

CODIFIED ORDINANCES OF SHINNSTON  
PART SEVEN - BUSINESS AND TAXATION CODE

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- Art. 765. Wine Distributors and Retailers.



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- CHAPTER ONE - Business Regulations  
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ARTICLE 705  
Carnivals and Circuses

- |        |                           |        |                              |
|--------|---------------------------|--------|------------------------------|
| 705.01 | Prohibitions; exceptions. | 705.03 | “Carnival-like” festivities; |
| 705.02 | Carnival; circus defined. |        | permit; fees.                |
|        |                           | 705.99 | Penalty.                     |

705.01 PROHIBITIONS; EXCEPTIONS.

(a) No carnival or circus shall set up business and perform or operate within the corporate limits of the City subject to the exceptions hereinafter set forth.

(b) This article shall not be construed against a carnival or circus passing through the corporate limits of the City en route to a destination outside of the City.

705.02 CARNIVAL; CIRCUS DEFINED.

“Carnival” or “circus” means a commercial amusement show, usually traveling from place to place, having side shows, a ferris wheel, merry-go-rounds or other riding equipment for hire or without charge; usually having animals and/or trapeze performers; usually having merry making devices which are noisy and riotous; usually having entertainment with side shows, rides, games and refreshments; usually operated as a commercial enterprise and sometimes by a social or charitable organization.

705.03 “CARNIVAL-LIKE” FESTIVITIES; PERMIT; FEES.

(a) For the purpose of this article, carnival and circus shall refer to organized commercial traveling road shows. Local charitable or nonprofit organizations may operate “carnival-like” festivities or fund-raising events for not more than two consecutive days, provided, that all rides, amusement devices, refreshment stands, etc. are owned and operated by members of the organization. Before a local charitable or nonprofit organization may operate a “carnival-like” festivity or fund-raising event, it shall obtain a permit to do so from the City. The fee for such permit shall be five dollars (\$5.00) for each two-day period of operation.

(b) A local merchant or a group of local merchants may operate a “carnival-like” show or activity or hire a “carnival-like” show or activity to promote their business for not more than two consecutive days, provided a permit is obtained from the City, which permit shall be approved by the City Manager. Such permits approved by the City Manager for such merchant operation shall be confined to holidays and the day or days preceding or following a holiday. The fee for such permit shall be five dollars (\$5.00) for each two-day period of operation.

705.99 PENALTY.

The managers, performers and employees of carnivals or circuses who violate this section shall, upon conviction, be fined not more than five hundred dollars (\$500.00). Each day or night of violation shall constitute a separate offense.

**ARTICLE 709**  
**Peddlers and Solicitors**

709.01	Peddler; solicitor defined.	709.06	Revocation of certificate.
709.02	Certificate of registration required.	709.07	Display of certificate.
709.03	Application for certificate.	709.08	Registration period; transfer prohibited.
709.04	Issuance of certificate; photograph.	709.99	Penalty.
709.05	Cost of registration.		

**CROSS REFERENCES**

Solicitation of charitable funds - see W. Va. Code Art. 29-19

Obtaining money by false pretenses - see W. Va. Code  
61-3-24 et seq.

Trespass - see GEN. OFF. 533.02

**709.01 PEDDLER; SOLICITOR DEFINED.**

“Peddler” or “solicitor” means any person who goes from house-to-house, or from place-to-place in person, or who calls from house-to-house or from place-to-place by means of telephone in the City, selling or offering to sell or take orders for goods, wares, merchandise or any other article for future delivery, or for services to be performed in the future, or for the making, manufacturing or repairing of any article or thing; provided, however, that this definition shall not include newspaper carriers or any driver operating a regular route who solicits additional customers on such route when such solicitation is only incidental to his regular duties; or any person having in the City a bona fide and permanent address or place of business; or benevolent organizations.

**709.02 CERTIFICATE OF REGISTRATION REQUIRED.**

No person shall engage in the occupation of peddler or solicitor within the corporate limits without having on his person a certificate of registration procured from the City Manager, with the approval of the Chief of Police.

**709.03 APPLICATION FOR CERTIFICATE.**

Any person desiring to engage in the occupation of peddler or solicitor shall apply to the City Manager for a Certificate of Registration. Such application shall be made on a form provided by the City Manager and shall show, and contain in addition to such other information as the City Manager may desire, the following:

- (a) Name and description of applicant.
- (b) Permanent home address and local address of applicant.
- (c) If employed, the name and address of employer.
- (d) A photograph of the applicant taken within ninety days prior to the date of the filing of the application, which picture shall be two inches by two inches, showing the head and shoulders of the applicant in a clear and distinguishing manner.
- (e) Fingerprints.
- (f) A statement as to whether the applicant has been convicted of any felony or misdemeanor involving moral turpitude, the nature of the offense, the time committed and the punishment or penalty assessed therefor.

#### 709.04 ISSUANCE OF CERTIFICATE; PHOTOGRAPH.

Subject to the restrictions set forth in this article, the City Manager shall issue to each applicant a Certificate of Registration containing a photograph of the applicant.

