordinance No. 24, adopted July 9, 1974, superseded by Ordinance No. 128.

Ordinance No. 11, as amended by Ordinance No. 26, adopted July 17, 1976, as it pertains to establishment of certain fines, in subsections 11-7 through 11-14.

Ordinance No. 11, as amended by Ordinance No. 81, adopted February 13, 1990, relative to the regulation of certain speed limits.

Ordinance No. 11, as amended by Ordinance No. 128, adopted May 3, 2006, relative to the adoption of state traffic laws.

Ordinance No. 11 is hereby further amended by forgoing revisions to sub-subsection 11-4(b) and 11-4(d), which sub-subsections shall hereafter read in their entirety, as follows:

#### 11-4. STOPPING, STANDING, AND PARKING

(a) ...

#### (b) Stopping, Standing, or Parking Prohibited in Specific Places

No person shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within fifteen (15) feet of a fire hydrant;
- (5) On a crosswalk;
- (6) Within twenty (20) feet of a crosswalk at an intersection;
- (7) Within thirty (30) feet upon the approach to any beacon, stop sign, or traffic-control signal located at the side of a roadway;
- (8) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
- (9) On the roadway side of a vehicle stopped or parked at the edge or curb of a street;

(10)At any placed where official signs or yellow or red marked curbs prohibit stopping;

(c) ...

(d) Penalties

*(1) Any person found guilty of violating Section 11-4(a) or 11-4(b)(1)(2)(3)(4)(5)(6)(7)(8) or (9) or 11-4(c) shall be fined an amount of Twenty-Five Dollars (\$25).*

*(2) Any person found guilty of violation Section 11-4(b)(10) shall be fined Twenty-Five Dollars (\$25.00) for the first (1<sup>st</sup>) violation and such fine shall be paid within ten (10) business days unless disputed by an appearance in court. For a second (2<sup>nd</sup>) or subsequent violation in which a person is found guilty of violating Section 11-4(b)(10), that person shall be fined an amount between Twenty-Five and One Hundred Dollars (\$25.00 - \$100.00), in the discretion of the municipal court. For such second (2<sup>nd</sup>) and subsequent violations of Section 11-4(b)(10), the municipal court, in the absence of a court appearance by the accused, may issue a summons and/or capias warrant for non-appearance directed to the record holder of such vehicle alleged to be a repeat violator of 11-4(b)(10) and may impose a fine of up to Two Hundred Dollars (\$200.00) for the non-appearing repeat violator, plus the costs of incarceration.*

SECOND: This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: April 2, 2008

Second Reading (adopted): May 7, 2008

## **Ordinance No. 136**

### **An ordinance of the Town of Bethany, West Virginia, authorizing written notification and increased fines for certain alleged motor vehicle moving violators in the Town of Bethany**

Be it ordained by the town council of the Town of Bethany, West Virginia:

#### **SECTION ONE. FINDINGS.**

The council files that under the Ordinances of the Town of Bethany and the incorporated adoption of the State of West Virginia traffic laws, that there exists, for certain accused moving violators, administrative and economic difficulties with accomplishing adjudication for those accused who fail to timely respond to moving violations and whom otherwise fail to appear in court.

#### **SECTION TWO. ADDITIONAL REMEDIES FOR ACCUSED MOTOR VEHICLE MOVING VIOLATORS WHO DO NOT TIMELY RESPOND TO MOVING VIOLATIONS AND WHOM OTHERWISE FAIL TO APPEAR IN COURT TO CHALLENGE VIOLATIONS.**

In addition to all other remedies provided by the Ordinances of the Town of Bethany, West Virginia, and in addition to the remedies provided by the incorporated provisions of West Virginia state traffic laws, as additional remedies for persons accused of motor vehicle moving violations who fail to timely respond to any violation and whom otherwise fail to timely appear in court to challenge said violation, the appropriate Town of Bethany personnel shall provide written notice to any alleged motor vehicle moving violator of the possible penalties set forth below:

*PENALTIES. Any person who is accused to violating any moving motor vehicle ordinance within the Town of Bethany who does not timely respond to the violation, and whom otherwise fails to timely appear in court to challenge said alleged moving violation, may be fined up to Five Hundred Dollars (\$500.00), in the discretion of the Municipal Court, and the Municipal Court may issue a summons and/or capias warrant for non-appearance directed to the accused, and may also assess the costs of incarceration.*

This ordinance shall be effective upon its adoption.

Sven de Jong, MAYOR

First Reading: April 2, 2008

Second Reading (adopted): May 7, 2008



## **Part VI. Long-Term Agreements**

## **Ordinance No. 13**

AS AMENDED BY ORDINANCE NOS. 17, 31, 46<sup>1</sup>

**An ordinance granting to Communication Construction Corporation, a corporation, its successors and assigns, the right to construct and operate a community antenna television system within the Town of Bethany, Brooke County, West Virginia**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

*WHEREAS the Council of the TOWN OF BETHANY, Brooke County, West Virginia (hereinafter Town Council), did on May 8, 1973, enter into an agreement with COMMUNICATION CONSTRUCTION CORPORATION (hereinafter Company), predecessor to TELCOR CABLE TV, authorizing cable television service in the Town of Bethany;*

*WHEREAS it has been brought to the attention of the Town Council that certain revisions to the aforesaid agreement are required to conform to the requirements of the Federal Communications Commission.*<sup>1</sup>

