

CHARTER
OF THE CITY OF
SHINNSTON, WEST VIRGINIA

EDITOR'S NOTE: The Shinnston Charter was enacted on
June 28, 1998.

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CHARTER
OF THE CITY OF
SHINNSTON, WEST VIRGINIA

SECTION 1. INCORPORATION; SUCCESSION; NUMBER OF WARDS

The inhabitants of the City of Shinnston, Harrison County, West Virginia, within the corporate limits thereof as now established or as may hereafter be established in the manner provided by law, shall be and continue in perpetuity to be a municipal body politic and corporate, under the name of the "City of Shinnston," with all the powers of self-government granted by the constitution and laws of the state.

The City of Shinnston, as successor in interest of the present municipal corporation of the same name, shall succeed to, own, possess and enjoy all the property and all the rights, titles and interest of every kind and nature vested in or belonging to such municipal corporation at the time this Charter becomes effective, shall be subject to all existing liabilities, shall be bound by and through the appropriate agency shall pay all existing debts, and shall faithfully perform all present duties and discharge all present obligations of such corporation.

The territory embraced within said City shall be divided into four wards as now established, or as may hereafter be established, and the Council of said City may change the boundaries of said wards, or create additional ones, as may appear to said Council to be proper or necessary; but no change shall be made in the boundaries of said wards, or any new ward created, less than sixty days before the holding of a general election for said City.

SECTION 2. FORM OF GOVERNMENT

There is established by this Charter the "Manager Plan" form of municipal government, as prescribed in Plan IV of section two, article three, chapter eight of the Official Code of West Virginia, as amended. Except as otherwise provided in this Charter, the Council shall be the governing authority of the City, and shall appoint the City Manager who shall execute the laws and administer the government of the City, except as otherwise provided herein.

SECTION 3. POWERS OF THE CITY

The City shall have all the powers specifically provided for in this Charter, and shall also have all the powers now or hereafter granted to municipal corporations and to cities of its class by the constitution and general laws of the state, together with all the implied powers necessary and proper to carry into execution the powers so granted. The enumeration herein of particular powers shall not be deemed exclusive, but the City shall have and may exercise all the powers which under the constitution and laws of the state might properly be specifically enumerated in this Charter.

SECTION 4. THE COUNCIL; QUALIFICATIONS, TERMS OF OFFICE, AND SALARY OF MEMBERS; SELECTION OF MAYOR

The Council shall consist of seven members, one from each of the four wards established by the qualified voters of the City for terms of four years beginning on the first day of July following their election, except that of the seven Council members elected at the first election held under the provisions of the Charter, the three Council members elected at large shall be elected for terms of two years.

In order to determine the ward representatives of Council of the first administration under the first provisions of this Charter, all candidates for Council in the first election under this Charter shall file and declare by the ward in which they reside. Eligible voters shall be able to vote for all seven Council positions in the first election under this Charter. The person receiving the highest number of votes in that candidate's ward shall be the ward representative. The three persons receiving the highest number of votes after all four wards are represented shall be the at large Council members.

At each regular election thereafter, either three or four Council members, as the case may be, shall be elected to succeed the incumbent members whose terms of office expire on the thirtieth day of June following the election. The terms of all Council members in office on the date this Charter is adopted shall continue until the close of business on the 30th day of June following the first regular election held hereunder.

Council members shall be qualified voters of the City, shall be residents of the City, shall hold no other public office except that of notary public or member of the National Guard or naval or military reserve, and shall not be employed by the City in any capacity. If a Council member shall cease to be qualified or shall be convicted of treason, felony, or bribery in any election, their office shall immediately become vacant. To file for Council, a candidate must present the appropriate form and pay a \$10.00 filing fee. The first election under this Charter shall be held on June 9, 1998. Subsequent elections shall be held on the first Tuesday in June in even numbered years thereafter.

A special meeting of the Council shall be held at 12:00 noon on the 1st day of July following each regular City election. If the former Mayor has been re-elected to Council and is present, the former Mayor shall preside as temporary chairperson. Otherwise, the person receiving the highest number of votes shall preside. Then, newly elected Council members shall be inducted into office. The Council shall then elect one of its members to serve as Mayor for a term of two years. The Mayor shall preside at meetings of the Council and shall be recognized as the head of the City government for all ceremonial and military purposes, but shall have no regular administrative duties unless otherwise provided herein or directed by Council. The Council shall elect from among its members a Vice-Mayor who shall act as Mayor during the absence or disability of the Mayor and, if a vacancy occurs, shall become Mayor for the remainder of the unexpired term.

The compensation of the Mayor and members of Council shall be set by ordinance.

SECTION 5. CITY COUNCIL - PROHIBITIONS

(a) Holding Other Office. Except where authorized by law, no Council member shall hold any other elected public office during the term for which the member was elected to the Council. No Council member shall hold any other City office or employment during the terms for which the member was elected to the Council. No former Council member shall hold any compensated appointive office or employment with the City until one year after the expiration of the term for which the member was elected to the Council. Nothing in this section shall be construed to prohibit the Council from selecting any current or former Council member to represent the City on the governing board of any regional or other intergovernmental agency.