#### 709.05 COST OF REGISTRATION.

There shall be no fee for the Certificate of Registration issued pursuant to the provisions of this article, except that the applicant shall reimburse the City for the cost incurred in the issuance of his Certificate. Such cost shall be determined and collected by the City Manager, but in no case shall it exceed five dollars (\$5.00).

#### 709.06 REVOCATION OF CERTIFICATE.

The City Manager shall revoke any Certificate of Registration issued pursuant to the provisions of this article for any false statement made in the application for such Certificate or for dishonest or improper dealing with the public.

#### 709.07 DISPLAY OF CERTIFICATE.

No person to whom the Certificate of Registration has been issued pursuant to the provisions of this article shall fail, neglect or refuse to display such Certificate of Registration upon demand.

#### 709.08 REGISTRATION PERIOD; TRANSFER PROHIBITED.

A Registration Certificate issued pursuant to the provisions of this article shall be valid for a period of one year from date issued, providing employment is with the same company. The Certificate is not transferable.

#### 709.99 PENALTY.

(EDITOR'S NOTE: See Section 101.99 for general Code penalty.)

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ARTICLE 713  
Topless Dancing Establishments

713.01 Prohibitions.

713.99 Penalty.

CROSS REFERENCES  
Indecency and obscenity - see GEN. OFF. Art. 517

713.01 PROHIBITIONS.

The existence of nude and/or topless dancing establishments and/or nude and/or topless dancing within the City limits is prohibited.  
(Passed 4-7-97)

713.99 PENALTY.

The managers, performers, patrons and/or employees of such establishments who violate this section shall, upon conviction, be fined not more than five hundred dollars (\$500.00) and/or sentenced to incarceration in jail for not more than thirty days. Each twenty-four hour period in which anyone violates this article shall constitute a separate offense.  
(Passed 4-7-97)



CHAPTER THREE - License Taxes and Service Charges

- Art. 741. Municipal License Tax.
- Art. 745. Business and Occupation Tax.
- Art. 749. Intoxicating Liquor.
- Art. 753. Fire Protection Service Charge.
- Art. 757. Private Clubs.
- Art. 761. Public Utility Service Tax.
- Art. 765. Wine Distributors and Retailers.

ARTICLE 741  
Municipal License Tax

741.01	License required.	741.07	Transfers.
741.02	Revocation.	741.08	Reserved.
741.03	Issuance by Council.	741.09	Annual license fees.
741.04	Issuance by City Clerk.	741.10	Term license fees.
741.05	Minimum charge.	741.99	Penalty.
741.06	License year.		

CROSS REFERENCES

- Authority to levy - see W. Va. Code 8-13-4
- Business franchise registration certificate tax - see W. Va. Code Art. 11-12
- Limitation on municipal tax - see W. Va. Code 11-12-4

741.01 LICENSE REQUIRED.

No person shall, without a City license, engage in or prosecute, within the City, any of the businesses, activities, trades or employments, or exercise any of the following privileges.

- (a) Keep a hotel or eating house; or
- (b) Keep for public use or resort, any bowling alley, pool table, billiard table, bagatelle table, or any table of like kind; or

- (c) Exhibit any circus, menagerie, circus and menagerie combined, theatrical performances, street or other carnival, or public show, to which admission is charged for money or reward, except any educational, literary, dramatic, musical or benevolent society, or volunteer fire company, not conducted for private profit, unless professional or paid talent, other than director, is employed in such performance or exhibition; or
- (d) Run or operate for profit a merry-go-round, or roller coaster, scenic railway, or like device, or keep for public use or resort a shooting gallery, skating rink, or run or operate a crane rack, doll baby rack, knife rack, striking machine, jingle board, punch board, artful dodger, candy wheel, or other scheme or device by which merchandise or other things of value are disposed of by game of chance, or like device, or human laundry device, or dip device; or
- (e) Act as hawker or peddler, provided that bona fide farmers vending farm products shall not be required to have a license; or
- (f) Act as auctioneer; or
- (g) Practice the business of a real estate agent, stock broker or other broker by buying and selling for others stock securities or any other property for a commission or reward; or
- (h) Practice the business of money broker, buying or selling undercurrent or depreciated money or funds, or exchanging one kind of money for another for benefit or reward; or
- (i) Practice the business of pawnbroker by lending money or other things for profit, for or on an account of personal property deposited with the lender in pledge; or
- (j) Sell or offer for sale merchants' trading stamps, premium stamps, or stamps or certificates of like nature, or to undertake to redeem such stamps or certificates in money or goods; or
- (k) Carry on the business of junk dealer, or act as agent, solicitor, canvasser or salesman, for any junk dealers; or
- (l) Sell pistols; revolvers, dirks, sling shots, billies, bowie knives, metallic or other false knuckles, or weapons of like kind; or
- (m) Maintain any slot machine, or other automatic device, which for the same profit or reward, in each case, and without any violation of law, furnishes music or exhibits pictures, or provides facilities for weighing, or supplies merchandise or other thing, or renders any service, but no slot machine or other automatic device with respect to which, or its operations, service or supplies, there is any element of chance, (being a gaming table within the meaning of the West Virginia Code) shall be provided a license; or
- (n) Solicit or carry on or practice the business of a collection agency or association, whether it be a person, firm or corporation; or
- (o) Manufacture, sell or distribute, either at retail or wholesale, any and all preparations of every kind, character or nature, commonly known as soft drinks, including bevo, pable, milo, moxie, ginger ale, near-beer, coco-cola, pop, grape juice, and all other preparations of like nature and character; or