13-1. There is granted to Communication Construction Corporation, a corporation, (hereinafter called the "Company") from the effective date of this Ordinance, the right to construct, maintain and operate a Community Antenna Television System designed to receive, amplify and distribute television and radio signals within the Town of Bethany (hereinafter called the "Town"). *The Agreement of May 8, 1973, was preceded by public notice and public hearing affording due process, and it was determined that the Company possessed the legal, character, financial, technical, and other qualifications to operate a cable television system in Bethany, and that the Company's construction arrangements were adequate and feasible. There is hereby granted to Blue Devil Cable Television, Inc. (hereinafter designated as "Blue Devil") from the effective date of this Ordinance, the right to construct, maintain, and operate a community antenna television system designed to receive, amplify and distribute television and radio signals within the Town of Bethany (hereinafter called the "Town"). Blue Devil is the successor by assignment of Communication Construction Corporation and Talker Cable TV and as such successor is bound by all previous obligations imposed upon Communication Construction Company and Talker Cable TV by the Town.*<sup>1</sup>

13-2. *The Company in its operation to use existing poles*<sup>1</sup> such as those erected and maintained by the Utility Companies where satisfactory agreements can be reached with such Utility Companies.

13-3. *All transmission and distribution structures, lines and equipment erected by the Company within the Town shall be so located as to cause minimum interference with the proper use of the streets, alleys*

*and other public ways and places, and to cause minimum interference with the rights of reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. A plat showing the location of all proposed installations shall be submitted to the Town for approval prior to erection or construction.*<sup>1</sup>

13-4. New poles will be placed only at locations approved by the Town Council.

13-5. The Company shall be subject to all ordinances and other regulations of the Town, both present and future, with regard to the quality and safety of the construction, maintenance and operation of the System, and with regard to the Company's use of the streets, alleys, thorough-fares and other public places of the Town.

13-6. The Company shall not disturb any pavement, sidewalk, driveway or other surfacing without the prior written approval of Town Council and subject to such terms as the Town Council shall impose.

13-7. The Company shall at all times, defend, indemnify, protect and save harmless the Town from and against any and all liability, losses, and physical damage to property and bodily injury or death to persons which may arise out of or be caused by the erection, construction, replacement, removal, maintenance and operation of the Company's community antenna television and audio communications service, and resulting from or by any negligence, fault or misconduct on the part of the Company, its agents, officers, servants and employees. The Company shall carry public liability insurance for the protection of itself and the Town with minimum limits of \$100,000.00 for injury to any one person and \$300,000.00 as to any one accident, and with property damage limits of not less than \$10,000.00. The Company shall furnish and file with the Town Council certificates evidencing said public liability insurance. The Company shall hold the Town harmless against damages resulting from legal action which may be brought against it in connection with the establishment and/or operation and maintenance of the Company's community antenna system in the Town. The Company shall also carry Workmen's Compensation coverage on its employees who are engaged in any manner in the erection, construction, replacement, repair, maintenance and operation of the Company's plant and equipment. *The franchise herein granted shall be non-exclusive and shall be for a term of 15 years from May 8, 1973, provided that the Company may obtain a renewal term of an additional ten years following a public proceeding affording due process and a determination that the Company remains fully qualified to provide cable television service to the Town of Bethany.*<sup>1</sup>

13-8. The franchise herein granted shall be non-exclusive and shall be for a term of 25 years from the adoption of this Ordinance. *Company shall, within one year of receiving a Certificate of Compliance from the Federal Communications Commission, have energized trunk cable in at least 20% of the Town of Bethany, with 20% of the Town furnished with energized trunk cable during each succeeding year.*<sup>1</sup>

13-9. Construction operations by the Company for providing the above-mentioned services shall begin within three months of the Company's obtaining permission from the utility companies to use existing utility poles for the erection and maintenance of the Company's transmission lines and other facilities, and the proposed services shall be available in the Town within an additional six months from the time construction operations by the Company begin, and provided no conditions arise beyond the control of the Company.

13-10. *The installation charge for each home subscriber shall be \$20.00 for each outlet; the installation charge for each commercial subscriber shall be negotiated between Blue Devil and the commercial subscriber. The installation of PAY-TV service shall be \$20.00 for each outlet.*

13-11. *Blue Devil agrees to charge subscribers to its service at not more than the following rates:*

<i>home and commercial subscribers a monthly service charge of</i>	<i>\$ 7.21</i>
<i>per month for the first outlet</i>	
<i>and an additional charge for each additional outlet</i>	<i>\$10.54</i>
<i>reconnecting after disconnection for non-payment</i>	<i>\$25.00</i>
<i>relocation of outlet at subscriber's request</i>	<i>\$ 5.00</i>
<i>PAY-TV a monthly service charge of</i>	<i>\$ 9.00 <sup>1</sup></i>

Rate changes will be made only with the approval of the Town Council.

13-12. *In consideration of the rights, privileges and franchise hereby granted, and in lieu of any occupation license, Blue Devil agrees to pay the Town an annual franchise fee in the amount of \$175.00 per year on or before January 15 of each year.*

13-13. *Revoked.*

13-14. *Revoked. <sup>1</sup>*

13-15. The Company shall have the authority to trim trees upon any streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming into contact with its wires, cables, and other apparatus, and at the expense and liability of the Company. Such authority does not extend to entry upon private property without the property owner's consent.

13-16. The Company will furnish without installation charge or without monthly fee a reasonable number of outlet connections to municipal buildings as selected by the Town Council, as well as all public, private and parochial elementary schools passed by the cable Company operation. *The Company shall promptly, customarily within 24 hours, investigate and resolve all complaints regarding cable television service. A local office shall be maintained for that purpose.*<sup>1</sup>

13-17. The Company shall, during the existence of this agreement, furnish reasonable, adequate and efficient community antenna reception service to the residents of the Town wherever practicable, and the Company agrees to maintain its system in reasonable repair and working order and to provide adequate facilities for such maintenance. These requirements may be temporarily suspended by disaster or emergency conditions or other circumstances beyond the reasonable control of the Company.