(b) Appointments and Removals. Neither the City Council nor any of its members shall in any manner control or demand the appointment or removal of any City administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, but the Council may express its views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration. Except for the purpose of inquiries and investigations under Section 7 of this Charter, the Council or its members shall deal with City officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately.

(d) Conflict of Interest. Any member of the Council having any interest direct or indirect, other than as a citizen of the City of Shinnston, in any matter to be acted upon in any way by Council, shall divulge that interest to the City Council and shall have no vote on such matter, nor shall he/she be privileged to take part in the discussion thereof except by unanimous consent, and, upon the request of any other member of the Council, the member shall retire from the session until such matter has been disposed of.

SECTION 6. VACANCIES; FORFEITURE OF OFFICE; REMOVAL FROM OFFICE; FILLING OF VACANCIES

(a) Vacancies. The office of a Council member shall become vacant upon the member's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

(b) Forfeiture of Office. A Council member shall forfeit that office if the Council member (1) lacks at any time during the term of the office for which elected any qualification for the office prescribed by this Charter or by law, or (2) while holding such office is convicted of treason, felony, or bribery in any election.

(c) Removal from Office. A Council member shall be subject to removal from office in the manner provided for the removal of municipal officers in section seven, article six, chapter six of the official Code of West Virginia, as amended, if the Council member (1) violates any express prohibition of this Charter, (2) is convicted of a crime involving moral turpitude, or (3) fails to attend three consecutive regular meetings of the Council without being excused by the Council.

(d) Filling of Vacancies. If a vacancy occurs in the City Council, the Council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy. An individual who has forfeited the office of member of the City Council cannot be reappointed to complete the unexpired term. The appointee will remain in office until the person elected to serve the remainder of the unexpired term takes office. This person will be elected at the regular municipal election following the date the vacancy occurred. If the vacancy occurs less than 60 days prior to the next municipal election, the appointee will remain in the office the remainder of the unexpired term of the Council member. If the Council fails to appoint someone to fill the vacancy within 45 days, then of the unsuccessful candidates for the office of member of Council at the last election, who are still qualified and willing to serve, the one who received more votes than any of the others shall be entitled to the office. A special

election shall be held within 40 days, following all other efforts to fill a Council vacancy, if those efforts are unsuccessful in filling the vacancy with a qualified replacement. If a special election does not fill the vacancy, then the Mayor shall appoint a qualified person to fill the vacancy.

(e) Appointments and/or Elections. Appointments and/or elections to fill any vacancy on Council shall be done in such a manner to keep intact the respective ward and at-large representation of the electorate.

SECTION 7. CITY COUNCIL - JUDGE OF QUALIFICATIONS

The City Council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. In order to exercise these powers, the Council shall have the power to subpoena witnesses, administer oaths and require the production of evidence. The City Clerk shall notify a member charged with conduct constituting grounds for forfeiture of office by certified mail.

If the member desires a public hearing, he/she must notify the City Council within ten days. The public hearing must be heard no later than twenty days after the receipt of the request for a hearing. A notice of such hearing shall be published in one or more newspapers of general circulation in the City at least one week in advance of the hearing. Decisions made by the Council under this section shall be subject to judicial review.

SECTION 8. POWERS OF THE COUNCIL; APPOINTMENT AND TENURE OF THE CITY MANAGER

Subject to any limitations imposed by the constitution and general laws of the state, all powers of the City shall be vested in and exercised by the Council, except such powers as are by this Charter specifically vested in the sanitary board and such powers as are by general law vested in the other boards or commissions provided for in this Charter or hereafter created by Council pursuant to general law. No franchise granted by the Council may be transferred in whole or in part without the written consent of Council.

The Council shall appoint a City Manager to serve for an indefinite term, and may at any time remove him/her from office by the affirmative vote of not less than four of its members. At least thirty days before such removal shall become effective, the Council shall adopt a preliminary resolution stating the reasons for his/her removal, and specifying the date on which his/her removal shall become final. At any time within ten days after the adoption of such resolution, upon the written request of the Manager, he/she shall be afforded an opportunity to be heard at a public meeting of the Council, which shall be held no earlier than ten nor later than twenty days after the request was made, and at a time and place to be fixed by Council. After such public hearing if one is requested, after full consideration, the Council by the affirmative vote of four of its members may adopt a final resolution of removal. By the preliminary resolution the Council may suspend the Manager with pay for a period not to exceed thirty days, and may designate some other person to perform the duties of the Manager during the period of his/her suspension.

The City Manager shall be a person of proved executive and administrative ability, preferably with experience and training in the field of City management. At the time of his/her appointment he/she need not be a resident of the City or state, but during his/her tenure of office shall reside within the State of West Virginia. No Council member, during his/her term and for a year thereafter, shall be eligible for appointment as City Manager.