- (p) Keep or maintain for public use or resort, a taxicab stand or any place of like character; or
- (q) Act as a fortune teller, palmist, phrenologist, spiritualist, medium, clairvoyant, mind reader, or perform the art or profession of telling the past or forecasting the future; or
- (r) Engage or conduct in the transient business of selling goods, wares and merchandise and commonly known as "itinerant vending"; or
- (s) Manufacture, sell or distribute, either at wholesale or retail, non-intoxicating beer.

Nothing in this article and no license or payment under the provisions hereof, shall be taken to legalize any act which otherwise may be in violation of law, or exempt any person from any penalty prescribed for such violations.

(1958 Code Sec. 9-1)

#### 741.02 REVOCATION.

Licenses may be revoked by Council for violation of the terms, and conditions of the same or the provisions of this article, at a meeting of Council of which the holder of such license shall have been given at least ten days notice.

(1958 Code Sec. 9-3)

#### 741.03 ISSUANCE BY COUNCIL.

Every person desiring a City license to keep for public use or resort, a bowling alley, pool table, billiard table, bagatelle table or any table of like character shall apply in writing to Council specifying the place of which the same shall be kept and conducted, and, if Council sees fit to grant the same shall enter an order authorizing the City Clerk to issue such a license.

(1958 Code Sec. 9-4)

#### 741.04 ISSUANCE BY CITY CLERK.

Subject to the exceptions contained in the preceding section, the City Clerk shall issue a license to all persons applying therefor, who pay the fees hereinafter provided. No license shall be valid until the fee or tax has been paid in full.

(1958 Code Sec. 9-5)

#### 741.05 MINIMUM CHARGE.

Licenses shall be issued for the current fiscal year, except in instances where the schedules or charges are fixed for shorter or other periods of less than a year, but in all other cases the amount of the charge shall be the yearly license rate or charge and licenses shall be issued for the time or periods for which the charges have been made. If a license is granted for a period of less than one year, the tax shall be computed from the annual tax in proportion to such time as the license has to run, unless specifically otherwise provided; and provided further, that no license for any purpose or for any length of time shall be issued for less than two dollars (\$2.00). (1958 Code Sec. 9-6)

#### 741.06 LICENSE YEAR.

The license year shall begin on July 1 of each year and end on June 30 of the following year. (1958 Code Sec. 9-7)

**741.07 TRANSFERS.**

Any one desiring to transfer or assign a license for which the assent of Council must be had prior to issue, shall likewise apply to Council for permission for such assignment or transfer, specifying the person to whom such transfer is to be made, and if Council shall approve of the same, shall enter an order of record allowing such transfer, whereupon the City Clerk shall issue a new license to the licensee for the unexpired term upon the surrender of the old license and payment of his fee. (1958 Code Sec. 9-8)

**741.08 RESERVED.**

(EDITOR'S NOTE: This section is reserved for future legislation.)

**741.09 ANNUAL LICENSE FEES.**

The annual license fees or charges for all businesses of any kind and nature located within the City of Shinnston shall be fifteen dollars (\$15.00). In addition thereto, any business with vending machines shall pay an additional five dollars (\$5.00) for each vending machine; any business with video machines shall pay an additional five dollars (\$5.00) for each video machine; any business with jukeboxes shall pay an additional five dollars (\$5.00) for each jukebox; any business selling packaged beer shall pay an additional five dollars (\$5.00); any business with pool tables shall pay an additional twenty-five dollars (\$25.00) for each pool table; any business with a beer license shall pay an additional fifty dollars (\$50.00); any business with a wine license shall pay an additional one hundred twenty-five dollars (\$125.00); and any business with an Alcohol Beverage Control Commission license shall pay an additional two hundred fifty dollars (\$250.00).  
(Passed 6-3-96)