13-18. The Company's plant and equipment, including the antenna site, head-end and distribution system towers, structures, poles, wires, underground cables and appurtenances shall be installed in accordance with good engineering practices, and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated so as not to endanger or interfere with person or property or to interfere with improvements the municipality may deem proper to make, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on public ways, places and structures.

13-19. Erection, installation, construction-replacement, removal, repair, maintenance and operation of the system shall be in accordance with the provisions of the National Electrical Code of the National Board of Fire Underwriters and such applicable laws of the State of West Virginia and applicable ordinances of this municipality which may now be in effect or enacted in the future. All installations shall be of a permanent nature, durable and maintained in a safe, suitable and substantial condition in good order and repair.

13-20. Any opening or obstruction in the streets or other public ways made by the Company in the course of the construction, operation or removal of installations shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights.

13-21. The Company shall not sell or assign its right, title and interest hereunder to any firm, business or corporation without prior written notice to the Town Council.

13-22. For the purpose of compelling compliance with their grant and franchise, and to secure efficiency of public service and reasonable rates, and the maintenance of the community antenna system in good condition during the full term of the grant, it is hereby provided that if the Company fails to comply with any of the provisions of the grant, or fails to fulfill any of its obligations hereunder, except for causes beyond the reasonable control of the Company, the Town Council shall have the right to revoke and declare forfeited this agreement and all rights of the Company hereunder. In the event the Company shall be adjudged bankrupt or placed in receivership, the Town Council may declare the rights herein granted forfeited and terminated.

13-23. Upon expiration of this franchise or earlier termination thereof, the Town may, at its option, require the Company to remove all or any part of its installations and to restore any damage caused by such removal, at the expense of the Company. Upon failure of the Company to comply, the Town may undertake such removal and the cost thereof shall be deemed liquidated damages payable by the Company to the Town. *Should the Federal Communications Commission modify its rules relating to local cable television franchises, such modifications shall be incorporated herein within one year of their adoption or at the time of renewal of the Agreement, whichever occurs first.*<sup>1</sup>

13-24. The provisions of this Ordinance and franchise are hereby declared to be severable. If any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid or void, the remainder of this Ordinance shall continue in force and effect, it being the intent now hereby declared that this Ordinance would have been adopted even if such invalid or void matter had not been included therein.

/s/ Roger N. Pauls

MAYOR

First Reading: 10/10/72

Second Reading (adopted): 12/12/72

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<sup>1</sup> As amended by Ordinance No. 17, adopted 6/12/73, Ordinance No. 31, adopted 7/8/75, and Ordinance No.

46, adopted 12/18/79.

**Acceptance:**

Telcor Cable TV, Successor to Communication Construction Corporation, a corporation, hereby accepts the foregoing Amendments to the franchise agreement and agrees to comply with the provisions thereof.

Signed this 16 day of July, 1975

TELCOR CABLE TV, Successor to  
COMMUNICATION CONSTRUCTION  
CORPORATION, a corporation

/s/ M\_\_\_\_\_ Bates

ITS PRESIDENT

## **Ordinance No. 27**

AS AMENDED BY ORDINANCE NO. 86<sup>1</sup>

### **An ordinance granting to Monongahela Power Company a franchise to construct, operate and maintain an electrical system in the Town of Bethany**

WHEREAS, it appearing that under and in accordance with the provisions of Chapter 8, Article 31, Section 1 of the West Virginia Code, Monongahela Power Company, a corporation, (hereinafter called "Company") has, more than thirty days prior to the date of passage hereof, filed with this *Town of Bethany (hereinafter called "Town")*<sup>1</sup> written application for a franchise granting to the Company the exclusive right and privilege to construct, erect, alter, operate, maintain and reconstruct, in, upon, along, across, over and under the streets, alleys, public ways and public places in the Town, an electric system and facilities appurtenant thereto;

WHEREAS, the Company has caused notice of such application, stating the object of such franchise, to be given by publication thereof once a week for two successive weeks in a qualified newspaper of general circulation in the Town; and,

WHEREAS, an opportunity has been given any person interested in the granting or refusing of said franchise to be heard;

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE COUNCIL OF THE TOWN OF BETHANY:

Section 1. In consideration of the benefits mutually to be derived by the Town and by the Company, there is hereby granted by this Town to the Company the exclusive right and privilege to construct, erect, alter, operate, maintain and reconstruct, in, upon, along, across, over and under the streets, alleys, sidewalks, public ways and public places, and extensions thereof, (all hereinafter called "public ways") now or hereafter laid out, used or dedicated in the Town and/or any annexations thereto, an electric system, consisting of transmission and distribution facilities and appurtenances thereto, required to conduct electricity within and/or through the Town.

Section 2. All structures erected by the Company pursuant hereto shall comply with the standards of the National Electrical Code and shall be so located as reasonably to cause minimum interference with the proper use of the public ways or with the rights or convenience of owners of property abutting thereupon. In



the event of any disturbance by the Company of any public pavement, sidewalk, driveway or other surfacing the Company shall, at its own cost and expense, repair and restore the same to as good condition as existed prior thereto.