Neither the Council nor any of its members shall direct or in any manner interfere with or obstruct the appointment or removal of any City officer or employee by the City Manager or by any of his/her subordinates. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. If any Council member shall violate the provisions of this section, he/she shall be subject to removal from office pursuant to section seven, article six, chapter six of the official code of West Virginia, as provided by Section 6, Subsection (c) of this Charter.

Except as otherwise provided by this Charter, and within the limitations imposed by the constitution and general laws of the state, the Council may determine the powers and duties of City officers, and subject to the requirements of general law may regulate the number, method of selection, qualifications, tenure, and compensation of City officers and employees, including the establishment of civil service for such employees.

SECTION 9. POWERS AND DUTIES OF CITY MANAGER

Except as otherwise provided in the Charter, the City Manager shall be the head of the administrative branch of the City government. He/she shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his/her authority, and to that end, except as otherwise provided in this Charter, he/she shall have the power and shall be required to:

- (1) Appoint and, when he/she deems it necessary or advisable, remove all officers and employees of the City except as otherwise provided by this Charter or by general law, and except as he/she may authorize the head of a department or office to appoint and remove subordinates in such department or office.
- (2) Prepare the annual budget, submit it to the Council for adoption, and be responsible for its administration after adoption.
- (3) Prepare and submit to the Council as of the end of each fiscal year a complete report on the finances and administrative activities of the City for the preceding year.
- (4) Advise the Council with respect to future plans and physical needs, and keep it informed concerning the current financial condition of the City.
- (5) Require the chief of police and the chief of the fire department to establish for their respective departments a course of training designed to promote the more efficient and safe operation of their departments.
- (6) Execute on behalf of the City all legal and other written documents requiring execution by the chief executive officer of the City, acknowledge the same if necessary, and perform all other acts and duties required of the chief executive officer of the City.
- (7) Perform such other duties as may be required of him/her by this Charter, by general law, or by order of the Council not inconsistent with this Charter or with general law.

The Manager may by letter filed with the City Clerk designate some qualified administrative officer of the City to perform the duties of the Manager during his/her temporary absence or disability. If the Manager fails to make such designation, the Council may by resolution appoint an officer of the City to act for the Manager during his/her absence or disability.

SECTION 10. CITY CLERK

The Council shall appoint a resident of the City to serve as City Clerk at the will and pleasure of the Council. Except as otherwise provided in this Charter and subject to the supervision of the City Manager, the Clerk shall have the power and it shall be his/her duty to:

- (1) Give notice of and attend all meetings of the Council, keep the journal of its proceedings, authenticate by his/her signature and record in full in a book kept for the purpose all ordinances and resolutions of the Council, prepare and keep up to date an index of all such ordinances and resolutions, and keep all such records available for public inspection when not in use.
- (2) Make and certify copies of any ordinance, resolution or order of the Council whenever required to do so, and affix the corporate seal of the City to any paper required to be sealed and to any certified copy of any paper, order or proceeding which he/she may make.
- (3) Prepare and cause to be served all notices required to be given to any person, firm or corporation, and after the proper service and return of any notice he/she shall file and preserve the same.
- (4) Have custody of and keep available for public inspection the permanent records of the City and file and properly index all records of such City officers and departments as the City Manager may direct.
- (5) Perform such other duties as may be required of him/her by this Charter, by general law, or by City ordinance or order of the City Manager not inconsistent with this Charter or with general law.

SECTION 11. RECALL OF A MEMBER OF COUNCIL

Any member of Council may be removed from office by the following procedure: a petition signed by at least twenty percent of the qualified voters of a ward for a ward Council member or of the City for an at-large member shall be filed with the City Clerk, which Petition shall contain a general statement of the grounds for which the removal is sought. The petition shall be accompanied by a bond in an amount determined by the City Clerk to equal the cost of the recall election with sufficient surety to pay the cost of the recall election if a majority of the legal votes cast are against the recall. Such petition and bond shall be submitted to, examined and certified by the City Clerk, and if such petition be deemed sufficient by the City Clerk, the City Clerk shall certify the same to the City Council without delay. Upon receipt of such petition the Council shall order and fix a date for holding a special recall election, not less than thirty days nor more than fifty days from the date of the City Clerk's certificate. The Council shall publish notice of the election at least ten days prior to the recall election in two newspapers of general circulation in the City. The ballot for such recall election shall be substantially of the following form and effect:

OFFICIAL BALLOT

_____ day of _____, in the year _____. Special recall election for the removal of

_____.

_____ For the recall of _____.

_____ Against the recall of _____.

Should a majority of the votes cast be in favor of recall the person recalled shall forthwith forfeit his/her office and the Council shall appoint a successor to such office following the provisions in Section 6 of this Charter.

The method of removal shall be cumulative and in addition to any other methods of removal provided by law. No recall petition shall be filed within ninety days succeeding or preceding any regular Council election. Not more than one recall election shall be held with respect to an officer during his/her term of office.

SECTION 12. CITY COUNCIL - INDEPENDENT AUDIT

The City Council shall provide for an independent annual audit of all City accounts and may provide for more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the City government or any of its officers. The Council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding three years, but the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the state makes such an audit, the Council may accept it as satisfying the requirements of this section.