ARTICLE 745  
Business and Occupation Tax

- |  |   |
|--|---|
| 745.01 Authority to levy business and occupation tax.                | 745.20 Tax cumulative.  |
| 745.015 Definitions.   | 745.21 Method of payment.   |
| 745.02 Imposition of privilege tax.                                  | 745.22 Tax a personal obligation and lien; penalty.   |
| 745.03 Exemptions.   | 745.23 Collection by suit; injunction.  |
| 745.04 Production of coal and other natural resource products.       | 745.24 Tax lien; liability of purchaser.  |
| 745.05 Manufactured or compounded products.                          | 745.25 Final settlements; user personally liable.   |
| 745.06 Business of selling tangible property; sales exempt.          | 745.26 Certificate to Clerk of County Commission of Assessment of Taxes.                                      |
| 745.07 Public service or utility business.                           | 745.27 Collection by distraint.   |
| 745.08 Business of contracting.                                      | 745.28 Administration of article by City Treasurer.   |
| 745.09 Business of operating amusements.                             | 745.29 Authorization to inspect returns.  |
| 745.10 Business of furnishing property for hire.                     | 745.30 Returns and amount of payments confidential.   |
| 745.11 Service business or calling not otherwise specifically taxes. | 745.31 Tax credits for new and expanding businesses: applicable definitions.                                  |
| 745.12 Banking and other financial business.                         | 745.32 Amount of credit allowed: tax credits for new businesses.  |
| 745.13 Tax credit for industrial expansion; regulations.             | 745.33 Qualified investment: tax credits for expanding businesses.  |
| 745.14 Assessment limited to subjects taxed by State.                | 745.34 Amount of credit allowed: tax credits for expanding businesses.  |
| 745.15 Computation of tax; returns and remittances by taxpayer.      | 745.35 Other disqualifications for forfeiture of tax credit.  |
| 745.16 Erroneous computation.  | 745.36 Taxpayers responsibility to keep records of investment credit property tax credits for new businesses. |
| 745.17 Failure to make return; incomplete or erroneous return.       | 745.99 Penalty.   |
| 745.18 Records.  |   |
| 745.19 Appeal; correction of assessment.                             |   |

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-5

Business and occupation tax - see W. Va. Code Art. 11-13  
Collection of taxes - see W. Va. Code 8-13-15 et seq.

## 745.01 AUTHORITY TO LEVY BUSINESS AND OCCUPATION TAX.

(a) The City pursuant to the provisions of Chapter 8, Article 13, Section 5 of the West Virginia Code of 1931, as amended, hereby adopts a tax and re-enacts such existing tax not inconsistent herewith on the following enumerated business activities or occupations for the use of such municipality in accordance with the plenary power granted by the Legislature of the State of West Virginia in such Code provisions.

(b) This tax and the re-enactment thereof shall be operative as of the first day of the current fiscal year and each thereafter unless further annulled. (Passed 9-10-90.)

## 745.015 DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) "Banking business" or "financial organization" means any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, financial company, investment company, investment broker or dealer and any other similar business organization at least ninety percent (90%) of the assets of which consists of intangible personal property and at least ninety percent (90%) of the gross receipts of which consists of dividends, interest and other charges derived from the use of money or credit.
- (b) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall not include a casual sale by a person who is out engaged in the business of selling the type of property involved in such casual sale. "Business" shall include the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and shall include the activities of a banking business or financial organization.
- (c) "Collector" means the City Treasurer or his authorized agent.
- (d) "Contracting" includes the furnishing of work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new existing building or structure, or any part thereof, or for the alteration, improvement or development of real property.
- (e) "Gross income" means the gross receipts of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales, and the value proceeding or accruing from the sale of tangible property value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees or other emoluments however denominated and without any deductions on account of cost of property sold, costs of material used, labor costs, taxes, royalties, interest or discount paid or any other expense whatsoever. "Gross income" of a banking or financial business is specified in Section 745.12.

- (c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit; provided, that this exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of West Virginia Code Article 60-7.
- (d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes.
- (e) Production credit association, organized under the provisions of the federal "Farm Credit Act of 1933".
- (f) Any credit union organized under the provisions of West Virginia Code Chapter 31 or any other chapter; provided, further, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of West Virginia Code Article 19-4.
- (g) Gross income arising from the sale of radio and television broadcasting time. (Passed 10-21-80.)

#### 745.04 PRODUCTION OF COAL AND OTHER NATURAL RESOURCE

(a) Upon every person engaging or continuing within this City in the business of producing for sale, profit or commercial use, any natural resource products, the amount of such tax to be equal to the value of the articles produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates as follows.

(b) Coal, one and sixteen one-hundredths percent (1.16%); limestone or sandstone quarried or mined, sixty-six one-hundredths of one percent (.66%); oil, one and thirty-one one-hundredths percent (1.31%); natural gas in excess of the value of five thousand dollars (\$5,000), four percent (4.0%); blast furnace slag, one and thirty-one one-hundredths percent (1.31%); sand, gravel or other mineral products, not quarried or mined, one and thirty-one one-hundredths percent (1.31%); timber, sixty-six one-hundredths of one percent (.66%); other natural resource products, sixty-six one-hundredths of one percent (.66%). The measure of this tax is the value of the entire production in this City regardless of the place of sale, or the fact that the delivery may be made to points outside of the City. (Passed 12-17-82.)