*If, in the opinion of said Town, any of the Company's towers, poles, wires, supports, brackets, masts and other appliances shall become unsafe and if such condition is determined to be in violation of the National Electric Safety code, then upon written notice by the Town of its opinion, the same shall be made safe by the Company or replaced by other or safe ones at the Company's own expense, unless such condition was caused or contributed to by the Town.*

*The Company shall at all times have the right to clear, control, cut, trim and remove trees, limbs, vegetation, brush and other obstructions from the rights of way or which in its opinion may interfere or endanger its facilities. However, Company agrees to exercise such right only to the extent reasonably necessary to prevent said obstructions from interfering or endangering its facilities.*<sup>1</sup>

Section 3. Subject to the approval of the Public Service Commission of the State of West Virginia insofar as the same may be required, the Company shall have the authority to promulgate such rules, regulations, terms and conditions, not in conflict herewith, as it may deem reasonably necessary to enable it to exercise its rights and perform its obligations hereunder and to provide electric service to all of its customers, *and the Town hereby agrees to abide by and comply with such rules, regulations, terms and conditions.*<sup>1</sup>

Section 4. This Town shall have the right, without charge, to maintain upon poles of the Company within the Town, to the satisfaction of the Company and in accordance with its specifications, wires and equipment necessary for police and fire communication and traffic control systems. The Town shall install, maintain and use such wires and equipment in such manner as not to interfere with nor endanger the Company's facilities, and in compliance with the rules and regulations of the Company.

Section 5. The Company shall indemnify and save this Town harmless against and from all loss and liability sustained by the Town on account of any damage, claim or judgment resulting wholly from negligence of the Company, its contractors, agents or employees. Within ten days after receipt by the Town of notice of any such claim or judgment, the Town shall notify the Company thereof in writing, and the Company shall have the right to defend and/or settle the same.

This Town shall indemnify and save harmless the Company against and from all loss and liability sustained by the Company on account of any damage, claim or judgment resulting from negligence of the Town, its contractors, agents or employees.

Section 6. This Town shall have the right, at its expense, to inspect all construction and erection work performed by the Company hereunder and to make such other inspections as it shall deem necessary to determine compliance herewith.

*Section 7. The Company shall respond promptly to correct interruptions in electrical service of the Town of Bethany caused by any source and shall designate a specific customer service representative for the Town of Bethany to have responsibility to see that the provisions of this section are complied with.*<sup>1</sup>

Section 8. The Company shall not sell or transfer to another said electric system or any rights hereunder until the transferee has filed in the office of the Clerk of this Town an instrument, duly executed, reciting the fact of such transfer and accepting the terms hereof and agreeing to perform all the obligations required to be performed by the Company hereunder.

*Section 9. The franchise herein granted shall take effect and be in force from and after final passage hereof, as required by law, and shall continue in force and effect thereafter for a term of 25 years.*<sup>1</sup>

Section 10. Any Ordinance or part thereof inconsistent herewith is hereby repealed to the extent of such inconsistency.

Section 11. If any section or part of this Ordinance be declared void, the validity of the remainder thereof shall not be affected thereby.

*Section 12. The said Company shall not be entitled to the rights and privileges herein granted unless it shall, within 60 days after the passage of this ordinance, file with the Recorder of said Town an acceptance of this ordinance and franchise, agreeing that it will comply with all the conditions and provisions thereof, and do and perform all things by this ordinance required to be performed by it and will refrain from doing all things which it is by this ordinance and franchise prohibited from doing.*<sup>1</sup>

/s/ John O. Cole

MAYOR

First Reading: Unknown

Second Reading (adopted): Unknown

CERTIFICATE

*I, Helen Moren, Recorder of the Council of the Town of Bethany, West Virginia, certify that this is a true copy of the ordinance passed by said Council at its meeting held on June 18, 1991.*

ACCEPTANCE

*Monongahela Power Company, a corporation, hereby accepts the foregoing ordinance and franchise and agrees to comply with all the conditions and provisions thereof, and will do and perform all things by this ordinance required to be performed by it and will refrain from doing all things which it is by this ordinance and franchise prohibited from doing.*

*Signed this 15<sup>th</sup> day of August, 1991.<sup>1</sup>*

MONONGAHELA POWER COMPANY

By \_\_\_\_\_

Vice President

ATTEST:

\_\_\_\_\_

Secretary

\_\_\_\_\_

<sup>1</sup> As amended by Ordinance No. 86, adopted 6/18/91.

## **Ordinance No. 68**

### **An ordinance accepting the dedication of Logan Court**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA, as follows:

The Town of Bethany hereby accepts the dedication of the street known as Logan Court, as the same is set forth on Plat of the Logan Court Addition to the Town of Bethany, recorded in the Office of the Clerk of the County Commission of Brooke County, West Virginia, in Plat Book \_\_\_\_, at page \_\_\_\_.

/s/ John O. Cole

MAYOR

First Reading: 2/12/84

Second Reading (adopted): 3/13/84

## **Ordinance No. 82**

### **Right to construct cable television system**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

The Mayor of the Town of Bethany, Brooke County, West Virginia, is hereby authorized to enter into and execute that certain Agreement by and between BOCCE Cable of Wheeling, WV, parent of BOCCE Cable, a WV proprietorship, its successors and assigns and the Town of Bethany, Brooke County, West Virginia, which said Agreement provides for the construction, operation and maintenance of a cable television system in the Town of Bethany, Brooke County, West Virginia, which said Agreement is attached hereto and made a part hereof.

/s/ John O. Cole

MAYOR

First Reading: 5/30/90

Second Reading (adopted): 7/18/90

## **Ordinance No. 92**

### **An ordinance of the Town of Bethany approving a street light agreement by and between the Town and Monongahela Power Company**

BE IT ORDAINED by the Council of the Town of Bethany, County of Brooke, State of West Virginia, that the Street Lighting Agreement dated August 8, 1995, with Monongahela Power Company, in the form presented to this meeting, providing for the lighting of certain public streets and areas of said Town of Bethany, be, and the same hereby is, approved and the proper officers are hereby authorized and directed to execute the same on behalf of said Town of Bethany.