SECTION 13. MEETINGS OF COUNCIL; RULES OF PROCEDURE; JOURNAL AND VOTING

(a) Meeting. The Council shall meet on the second Monday of each month at 7:00 p.m. Special meetings may be held on the call of the mayor or of three or more members and, except in cases of emergency, upon no less than twenty-four hours' notice to each member, the public and news media, specifying the time, place and purpose of the meeting. Except as allowed by the Open Governmental Proceedings Act, Chapter 6, Article 9A, Section 4 of the West Virginia Code, all meetings shall be public. (Amended 1-31-00)

(b) Rules and Journal. The City Council shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. An updated and official record of the City ordinances along with the City Charter shall be kept in a locked, secure location under the supervision of the City Clerk. A copy of the journal of Council proceedings, the City Charter and the City ordinances shall be kept at the City building and be available to the public.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Four members of the Council shall constitute a quorum. The Mayor shall be entitled to vote on all matters before the Council. The Council shall by resolution adopt by-laws prescribing its own rules, procedure, and order of business, and shall keep a journal of all its proceedings, which shall be available for public inspection.

(d) Agenda. The City Manager shall make a preliminary agenda available to each Council member, the City Attorney, the media, and interested citizens no later than the close of business on the Thursday preceding the regularly scheduled meeting of the Council, and a final agenda at the start of the meeting itself.

SECTION 14. ACTION REQUIRING ORDINANCE

In addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the City Council shall be done by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter, or abolish any City department, office or agency;
- (2) Provide for a fine or other penalty or a rule or regulation for violation of which a fine, or other penalty is imposed;
- (3) Levy taxes or provide for the collection of fees of any kind;
- (4) Require a license to do business;
- (5) Provide for public improvement;
- (6) Grant, renew or extend a franchise;
- (7) Regulate the rate charged for its services by a public utility;
- (8) Authorize the issuance of bonds or other forms of indebtedness;
- (9) Lay out or vacate a public street, avenue, road, alley or way
- (10) Relate to planning and zoning;
- (11) Regulate land use and development;
- (12) Provide for contractual or other agreements with other jurisdictions;
- (13) Provide for the purchase of private property by the municipality or for the sale of property belonging to the municipality; and
- (14) Amend or repeal any ordinance previously adopted.

Acts other than those referred to in the preceding sentence may be done either by ordinance or by resolution.

SECTION 15. ORDINANCES IN GENERAL

(a) Form. Every proposed ordinance shall be introduced in writing in the form required for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be "The City of Shinnston hereby ordains.." Any Ordinance which repeals or amends an existing ordinance or part of the City Code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing it in brackets or by striking type and shall indicate new matters by underscoring or by italics.

(b) Procedure. Any ordinance may be introduced by any member at any regular or special meeting of the Council. Upon introduction of any ordinance, the City Clerk shall distribute a copy to each Council member and to the City Manager and shall file a reasonable number of copies in the office of the City Clerk and such other public places as the Council may designate. The proposed ordinance shall be read by title at not less than two meetings of the City Council with at least one week intervening between each meeting unless a member of the City Council demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded. The City Clerk shall publish the ordinance together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing shall follow the publication by at least five days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time; all persons interested shall have an opportunity to be heard. After the hearing the Council may adopt the ordinance with or without amendment or reject it, but if it is amended as to any substance, the Council may not adopt it until the ordinance or its amended sections have been subjected to all the procedures herein before required in the case of a newly introduced ordinance. As soon as practicable after adoption, the Clerk shall have the ordinance and a notice of its adoption, published and available at a reasonable price.

(c) Effective Date. Except as provided in this Charter, every adopted ordinance shall become effective at the expiration of 30 days after adoption or at any later date specified therein.

(d) "Publish" Defined. As used in this section, the term "Publish" means to print in one or more newspapers of general circulation in this City:

- (1) The subject matter and general title or titles thereof, and
- (2) The places where copies of it have been filed and the times when they are available for public inspection and purchase at a reasonable price.

SECTION 16. EMERGENCY ORDINANCES

To meet a public emergency affecting life, health, property or the public peace, the City Council may adopt one or more emergency ordinances, but such ordinances may not levy taxes, grant, renew or extend a franchise, regulate the rate charged by any public utility for its services or authorize the borrowing of money except as provided in Section 3. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least five members shall be required for its adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances. It shall become effective upon adoption or at such a later time as it may specify. Every emergency ordinance, except one made pursuant to Section 3, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent re-enactment of the ordinance in the manner specified in this section if an emergency still exists. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

SECTION 17. CODES OF TECHNICAL REGULATIONS

The City Council may adopt any standard code of technical regulations by reference thereto in an adopting ordinance. The procedure and requirements governing such an adopting ordinance shall be as prescribed for ordinances generally except that:

- (1) Before any such ordinance shall be adopted, the code must be printed or typewritten and shall be presented in pamphlet form to the City Council at a regular meeting, and copies of such code shall be made available for public inspection.
- (2) The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. After adoption of the ordinance, such code or codes shall be certified by the mayor and filed as permanent record in the office of the Clerk, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded.