#### 745.05 MANUFACTURED OR COMPOUNDED PRODUCTS.

(a) Upon every person engaging or continuing within this City in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities or electric power not produced by public utilities taxable under provisions of this article, the amount of tax to be equal to the value of the article, substance, commodities or electric power manufactured, compounded or

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prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same except as hereinafter provided; multiplied by the rate of twenty-seven one-hundredths of one percent (.27%). The measure of this tax is the value of the entire product manufactured, compounded or prepared in this City for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside this City.

(b) It is further provided, however, that in those instances in which the same person partially manufactures products within this City and partially manufactures such products outside this City, the measure of this tax under this section shall be that proportion of the sale price of the manufactured product that the payroll cost of manufacturing within this City bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of this tax under this section shall be the proportion of the sales value of articles that the cost of operations in the City bears to the full cost of manufacture of the articles.  
(Passed 10-21-80)

#### 745.06 BUSINESS OF SELLING TANGIBLE PROPERTY; SALES EXEMPT.

Upon every person engaging or continuing within the City in the business of selling any tangible property whatsoever, real or personal, including the sale of food and the services incident to the sale of foods in hotels, restaurants, cafeterias, confectioneries and other public eating houses, except sales by any person engaging or continuing in the business of horticulture, agriculture or grazing or of selling stocks, bonds or other evidences of indebtedness, there is likewise hereby levied, and shall be collected, a tax equivalent to thirty-four one-hundredths of one percent (.34%) of the gross income of the business, except that in the business of selling at wholesale, the tax shall be equal to fifteen one-hundredths of one percent (.15%) of the gross income of the business.  
(Passed 3-4-96)

#### 745.07 PUBLIC SERVICE OR UTILITY BUSINESS.

(a) Upon every person engaging or continuing within this City in a public service or utility business, except railroad, railroad car, express, water companies, pipeline, telephone and telegraph companies, water carriers by steam boat or steam ship and motor vehicle carriers, there is hereby levied and shall be collected taxes on account of the business engaged in equal to the gross income of the business multiplied by the respective rates as follows.

(b) Street and inter-urban and electric railways, three-tenths of one percent (.3%); water companies, one and thirty-two one hundredths percent (1.32%), except as to income received by municipally owned water plants; electric light and power companies, three and one-half percent (3.50%) on sales and demand charges for domestic purposes and commercial lighting; and three percent (3.00%) on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing the same; natural gas companies, three percent (3.00%) on the gross income, such gross income for this purpose to be determined by deducting from the gross income from all sales of gas to consumers, the amount of the tax paid by the taxpayer under Section 745.04 of the production of the same tax; and on all other public service or utility businesses, eighty-six one-hundredths of one percent (.86%).  
(Passed 3-4-96)

**745.08 BUSINESS OF CONTRACTING.**

Upon every person engaging or continuing within this City in the business of contracting, the tax shall be equal to two percent (2.00%) of the gross income derived from contracts entered into after January 1, 1996.

(Passed 3-4-96)

**745.09 BUSINESS OF OPERATING AMUSEMENTS.**

Upon every person engaging or continuing within this City in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, racetrack, radio broadcasting station or any other place at which amusements are offered to the public, the tax shall be equal to forty one-hundredths of one percent (.40%) of the gross income of the business.

(Passed 3-4-96)

**745.10 BUSINESS OF FURNISHING PROPERTY FOR HIRE.**

(a) Upon every person engaging or continuing within this City in the business of furnishing any real or tangible personal property which has a tax situs in this City, or any interest therein, for hire, loan, lease or otherwise, whether the return be in the form of rentals, royalties, fees or otherwise, the tax shall be seventy-five one-hundredths of one percent (.75%) of the gross income of any such activity.

(b) The term "tangible personal property" as used herein, shall not include money or public security.

(Passed 3-4-96)

**745.11 SERVICE BUSINESS OR CALLING NOT OTHERWISE SPECIFICALLY TAXED.**

Upon every person engaging or continuing within this City in any service business or calling not otherwise specifically taxed under this article, unless exempted by some provision of this article, there is likewise hereby levied and shall be collected a tax equal to fifty one-hundredths of one percent (.50%) of the gross income of any such business.

(Passed 3-4-96)

**745.12 BANKING AND OTHER FINANCIAL BUSINESS.**

(a) Upon every person engaging or continuing within this City in the business of banking or financial business, the tax shall be equal to fifty one-hundredths of one percent (.50%) of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees and receipts from the sale of tangible personal property; provided that gross income shall not include interest received on the obligations of the United States, its agencies and instrumentalities; interest received on the obligations of this or any other state, territory or possession of the United States or any political subdivision of any of the foregoing or of the District of Columbia; or interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; provided that all interest derived on activities exempt under this provision, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

(b) Persons taxed pursuant to the provisions of this section shall not be taxed under Sections 745.04 to 745.11, inclusive of this article.  
(Passed 3-4-96)

**745.13 TAX CREDIT FOR INDUSTRIAL EXPANSION; REGULATIONS.**

(a) There shall be allowed as a credit against any tax imposed by this article the amount determined under West Virginia Code Article 11-13C relating to tax credit for industrial expansion.