/s/ John O. Cole

Mayor

First Reading:                      Unknown

Second Reading (adopted): 8/8/95

## **Ordinance No. 94**

### **Right to operate and maintain cable television system**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, BROOKE COUNTY, WEST VIRGINIA, THAT:

The Mayor of the Town of Bethany, Brooke County, West Virginia, is hereby authorized to enter into and execute that certain Agreement by and between Basil O. Ellis, dba Bocce Cable, of Valley Grove, West Virginia, a sole proprietorship, his successors and assigns, and the Town of Bethany, Brooke County, West Virginia, which said Agreement provides for the operation, maintenance, and expansion of a cable television system in the Town of Bethany, Brooke County, West Virginia, which said Agreement is attached hereto and made a part hereof.

/s/ John O. Cole

MAYOR

First Reading: 1/13/98

Second Reading (adopted): 3/10/98



## **Ordinance No. 116**

**An ordinance of the Town of Bethany, West Virginia, authorizing a certain sewer billing agreement with the Ohio County Public Service District**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. Pursuant to the provisions of Section 8-11-3(1) of the West Virginia Code, the mayor shall have full authority on behalf of the municipality to enter into a certain Sewer Billing Agreement with the Ohio County Public Service District, a copy of which proposed agreement is attached to this ordinance as an exhibit.

Section 2. Council finds that the principal object of such ordinance is not the raising of revenue for the municipality but rather is the facilitation of collection of sewer rates previously established. Accordingly, council further finds that notice of the proposed ordinance by publication is not required.

Section 3. This ordinance shall be effective upon its adoption.

/s/ Sven deJong

Mayor

First Reading: 11/18/03

Second Reading (adopted): 12/9/03

## EXHIBIT

### SEWER BILLING AGREEMENT

THIS AGREEMENT, Made this \_\_\_\_\_ day of September, 2003, by and between OHIO COUNTY PUBLIC SERVICE DISTRICT, a public utility with its principal address at 411 National Road, P. O. Box 216, Triadelphia, West Virginia, 26059 (hereinafter "DISTRICT") , and the TOWN OF BETHANY, a municipal corporation situate in Brooke County, West Virginia, with a mailing address of Church Street, Bethany, West Virginia, 26032 (hereinafter "BETHANY").

WHEREAS, BETHANY provides sewer service to certain of its citizens; and

WHEREAS, DISTRICT operates a water distribution public utility in Brooke, Ohio and Marshall Counties in West Virginia, which utility supplies water service to certain of the citizens of BETHANY and bills those citizens for their water consumption; and

WHEREAS, BETHANY desires to have DISTRICT assume responsibility for billing its citizens for sewer service based upon their water consumption; and

WHEREAS, the parties wish to define and state their respective responsibilities in writing.

NOW, THEREFORE, WITNESSETH: That for and in consideration of the mutual covenants and promises hereinafter stated and intending to be legally bound thereby, the parties do hereby agree as follows:

1. Billing Services. The DISTRICT will read the water meters of the BETHANY customers on a regular basis, being monthly if weather or other circumstances do not interfere with the meter reading process. Thereafter, the DISTRICT will include the charges for the BETHANY sewer service as set forth on BETHANY's tariffs on the DISTRICT's regular water bills upon such frequency as those bills may be sent out to customers.

2. Receipts. The DISTRICT shall receive all payments for BETHANY sewer customers. Said payments shall be credited first to the DISTRICT's own charges, with the remainder being credited to the BETHANY sewer charges. The DISTRICT shall, on a weekly basis, deposit all receipts credited to BETHANY into an account to be designated by BETHANY. To that end, BETHANY agrees to provide DISTRICT with deposit slips for the BETHANY account into which receipts are to be deposited.

3. Delinquent Accounts. The DISTRICT shall issue delinquent and shutoff notices to all delinquent BETHANY customers, and will shut off water service to BETHANY sewer customers in accordance with the Water Service Termination Agreement between the parties hereto.

4. Initial Cost. BETHANY agrees to pay the DISTRICT the sum of \$400.00 for the administrative time and cost of setting up the billing for BETHANY. In addition, BETHANY agrees to reimburse the DISTRICT for any and all computer programming and consultant costs to add the BETHANY tariffs and other necessary programming to the system and the legal costs in drafting this Agreement, the Water Service Termination Agreement, and obtaining approval from the Public Service Commission.

5. Monthly Costs. BETHANY agrees to pay the DISTRICT the sum of \$100.00 per month for its services under this Agreement. In addition, BETHANY shall pay the DISTRICT all amounts required under the Water Service Termination Agreement.

6. Customer Information. BETHANY agrees to provide DISTRICT with all current customer information and to keep such information updated and current.

7. Termination. This Agreement may be terminated by either party upon 60 days written notice given by certified mail.

8. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, including their respective successors and assigns, but may not be assigned without the consent of the other party, provided that such consent shall not be unreasonably withheld.

9. Notices. All notices and written communications between the parties hereto shall be effective when delivered by the parties to the United States Postal Service. All applicable written communications shall be addressed as follows until changed by either party in writing:

DISTRICT: Ohio County Public Service District  
411 National Road  
P. O. Box 216  
Triadelphia, WV 26059

BETHANY: Town of Bethany  
Church Street  
Bethany, WV 26032

IN WITNESS WHEREOF, the Town of Bethany has caused this Agreement to be signed by Sven M. de Jong, Mayor of the Town of Bethany, and its corporate seal to be affixed by authority of an ordinance of the Town Council of Bethany regularly adopted on the \_\_\_\_ day of September, 2003; and the Ohio County Public Service District has caused this Agreement to be signed by James C. Boyd, Jr., Chairman of the Board of the Ohio County Public Service District and its corporate seal to be hereunto affixed by authority of a resolution of the Board of the Ohio County Public Service District regularly adopted on the day of September \_\_\_\_, 2003.