Copies of any adopted code of technical regulations shall be made available by the City Clerk for distribution or for purchase at a reasonable price.

SECTION 18. AUTHENTICATION AND RECORDING; CODIFICATION; PRINTING

(a) Authentication and Recording. The City Clerk shall authenticate by signing and shall record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the City Council.

(b) Codification. One year after Charter is in effect and at least every four years after, the City Council shall provide for the preparation of a general codification of all City ordinances and resolutions having the force and effect of the law. The general codification shall be adopted by the Council by ordinance and shall be published promptly in bound or loose-leaf form, together with the Charter and other laws of the state of West Virginia, and such codes as the Council may specify. This compilation shall be known and cited officially as the Shinnston City Code. Copies of the code shall be furnished to City officers, placed in libraries and public offices for free public reference and made available for purchase by the public at a reasonable price fixed by the Council.

(c) Printing of Ordinances and Resolutions. The City Council shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter be printed promptly following its adoption, and printed ordinances, resolutions and Charter amendments shall be distributed or sold to the public at reasonable prices as fixed by the Council. Following publication of the first Shinnston City Code and at all times thereafter, the ordinances, resolutions and Charter amendments shall be printed in substantially the same style as the code currently in effect and shall be suitable in form for integration therein. The Council shall make such further arrangements as it deems desirable with respect to reproduction and distribution of any current changes in or addition to the provisions of the constitution and other laws of the state of West Virginia, or the codes of technical regulations and other rules and regulations included in the code.

SECTION 19. ADMINISTRATIVE OFFICES AND DEPARTMENTS

There shall be in the City government a police department, a fire department, a department of public works, and such other administrative departments as may by ordinance be created by the Council. The City Manager shall appoint as the head of each department, except the fire department, so long as it remains a volunteer entity, a chief, supervisor or director, who shall be responsible for the efficient administration of the department, subject to the supervision and control of the Manager. Except as otherwise provided by this Charter or by general law, the head of a department need not be a resident of the City or state at the time of his/her appointment, but within six months of his/her appointment to office shall become a resident of and shall reside in Harrison County, West Virginia.

The Council may by ordinance create, combine, change or abolish offices, departments or agencies, other than those established by this Charter. Except as otherwise provided in this Charter, the Council may assign additional functions or duties to any office, department or agency created by it or by this Charter, but may not discontinue or transfer any function or duty assigned by this Charter to any particular office, department or agency.
(Amended 1-31-00)

SECTION 20. FIRE DEPARTMENT; SERVICE FEES

Pursuant to West Virginia Code 8-15-1 et seq., the Shinnston Volunteer Fire Department shall be designated to provide the City with fire protection services for the City of Shinnston, so long as it is a viable, operating department. If it shall cease to be operational, then the City shall provide fire protection by establishing a fire department in accordance with Section 19 of this Charter.

SECTION 21. PERSONNEL SYSTEM

(a) Merit Principle. All appointments and promotions of City officers and employees shall be made solely on the basis of merit and fitness demonstrated by a valid and reliable examination or other evidence of competence.

(b) Merit System. Consistent with all applicable federal and state laws the City Council shall provide by ordinance, for the establishment, regulation and maintenance of a merit system governing personnel policies necessary to effective administration of the employees of the City's offices and agencies, including but not limited to any pay plans, examinations, force reduction, removals, working conditions, provisional and exempt appointments, in-service training, grievances and relationships with employee organizations.

SECTION 22. CITY ATTORNEY

The City attorney shall be a member in good standing of the West Virginia State Bar. He/she shall be appointed by the City Manager to serve for an indefinite term, only with the consent and ratification of Council. The City Attorney shall be a contracted employee. He/she shall perform all duties and exercise all powers which shall be conferred upon him/her by any ordinance or resolution of the Council and, except as otherwise provided in this Charter, he/she shall have the power and it shall be his/her duty to:

- (1) Act as legal adviser and counsel for the City Council and for all administrative boards and officers thereof with respect to their official duties. Upon request, he/she shall furnish to the City Council or to such officers a written opinion upon any question concerning their respective powers and duties.
- (2) Prosecute and defend all suits for or against the City, and prepare all ordinances and all contracts, bonds or other writings in which the City is concerned, and endorse on each his/her approval of the form and correctness thereof.
- (3) Prosecute all cases brought before or appealed from the police court, and perform the same duties so far as they are applicable thereto as are required by law of prosecuting attorneys.

Whenever the exigencies of the business of the City require such action, the City Manager shall have the right to employ special counsel to assist the City attorney.