(b) The City Treasurer shall prescribe such regulations, not inconsistent with any corresponding regulations prescribed by the State Tax Commissioner, as may be necessary to carry out the purposes of this section.  
(Passed 10-21-80)

**745.14 ASSESSMENT LIMITED TO SUBJECTS TAXED BY STATE.**

This article shall not be construed to assess a tax upon any person, business, occupation, service or property upon which the State of West Virginia does not impose an annual privilege tax under the provisions of West Virginia Code Article 11-13.  
(Passed 10-21-80)

**745.15 COMPUTATION OF TAX; RETURNS AND REMITTANCES  
BY TAXPAYER.**

The taxes due hereunder shall be due and payable as follows:

(a) For taxpayers whose tax under this article exceeds one thousand dollars (\$1,000) per month, the tax should be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. The taxpayer shall, on or before the last day of each month, make out a return upon a form prescribed by the City Treasurer showing the gross proceeds of sales or gross income of business, trade or calling and compute the amount of tax for which he is liable for the preceding month, sign the return and mail it, together with a remittance in the form required by Section 745.21, for the amount of the tax to the office of the City Treasurer.

provided, that no such tax lien shall be enforceable against a purchaser (including lien creditor) for valuable consideration without notice, unless docketed in the office of the Clerk of the County Commission of Harrison County, before a deed therefor to such purchaser or the lien of such creditor is delivered for record to the Clerk of the County Commission. A penalty of five percent (5%) of the tax shall be added for any default for thirty days or less, and for each succeeding thirty days elapsing before payment there shall be an additional penalty of one percent (1%), all of which penalties shall be secured by the lien therein provided.  
(Passed 10-21-80.)

#### 745.23 COLLECTION BY SUIT; INJUNCTION.

The City Treasurer may by himself, or a duly appointed agent, collect taxes due and unpaid under this article, together with all accrued penalties, and for such purpose may exercise all the power authorized for the collection of taxes under this article and other ordinances of the City and under the laws of the State. After delinquency shall have continued for sixty days, the City Treasurer may proceed, by himself or agent, in the Circuit Court of Harrison County to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties due under this article.  
(Passed 10-21-80.)

#### 745.24 TAX LIEN; LIABILITY OF PURCHASER.

The tax imposed by this article shall be a lien upon the property of any person subject to the provisions hereof who shall sell out his business or stock of goods or shall quit business, and such person shall be required to make the return provided for under Section 745.15 within thirty days after the date he sold out his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient purchase money to cover the amount of such taxes due and unpaid until such time as the former owner shall produce a receipt from the City Treasurer showing that the taxes have been paid. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and unpaid after the thirty day period allowed, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.  
(Passed 10-21-80.)

#### 745.25 FINAL SETTLEMENTS; USER PERSONALLY LIABLE.

(a) Any person, firm or corporation contracting with a nonresident person, firm or corporation engaged in a business or service taxes under this article shall withhold payment in sufficient amount to cover taxes assessed by this article in the final settlement of such contracts until the receipt of a certificate from the City Treasurer to the effect that all taxes levied and accrued under this article against the contractor have been paid.

(b) If any person, firm or corporation fails to withhold as provided herein, he shall be personally liable for the payment of all such taxes, and the same shall be recoverable, in the event the contractor fails to pay the tax due and owing, by the City Treasurer by appropriate legal proceedings.  
(Passed 10-21-80.)

## 745.26 CERTIFICATE TO CLERK OF COUNTY COMMISSION OF

ASSESSMEN

The City Treasurer, for the more effective collection of the tax, may file with the Clerk of the County Commission of Harrison County a certified copy of an assessment of taxes under this article for recordation which shall thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located in the City as against all parties whose interest arose after such recordation. Upon payment of taxes delinquent under this article, the lien of which shall have been recorded, the City Treasurer may certify in duplicate the fact and amount of payment and the balance due, if any, and shall forward the certificates, one to the taxpayer and one to the Clerk of the County Commission of Harrison County with the request that he record it in the book in which releases are recorded. From the date that such certificate is admitted to record the land of the taxpayer in the City shall be free from any lien for taxes under this article accrued to the date that the certificate was issued.  
(Passed 10-21-80.)

## 745.27 COLLECTION BY DISTRAINT.

The City Treasurer may distrain upon any goods, chattels or intangibles represented by negotiable evidences of indebtedness, of any taxpayer delinquent under this article for the amount of all taxes and penalties accrued and unpaid hereunder.  
(Passed 10-21-80.)

## 745.28 ADMINISTRATION OF ARTICLE BY CITY TREASURER.

The administration of this article is vested in and shall be exercised by the City Treasurer, who shall prescribe forms and reasonable rules or procedure in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any of the provisions of this article in any courts of the State shall be under the exclusive jurisdiction of the City Treasurer, who shall require the assistance of and act through the City Attorney.  
(Passed 10-21-80.)