Attest: OHIO COUNTY PUBLIC SERVICE DISTRICT

\_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Attest: TOWN OF BETHANY

\_\_\_\_\_ By: \_\_\_\_\_

Title: Recorder Title: Mayor

## **Ordinance No. 121**

**An ordinance of the Town of Bethany, West Virginia, authorizing the municipality to enter into a license agreement with the State of West Virginia for a sewer pipeline across Buffalo Creek**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. The Town of Bethany shall enter into a License Agreement with the State of West Virginia, Bureau of Commerce, Division of Natural Resources, Public Land Corporation, in form and content as presented at the meetings of council at which this ordinance is considered, which proposed agreement bears the identifier p-04-l/05-117, with respect to a proposed six-inch (6") sewer pipeline across, through and under Buffalo Creek, in the terms and conditions stated in such proposed agreement, a copy of which is attached to this ordinance as an exhibit.

Section 2. The signing of the agreement by the mayor on behalf of the municipality is hereby authorized, ratified and confirmed.

Section 3. The mayor shall cause an executed original of the License Agreement to be admitted to record in the office of the clerk of the County Commission of Brooke County, West Virginia.

Section 4. This ordinance shall be effective upon its adoption, but the License Agreement for all purposes shall be deemed to be valid and effective from the time of its signing by both of the parties to such an agreement.

/s/ Sven deJong

Mayor

First Reading: 4/20/2004

Second Reading (adopted): 5/12/2004

## **Part VII. Financings**

## **Ordinance No. 113**

**Ordinance authorizing the issuance by the Town of Bethany of not more than \$225,000 in aggregate principal amount of sewerage system bond anticipation notes, series 2003, for the purposes of temporarily financing the costs of design of, and other pre-project costs for, improvement and extensions to the existing public sewerage facilities of the Town and the costs of issuance of the notes; providing for the rights and remedies of and security for the registered owners of such notes; authorizing the sale and providing for the terms and provisions of such notes; and enacting other provisions with respect thereto.**

*Please contact the Office of the Town Recorder for the full copy.*

/s/Sven deJong

MAYOR

First Reading: February 24, 2003

Second Reading: March 11, 2003

Final Reading (adopted): May 13, 2003

## **Ordinance No. 119**

**Ordinance authorizing the refunding of the outstanding sewerage system bond anticipation notes, series 2003, and acquisition and construction of additions, betterments and improvement to the existing public sewerage system of the Town of Bethany and the financing of the cost, not otherwise provided, thereof through the issuance by the Town of Bethany of not more than \$3,000,000 in aggregate principal amount of sewer revenue bonds, series 2004A (West Virginia Infrastructure Fund); providing for the rights and remedies of and security for the registered owners of such bonds; authorizing execution and delivery of all documents relating to the issuance of such bonds; approving, ratifying and confirming a loan agreement relating to such bonds; authorizing the sale and providing for the terms and provisions of such bonds and adopting other provisions relating thereto.**

*Please contact the Office of the Town Recorder for the full copy.*



## **Ordinance No. 138**

**An ordinance of the Town of Bethany, West Virginia, authorizing Sewer Revenue Bonds, Series 2009A (United States Department of Agriculture)**

*Please contact the Office of the Town Recorder for the full copy.*

Sven de Jong, MAYOR

First Reading: January 7, 2009

Second Reading: February 4, 2009

Third Reading (adopted): March 4, 2009

## **Ordinance No. 139**

Town of Bethany

**Ordinance authorizing the acquisition and construction of certain additions, betterments and improvements to the existing public sewerage facilities of the Town of Bethany, and the financing of the cost, not otherwise provided thereof, through the issuance by the Town of not more than \$700,000 in aggregate principal amount of sewer revenue bonds, series 2009 (United States Department of Agriculture) in one or more series; defining and prescribing the terms and provisions of the bonds; providing generally for the rights and remedies of and security for the holder of the bonds; and providing when this ordinance shall take effect.**

*Please contact the Office of the Town Recorder for the full copy.*

Sven de Jong, MAYOR

First Reading: January 7, 2009

Second Reading: February 4, 2009

Third Reading (adopted): March 4, 2009

## Appendix: Numerical listing of known ordinances of the Town of Bethany, Brooke County, West Virginia

Ordinance Number	Date Adopted	Status	Title
1	1/13/1970	Superseded by Ord. 112	Regulating Real Property
2	1/13/1970	Amended by Ord. 100; superseded by Ord. 127	Building Permits and Fees
3	1/13/1970		Mobile Homes
4	1/13/1970		Loitering and Annoying Conduct
5	1/13/1970		Curfew on Children Under the Age of Seventeen Years
6	1/13/1970	Amended by Ord. 143	Weeds, Grass, Deleterious Growths Removal
7	1/13/1970	Superseded	Fire Protection Ordinance
8	1/13/1970	Superseded	Police Protection Ordinance
9	1/13/1970	Superseded	Street Lighting Ordinance
10	1/13/1970	Revoked by Ord. 42	Noise
10A	Unknown	Superseded by Ord. 124	Construction and Maintenance of Sidewalks
10B	6/15/1971	Superseded by Ord. 123	Municipal Planning Commission
10C	6/15/1971		The Municipal Zoning Board of Appeals
11	2/23/1972	Amended by Ord. 24, 36, 81, 135	Regulation of Motor Vehicles and Traffic
12	6/13/1972	Revoked by Ord. 43	False Alarms and Penalties
13	12/12/1972	Amended by Ord. 17, 31, 46	Right to Construct Community Antenna Television System
14	12/12/1972	Amends Ord. 7	Fire Protection
15	12/12/1972	Amends Ord. 8	Police Protection
16	12/12/1972	Amends Ord. 9	Street Lighting
17	6/12/1973	Amends Ord. 13	Right to Construct Community Antenna TV System
18	Unknown	Superseded by Ord. 110	Duties and Powers of Mayor
19	MISSING		
20	MISSING		
20A	9/11/1973	Revoked	Collection of Service Fees and License Fees
21	MISSING		
22	7/9/1974		Street Commissioner
23	9/10/1974	Revoked by Ord. 44	Private Club, Beer License Fees
24	9/10/1974	Amends Ord. 11; superseded by Ord.	Regulation of Motor Vehicles and Traffic