SECTION 23. PLANNING AND ZONING COMMISSION

The City Council shall establish a Planning, and Zoning Commission having five members whose purpose shall be to promote the orderly development of the municipality's governmental units and its environs. The members of this commission must be residents of the municipality and shall include representatives of business, industry and labor. One member of the commission shall also be a member of City Council and one member shall be the City Manager, who will serve as an ex-officio, non-voting member. The terms of these two members shall be co-extensive with the term of office to which they have been elected or appointed, unless the City Council and City Manager at the first regular meeting of the commission each year designate others to serve as the municipality's representatives. The City Manager will nominate one member of Council and four residents of the City who are qualified by knowledge and experience in matters pertaining to the development of the municipality, to serve on the commission. The appointees must then be confirmed by City Council. The appointments of the four residents will be one member for one year, one member for two years

and two members for three years respectively when first selected. Thereafter members shall be selected for terms of three years each. A member may be reappointed to his/her position on the commission. The commission shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July and October. All activities of the commission will be consistent with Chapter eight, Article twenty-four of the official Code of West Virginia.

SECTION 24. POLICE JUDGE

There shall be a police judge appointed by the City Manager, only with the consent and ratification of Council. He/she shall have criminal jurisdiction over the violation of all ordinances of the City. He/she shall hold Police Court at such times and places as may be determined by him/her. He/she shall give bond with security as required of a police judge, for the holding and proper disbursement of all sums which may come to him/her in his/her official capacity.

SECTION 25. CHIEF OF POLICE

The City Manager shall appoint a qualified individual to the office of chief of police.

SECTION 26. BOARD OF PARKS AND RECREATION

With the concurrence of Council, the City Manager will appoint five residents of the City to serve on a Board of Parks and Recreation. The first appointments under this Charter shall be as follows: two members will be appointed for two year terms, two members will be appointed for four year terms and one member will be appointed for a six year term. Thereafter, each member will serve for a six year term and may be reappointed. The Board will develop a plan for the improvement of all recreational facilities and submit a corresponding budget request to the City Manager annually. This plan and budget will become part of the overall plan and budget for the City. The Board will be required to develop rules, regulations and operating procedures for all recreational facilities. The Board shall be required to meet at least once a month on a regularly scheduled date which they themselves shall determine. An appointee shall forfeit his/her office if he/she fails attend three consecutive regularly scheduled meetings of the Board without being excused by the City Manager.

SECTION 27. ENFORCEMENT AGENCY FOR THE REPAIR, CLOSING, DEMOLITION OF DWELLINGS OR BUILDINGS UNFIT FOR HUMAN HABITATION

The City Council shall enact ordinances regulating the repair, closing, demolition, etc. of dwellings or buildings unfit for human habitation consistent with the Chapter 8, Article 12, Section 16 of the West Virginia Code. The enforcement agency shall consist of the City Manager, a municipal engineer or building inspector, and one member at large to be selected by and to serve at the will and pleasure of the City Manager. The ranking health officer and fire chief shall serve as ex-officio members of the enforcement agency. The enforcement agency shall be known as the Building Commission.

SECTION 28. BUDGET AND BUDGET MESSAGE; PUBLIC HEARING; ADOPTION AND REVISION

The fiscal and budget year of the City shall begin on the 1st day of July and shall end on the 30th day of June of each calendar year. The budget for each succeeding fiscal year submitted and amended as provided in this section, shall be adopted by the Council not later than the 28th day of March of the then current fiscal year.

Not later than the 1st day of March of each year, the City Manager shall submit to the Council a budget for the next fiscal year, together with a budget message which shall contain an outline of the proposed financial operation of the City for the coming year, shall describe the important features of the budget plan, and shall set forth the reasons for the salient changes from the previous year in cost and revenue items. In respect to proposed appropriations for capital improvements, there shall be included in the budget message, or attached thereto, a program and schedule of capital projects recommended by the City Planning Commission for the next five fiscal years. A copy of the budget and budget message, and all supporting documents, shall at the same time the budget is submitted to the Council be filed with the City Clerk as a public record, and shall be available for inspection by any interested person.

The budget shall provide a complete financial plan for the budget year, including any estimate of any anticipated surplus at the beginning of the year, an estimate of anticipated revenues from all sources during the year, and a detailed estimate of proposed appropriations for expenditure during the year by each office, department, and agency of the City. The total of appropriations of the budget as submitted by the Manager or as adopted by the Council shall not exceed the sum of estimated revenues and surplus.

At a regular or special meeting of Council between the 7th and 28th days of March of each year, there shall be a public hearing on the proposed budget, at which time all interested persons shall be given an opportunity to be heard for or against any estimate of revenue or any item of appropriation contained therein. At said meeting, Council shall ascertain the fiscal condition of the corporation, and make an itemized statement setting forth:

- (1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year;
- (2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness, legally incurred upon a vote of the people as provided by law, prior to the adoption of the tax limitation amendment;
- (3) Other contractual indebtedness, not bonded, legally incurred prior to the adoption of the tax limitation amendment, owing by the Municipality;
- (4) All other expenditures to be paid out of the receipts of the Municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations, and contingencies;
- (5) The total amount necessary to be raised by the levy of taxes for the current fiscal year;
- (6) The proposed rate of levy in cents on each one hundred dollars assessed valuation of each class of property; and
- (7) The separate and aggregate assessed valuations of real, personal and public utility property in each class in the Municipality.