## 745.29 AUTHORIZATION TO INSPECT RETURNS.

The City Manager, in the exercise of sound discretion and at the instance of the City Treasurer, may make written request to the State Tax Commissioner to allow the duly authorized agent of the City to inspect and make copies of State gross sales tax returns filed in the Commissioner's office by taxpayers of the City, for the purpose of securing information for Municipal tax purposes; provided, that before such agent may inspect and make copies of any returns he shall pay in advance, or furnish sufficient security for, such reasonable cost and expense as may be necessary to obtain such information.  
(Passed 10-21-80.)

## 745.30 RETURNS AND AMOUNT OF PAYMENTS CONFIDENTIAL.

All information contained in the returns provided for in this article and the amounts paid under the provisions hereof shall be confidential. No officer or employee of the City shall make known any such information for any purpose other than for the enforcement of this article and of the laws of the State and the United States of America.  
(Passed 10-21-80.)

745.31 TAX CREDITS FOR NEW AND EXPANDING BUSINESSES:  
APPLICABLE DEFINITIONS.

For the purpose of Sections 745.31 through 745.90, all terms shall have the same meaning that they have when used in similar contexts in other sections of this article, and the following definitions shall also apply:

- (a) "New business" means any new commercial, wholesale, retail, manufacturing or service business which physically locates its principal place of business within the corporate limits of the City or within specified commercial zones of the City, either by purchase of real property or by virtue of a lease of five years or more duration, and which is subject to the City's Business and Occupational Tax and is not currently paying such tax. No commercial entity which has conducted business within the corporate limits of the City currently or in the past, and which changes its name or changes its business structure shall be considered a new business under this section.
- (b) "Annexed business" includes existing commercial, wholesale, retail, manufacturing, service business which is brought within the corporate limits of the City by any of annexation and minor boundary adjustments. Annexed businesses include only those entities, which after annexation are subject to the City's Business and Occupation Tax and at the time prior to annexation were not paying such tax.
- (c) "New Employee" means a person who is hired and employed in a new business or annexed business who was not previously employed within the corporate limits of the City by such business. A new employee must be employed at least 120 hours per month at a wage not less than the federal minimum wage or must work at least six months during the taxable year.
- (d) "New Job" means a job which did not exist in the business of the taxpayer within the corporate limits of the City prior to a qualified investment being made, provided this job is directly attributable to the qualified investment and filled by a new employee as defined herein.
- (e) "Use." Property is said to be in use when the property is placed in a condition or state of readiness for a specifically assigned function from which new jobs have been created within the City.
- (f) "Expanding business." Any business (commercial, wholesale, retail, manufacturing, or service business) which exists within the corporate limits of the City may apply for expanding business tax credits hereunder if, and only if, said business:
  - (1) Creates two (2) new jobs as defined herein within the corporate boundaries of the city, or
  - (2) Hires two (2) new employees as defined herein within the corporate boundaries of the City, or
  - (3) Makes a qualified investment of at least five thousand dollars (5,000) within the corporate boundaries of the City prior to making application for said Expanding Business Tax Credit.
- (g) "Incremental Receipt" means the incremental difference between the gross receipts of the year prior to, and the three years following the business expansion.
- (h) "Base Year Receipts" means the year's gross receipts immediately prior to business expansion and application for Expanding Business Tax Credit.

(Passed 3-18-00)

745.32 AMOUNT OF CREDIT ALLOWED: TAX CREDITS FOR NEW BUSINESSES.

(a) Any taxpayer who conducts a new business in this City or is annexed into the City that is subject to the tax imposed by this article shall be allowed a credit against the assessed Business and Occupation Tax in accord with the "NEW Business" portion of table 1.

(b) The administration of Section 745.31 et seq. is vested in, and shall be exercised by the City Manager, who, in connection therewith, shall prescribe all necessary forms. The City Manager may prescribe all necessary rules and regulations that are in conformity with Section 745.31 et seq. for making returns and for the ascertainment, assessment and collection of all taxes imposed hereunder. The City Manager shall also prescribe such regulations as are necessary to verify the taxpayers continued entitlement to claim such credit, and verify proper good faith application of credit allowed.

(Passed 3-18-00)

745.33 QUALIFIED INVESTMENT: TAX CREDITS FOR EXPANDING BUSINESSES.

(a) General. The qualified investment in property purchased or leased for business growth shall be the cost of each property purchased or leased for the purpose of business expansion, which is placed in service and use in the City by the tax payer during the initial taxable year.

(b) Cost. In determining the qualified investment of business, one hundred percent (100%) of the cost expended for each of the following may be included in the total amount:

- (1) Real property and improvements thereto, having a useful life of five or more years after placed in service and use within the City.
- (2) Real property and improvements theretofore-tangible personal property acquired by written lease for a period of five or more years after placed in service and use within the City.
- (3) Depreciable or amortizable tangible personal property having a useful life of five or more years after property is placed in service or use within the City.