		128	
25	10/8/1974	Amended by Ord. 52, 73, 150	Dogs and Animal Regulation
26	10/8/1974	Superseded by Ord. 124	Specifications for Construction of Sidewalks and Curbs
27	Unknown	Amended by Ord. 86	Monongahela Power Company Franchise
28	3/11/1975	Amends Ord. 23; revoked by Ord. 44	Private Club, Beer License Fees
29	5/27/1975	Amends Ord. 7; superseded	Fire Protection Ordinance
30	6/10/1975	Revoked by Ord. 115	Building Permit Issuance, Building Codes and Penalties
31	7/8/1975	Amends Ord. 13	Right to Construct Community TV Antenna System
32	8/21/1975	Superseded by Ord. 101	Municipal Court and the Appointment of a Municipal Court Judge
33	1/13/1976		Abandoned Vehicles
34	1/13/1976		Door to Door Solicitation
35	8/10/1976		Criminal Procedure for Violation of Traffic Laws
36	1/13/1976	Amends Ord. 11	Regulation of Motor Vehicles and Traffic
37	10/17/1977	Amends Ord. 32; superseded by Ord. 101	Municipal Court and Appointment of Court Judge
38	2/20/1978		Prohibiting the Keeping of Animals, Swine, or Fowl
39	2/20/1978		Right of Way Growth Removal
40	7/17/1978	Amends Ord. 23; revoked by Ord. 44	Private Club, Beer License Fees
41	8/28/1978	Amended by Ord. 137	Public Intoxication in Public and Penalties
42	11/14/1978	Revokes Ord. 10	Noise
43	4/10/1979	Revokes Ord. 12	False Alarms and Penalties
44	12/18/1979	Revokes Ord. 23, 28, 40; amended by Ord. 90	Private Club, Beer License Fees
45	12/18/1979		Vandalism and Destruction of Property
46	12/18/1979	Amends Ord. 13	Right to Construct Community TV Antenna System
47	6/11/1980	Supersedes Ord. 7	Fire Protection
48	6/11/1980	Voids Ord. 8	Police Protection
49	6/11/1980	Supersedes Ord. 9	Street Lighting
50	9/9/1980	Amended by Ord. 97	Office of Treasurer
51	9/9/1980	Superseded by Ord. 111	Office of Recorder
52	4/14/1981	Amends Ord. 25	Dogs and Animal Regulation
53	12/7/1981		Municipal Elections
54	12/7/1981		License Tax on Distributors and Retailers of Wine
55	12/7/1981		Tax on Purchase of Intoxicating Liquors

56	12/7/1981	Revoked by Ord. 71	Contract for Garbage Collection
57	2/9/1982		Prohibiting Litter in Public Places
58	2/9/1982	Amends Ord. 1; superseded by Ord. 112	Regulating Real Property
59	5/20/1982		Prohibiting Expansion of Coin Operated Amusement Machines
60	4/20/1982	Amended by Ord. 63	Public Utilities Tax
61	5/11/1982	Superseded by Ord. 70	Sanitation Board Service Rates
62	1/11/1983	Amends Ord. 1; superseded by Ord. 112	Regulating Real Property
63	4/19/1983	Amends Ord. 60	Public Utilities Tax
64	5/9/1983	Supersedes Ord. 7	Fire Protection
65	10/11/1983		Trespassing
66	1/10/1984		Cruelty to Animals and Penalties
67	2/14/1984		Housing and Property Maintenance Code
68	3/13/1984		The Dedication of Logan Court
69	Unknown	Superseded	Granting a Discount for Prompt Payment of Service Fees
69A	3/3/1986	Amended by Ord. 154	Prohibiting Gambling
70	5/14/1986	Supersedes Ord. 61, superseded by Ord. 107	Sanitation Board Service Rates
71	10/14/1986	Revokes Ord. 56	Contract for Garbage Collection
72	3/17/1987	Amended by Ord. 144	Filing Date for Municipal Elections
73	10/19/1987	Amends Ord. 25	Dogs and Animal Regulation
74	4/19/1988		Bonfires and Other Outdoor Fires
75	5/9/1988	Superseded	Street Maintenance and Improvement Service Fee
76	7/12/1988	Superseded	Ord. 7 Fire Protection Ordinance
77	7/13/1988	Superseded	Ord. 8 Police Protection Ordinance
78	7/13/1988	Superseded	Ord. 9 Street Lighting Ordinance
79	5/23/1989	Revoked	Imposing an Ambulance Service Fee
80	7/12/1989	Amends Ord. 1; superseded by Ord. 112	Regulating Real Property
81	2/13/1990	Amends Ord. 11	Regulation of Motor Vehicles and Traffic
82	7/18/1990		Right to Construct Cable Television System
83	6/12/1990		Regulating Commercial Signs
84	6/12/1990	Amends Ord. 1; superseded by Ord. 112	Regulating Real Property
85	1/8/1991	Amends Ord. 1; superseded by Ord. 112	Regulating Real Property
86	6/18/1991	Amends Ord. 27	Grants Monongahela Power a Franchise