The City Clerk of the Municipality shall forward immediately a certified copy of the statement to the Tax Commissioner, and shall publish the statement forthwith. The session shall then stand adjourned until the 3rd Tuesday in April, at which time it shall reconvene.

The Council shall, when it reconvenes upon the 3rd Tuesday in April, hear and consider any objections made orally or in writing by the City Attorney, by the Tax Commissioner or his/her representative, or by any taxpayer of the City, to the estimate and proposed levy, or to any item thereof. Council shall enter of record any objections so made and the reasons and grounds therefor. The Council, after hearing objections, shall reconsider the proposed original estimate and proposed rates of levy, and if the objections are well taken, shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have first been approved, in writing, by the Tax Commissioner. When the same shall have been approved by the Tax Commissioner, the Clerk shall then enter the estimate and levy, together with the order of the Council approving them and the written approval of the Tax Commissioner thereof, in the proper record book.

In addition to the provisions set forth herein, Council shall be subject to the requirements contained in section one, article eight, chapter eleven, et seq. of the Official Code of West Virginia, as amended, as the same may apply to municipal corporations.

After the beginning of the fiscal year, the Council shall make only such changes in the budget as may be required because of action taken by the State Tax Commissioner in respect to the proposed tax levy of the City or as may be permitted or required by general law.

Thereafter, the Council shall make no other changes in the budget unless permitted or required to do so by general law. After the final adoption of the budget, the several amounts stated therein as proposed appropriation shall be appropriated to the specified objects and purposes. Except as otherwise provided by general law, the City Manager may at any time transfer any unencumbered appropriation balance of an appropriated line item from that line item to another line item with the same account category established by the State Tax Commissioner, subject to the approval of City Council. No transfers from one account category to another may be made without revision of the budget and approval by the Tax Commissioner pursuant to Chapter 11, Article 8, Section 1, et seq.

For the purposes of accounting for the budget, the modified accrual basis of accounting will be used, or any other basis of accounting required by the State Tax Commissioner. The ending unencumbered balance at the end of the fiscal year shall be the starting unencumbered balance for the new fiscal year.

In addition to the foregoing, Council and the City Manager shall comply with all applicable federal and state laws which in any way relate to the governing of the financial affairs of a municipal corporation. (Amended 1-31-00)

SECTION 29. PROHIBITIONS - GENERAL

(a) Activities Prohibited.

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any City position or appointive City administrative office because of race, gender, age, handicap, religion, country of origin or political affiliation.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

- (3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.
- (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any City election from any City employee.
- (5) No City employee shall knowingly or willfully solicit or receive any contribution to the campaign funds of any political party or committee to be used in a City election or to campaign funds to be used in support of or opposition to any candidate for election to City office or City ballot issue. Further, no City employee shall solicit votes for any candidate for election to City office or City ballot issue. Further, no City employee shall manage the campaign of or participate in fund-raising activities for any candidate for City office. Nor shall a City employee work at the polls for a municipal election. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any City office or position and if an officer or employee of the City, shall immediately forfeit his or her office or position. The City Council shall establish by ordinance such further penalties as it may deem appropriate.

SECTION 30. CHARTER AMENDMENTS

Amendments to this Charter shall be made in accordance with the general laws of the State of West Virginia.

SECTION 31. SANITARY BOARD

The Sanitary Board of the City in existence on the date this Charter Board is adopted shall be continued. The Sanitary Board shall have the powers and shall perform the duties prescribed by general law with respect to the construction, operation and maintenance of sewage disposal facilities. The Sanitary Board shall be composed of the City Manager, who shall be the Chairman of the Board, two other persons appointed by the Council.
(Amended 1-31-00)

SECTION 32. DISCRIMINATORY PRACTICES PROHIBITED

No person holding any appointive office or employment in the service of the City, or seeking appointment thereto, shall be appointed, promoted, demoted or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color or religious beliefs, or gender, handicap, or country of origin.

SECTION 33. SOCIAL SECURITY

The City Council, the sanitary board, and every other board or commission provided for in this Charter, or hereafter created by Council pursuant to general law, shall in the manner prescribed by law provide social security coverage for all eligible City officers and employees.

SECTION 34. OATH OR AFFIRMATION OF OFFICE

Before taking office every officer of the City and the head of each administrative department shall take the oath or affirmation required by section five, article four of the constitution of the state.

SECTION 35. EFFECT OF CHARTER ON EXISTING ORDINANCES AND ADMINISTRATIVE RULES AND REGULATIONS

All existing ordinances and all existing administrative rules, regulations and practices, if not inconsistent or in conflict with this Charter, shall continue in full force and effect until repealed or modified by the Council or other competent authority of the City. All ordinances, rules, regulations and practices that are inconsistent or in conflict with this Charter shall, unless sooner repealed or modified, continue in full force and effect for a period of sixty days only, and at the end of that period shall to the extent of such inconsistency or conflict be of no further force or effect.

SECTION 36. REFERENCE TO GENERAL LAW

A reference contained in this Charter to a provision of general law shall be construed to mean the provision as it now exists or as it may hereafter be amended. Where additional sections are added to the subject matter of a provision of general law referred to in this Charter, the reference shall include such additional sections.

SECTION 37. MEETINGS AND OTHER ACTS ON LEGAL HOLIDAYS

Whenever under the provisions of this Charter it is required that a meeting be held or that an act be done on a date which is a legal holiday, the meeting shall be held or the act shall be done on the next day not a legal holiday.

SECTION 38. SEPARABILITY

The provisions of this Charter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, such holding shall in no way affect any other provision thereof.

SECTION 39. ELECTIONS

The City Clerk shall prepare and furnish printed forms for certificates of announcement substantially in the form set forth and authorized by ordinance of the City Council. The certificate of announcement is defined as and shall be the form on which qualified persons make official such person's candidacy for Council in the next City election.

Regular City elections shall be held on the 9th day of June, one thousand nine hundred ninety-eight, and on the first Tuesday in June of every second year thereafter. Special elections shall be held at such times as may be fixed by the Council in accordance with the provisions of this Charter and of general law.

The ballot to be used in City elections shall be prepared by the Council and shall have set forth thereon a division the names of all properly nominated candidates for election to membership on the Council by ward, and at-large, as is provided hereunder. In the printing of the ballots, the position of the names of the candidates shall be in like manner as is provided by general law for the printing of official primary ballots. The ballots shall state that the election is non-partisan and shall clearly indicate the number of candidates for each office for whom the voter is entitled to vote. At least ten days before the election a sample ballot showing the names of all properly nominated candidates shall be published once in two newspapers circulated in the City in the same manner as is provided by law for the publication of the list of nominations in a general election.

Except as otherwise provided in this Charter, City elections shall be conducted and the result determined and certified in accordance with the provisions of general law with respect to primary, general and special elections, so far as they are applicable, except that the duties devolving upon the county court and the Clerk thereof under the general laws for conducting elections shall be performed by the City Council and the City Clerk. The Council shall appoint three commissioners and two Clerks to serve as election officials in each precinct in the City. At least three days before the date of the election the City Clerk shall procure from the Clerk of the county court the necessary registration records and other election supplies and shall deliver them together with the ballots to the election officials. The election officials shall as soon as possible after the closing of the polls on election day return to the City Clerk the ballots, tally sheets, certificates of the result of the election, registration records, ballot boxes and other election supplies. On the first Monday following the election the Council shall canvass the returns of the election and declare the result. In the case of a contest the Council shall be the judge of the election and qualifications of all City officials.

The cost incurred for such election shall be paid out of the general City revenues. The costs of conducting special elections shall be paid out of general City revenues.

In the event any candidate requests a recount of the votes in any election, such recount is to be paid by the person making such request, and the cost of such recount is to be set by Council prior to each election according to state law.

SECTION 40. EFFECTIVE DATE OF CHARTER

For the purposes of extending the terms of office of present elective officers, of the election of new officers under this Charter, and the operation of all other provisions of Section 41 hereof, this Charter shall be in effect from and after the date of its adoption by the voters of the City. For all other purposes it shall be in effect on and after the first day of July next following the first election held under its provisions.

SECTION 41. TRANSITION

(a) Schedule. The first election of officers under this Charter shall be held on June 9, 1998 in conjunction with the election regarding the approval of this Charter. Members of Council elected on June 9, 1998 shall take office on July 1, 1998 as specified in Section 4 of this Charter.

(b) Hiring of City Manager. At the time the Charter is approved by the voters, the City Council will commence the search for qualified candidates for City Manager by advertising the position in a professional journal and a newspaper of general circulation in Harrison County, West Virginia. At the first regular meeting of City Council under this Charter, on July 1, 1998, City Council shall appoint an interim City Manager. Thereafter, City Council shall scrutinize resumes, interview candidates and select the most qualified individual for the position of City Manager. City Council shall appoint a City Manager by August 1, 1998.

(c) Continuance of Office or Employment. No City administrative officer shall continue in office after the effective date of this Charter, unless such office is continued or provided for by this Charter. Except with respect to the position of City Clerk, no non-elected City employee shall lose their position of employment solely as a result of the adoption of this Charter unless such position is specifically eliminated hereby. Nothing contained herein shall prohibit the Council from contracting with or employing former City officers or employees, on a temporary basis, to provide for the orderly and efficient transfer of duties under, and implementation of, this Charter. Such contract or employment shall not constitute a conflict of interest.

(d) City Clerk. The non-elected position of City Clerk under the previous Charter is materially distinguishable from the position of City Clerk under this Charter. Therefore, the position of City Clerk under the previous Charter is specifically eliminated and the position of City Clerk under this Charter is considered a new position. City Council shall appoint an interim City Clerk by July 1, 1998. City Council shall appoint a City Clerk by August 1, 1998.

(e) Former Elected Officers. The members of Council representing the first, second, third and fourth wards and the Mayor and Recorder elected in June, 1996 shall serve until their successors are elected and qualified and take office on July 1, 1998.