			for Electric System
87	5/14/1991	Supersedes Ord. 61; superseded by Ord. 107	Sanitation Board Service Rates
88	8/11/1992	Revokes Ord. 79	Imposing an Ambulance Service Fee
89	6/24/1994	Supersedes Ord. 8	Police Protection Ordinance
90	6/24/1994	Amends Ord. 44	Collection of License Fees
91	11/15/1994		Regulating Discharge of Rain Water into Sanitary Sewer System
92	8/8/1995		Street Lighting Agreement with Mon. Power
93	8/19/1996	Supersedes Ord. 61; superseded by Ord. 107	Rates for Services of Sanitation Board
94	3/10/1998		Right to Operate and Maintain Cable Television System
95	3/13/2001	Superseded by Ord. 106	Adoption of Building Code
96	4/17/2001		Public Indecency Penalties
97	1/8/2002	Amends Ord. 50; supersedes Ord. 51	Relating to Duties of Treasurer & Recorder
98	1/8/2002	Amended by Ord. 98A	Continuing the Municipal Sanitary Board
98A	3/12/2002	Amends Ord. 98	Continuing the Municipal Sanitary Board
99	1/8/2002	Amends Ord. 10B; superseded by Ord. 123	Expand the Municipal Planning Commission
100	3/12/2002	Amends Ord. 2; superseded by Ord. 127	Building Permits
101	3/12/2002	Supersedes Ord. 32, 37	Relating to Municipal Court & Judge
102	5/16/2002	Superseded by Ord. 107	Rates for Services of Sanitation Board
103	6/11/2002	Revokes Ord. 7, 8, 9, 69, 75, 79, amended by Ord. 120, 149	Public Safety & Service
104	9/10/2002		Adoption of State Fire Code
105	9/10/2002		Prohibiting Racial Profiling
106	12/10/2002	Supersedes Ord. 95	Relating to Adoption of Building Code
107	12/10/2002	Supersedes Ord. 102; superseded by Ord. 118	Relating to Rates for Services of Sanitation Board
108	12/10/2002	Superseded by Ord. 127	Confirms Fees for Building Permits
109	2/11/2003	Amended by Ord. 114	Governance and Elections
110	2/11/2003	Supersedes Ord. 18	Duties and Powers of Mayor
111	4/8/2003	Supersedes Ord. 51; amends Ord. 97	Duties of Treasurer and Recorder
112	5/13/2003	Supersedes Ord. 1, 58, 62, 80, 84, 85	Zoning Ordinance
113	5/13/2003		Sewerage System Bond Notes, Series 2003
114	9/9/2003	Amends Ord. 109	Relating to Governance & Elections
115	9/9/2003	Revokes Ord. 30	Relating to Building Permits

116	12/9/2003		Authorizing Sewer Billing Agreement
117	12/9/2003	Amended by Ord. 126, 131	Open Governmental Proceedings
118	1/13/2004	Supersedes Ord. 107; superseded by Ord. 147	Rates for Services of Sanitation Board
119	3/9/2004		Sewer Revenue Bonds, Series 2004A
120	5/12/2004	Amends Ord. 103; amended by Ord. 149	Public Safety & Service Fee
121	5/12/2004		License Agreement for Sewer Pipeline
122	8/10/2004		Sewer Use
123	11/9/2004	Supersedes Ord. 10B, 99; superseded by Ord. 151	Municipal Planning Commission
124	1/11/2005	Supersedes Ord. 10A, 26	Sidewalks
125	MISSING		
126	1/10/2006	Amends Ord. 117	Meetings of the Governing Body
127	3/1/2006	Supersedes Ord. 2, 100, 108; amended by 141	Building Permits
128	5/3/2006	Supersedes Ord. 24	West Virginia Traffic Laws
129	MISSING		
130	11/1/2006		Vacating the Southerly Extension of Fair Street
131	2/7/2007	Amends Ord. 117	Citizen's Matters on Agenda of Open Governmental Proceedings
132	MISSING		
133	MISSING		
134	MISSING		
135	5/7/2008	Amends Ord. 11	Motor Vehicles & Traffic
136	5/7/2008		Authorizing Fines for Certain Motor Vehicle Violators
137	10/1/2008	Amends Ord. 41	Public Intoxication
138	1/7/2009		Authorizing Sewer Revenue Bonds, Series 2009A
139	3/4/2009		Authorizing Sewer Revenue Bonds, Series 2009A
140	4/1/2009		Livestock and Large Animals in Public Areas
141	4/1/2009	Amends Ord. 127	Building Permits
142	MISSING		
143	7/1/2009	Amends Ord. 6	Nuisance Weeds and Noxious Matter on Private Property
144	9/2/2009	Amends Ord. 72	Filing Date for Municipal Elections
145	4/7/2010		Authorizing revision of West Virginia Public Service Commission tariffs

146	4/7/2010		Floodplain Ordinance
147	5/5/2010	Supersedes Ord. 118	Amending Municipal Sewer Service Fees
148	5/4/2011		Early Voting by Mail
149	4/4/2012	Amends Ord. 103, 120	Public Safety & Service Fee
150	3/6/2013	Amends Ord. 25	Dogs and Animal Regulation
151	2/5/2014	Supersedes Ord. 123	Municipal Planning Commission
152	MISSING		Video Lottery Land Use
153	MISSING		
154	4/2/2014	Amends Ord. 69A	Prohibiting Gambling
155	4/2/2014		Hotel Occupancy Tax
156	10/1/2014	Superseded by Ord. 157	Water and Sanitary Sewerage Rates, Fees, and Charges
157	2/4/2015	Supersedes Ord. 156	Water and Sanitary Sewerage Rates, Fees, and Charges