(c) The cost of purchased property may not include the value of property given in trade or exchange for the property purchased.

(d) Qualified investment property may not include repair costs unless capitalized for federal income tax purposes, vehicles purchased prior to the use and service of the qualified investment within the City, or wages and/or benefits paid to any new or existing employee.

(Passed 3-18-00)

745.34 AMOUNT OF CREDIT ALLOWED: TAX CREDITS FOR EXPANDING BUSINESSES.

(a) Any taxpayer who has an existing business within the corporate limits of the City that is subject to the tax imposed by this article shall be allowed a credit against the incremental receipts assessed Business and Occupation Tax in accord with the "Expanding Business" portion of table 1, assuming that the taxpayer has met the criterion of Section 745.31 (f) et seq.

(b) Expanding businesses receive the Tax Credit on the incremental receipts while continuing to pay the full assessment of Business and Occupational Tax on the base year receipts over the three year tax credit period.  
(Passed 3-18-00)

**745.35 OTHER DISQUALIFICATIONS FOR FORFEITURE OF TAX CREDIT.**

(a) Reduction in the Number of Employees: Tax Credits for New Businesses. If, during any taxable year in which a tax credit is being taken, the average number of employees employed in positions directly attributable to the qualified investment is reduced by ten percent (10%), the tax credit created herein shall be forfeited for that year and for each eligible year thereafter where the number of employees remains ten percent (10%) below the number of jobs created as a result of the qualified investment.

(b) No application for a tax incentive will be considered and no credit will be otherwise granted to any business who at the time the application is submitted, or any time during the life of the tax incentive program, is or becomes delinquent in payment of City Business and Occupation Tax, City Water and City Sewer or City Service Fees.

(c) The City Manager shall be empowered by the City Council to rescind the above tax incentive program to any business that becomes delinquent in any of the above listed fees and after due notice fails to bring their account current.

(d) Financial institutions, public utilities, the local Cable Company and owners of residential and commercial rental property, including multi-family apartment units, are excluded from this credit program.  
(Passed 3-18-00)

<b>TABLE 1</b>			
	<b>Tax Credit Year 1</b>	<b>Tax Credit Year 2</b>	<b>Tax Credit Year 3</b>
<b>New Business</b>	<b>50%</b>	<b>25%</b>	<b>15%</b>
<b>Expanding Business</b>	<b>100%</b>	<b>50%</b>	<b>25%</b>

(Passed 5-10-00)

**745.36 TAXPAYERS RESPONSIBILITY TO KEEP RECORDS OF INVESTMENT CREDIT PROPERTY TAX CREDITS FOR NEW BUSINESSES.**

(a) Every taxpayer who claims the credit herein provided shall maintain sufficient records to establish the following facts for each item of qualified property:

- (1) Its identity;
- (2) Its actual or reasonably determined cost (See Qualified Investment, Section (745.33);

- (3) The month and taxable year it was placed in service or use in this City;
- (4) The amount of credit taken;
- (5) The date it was disposed of or ceased to be qualified property for the tax credit; and,
- (6) The employment levels for the taxable quarter in which credit is being taken.

(b) Any taxpayer who does not maintain such records shall be treated as having forfeited the remaining tax credit herein provided for unless special arrangements have been made with the City Manager.

(Passed 3-18-00)

745.99 PENALTY.

(a) No person shall refuse to make the return provided to be made in Section 745.15 or make any false or fraudulent return or false statement in any return, with intent to defraud the City or to evade the payment of the tax, or any part thereof, imposed by this article, or for the president, vice-president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. Any person violating any of the provisions of this section, on conviction thereof, shall be fined not more than one hundred dollars (\$100.00) or imprisoned not exceeding thirty days, or punished by both fine and imprisonment.

(b) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing and, on conviction thereof, shall be punished in the manner provided by law. (Passed 10-21-80.)

ARTICLE 753  
Fire Protection Service Charge

- 753.01 Definitions.
- 753.02 Charges and fees.

753.03 Late payments; interest.

**CROSS REFERENCES**

Special charges for municipal services - see W. Va. Code 8-13-13

**753.01 DEFINITIONS.**

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

- (a) "City" means the City of Shinnston.
- (b) "Water meters" means all meters used to measure the quantity of City water used.
- (c) "Family unit" means any dwelling, room and apartment owned or occupied by any person within the City, which may require fire or police protection.
- (d) "Mercantile unit" means store, service station, garage, rest home, school, beauty shop, pool room, fraternal organization, lodge, service organization, restaurant and any other undefined structure owned or occupied by any person or corporation within the City, which may require fire or police protection.
- (e) "Fire Department" means the City of Shinnston Volunteer Fire Department, including all of the personnel, buildings, machinery, and equipment used in the operation thereof.
- (f) "Shall" is mandatory; "may" is permissive.  
(Passed 3-16-83)

**753.02 CHARGES AND FEES.**

(a) A monthly municipal service fee of twelve dollars (\$12.00) shall be imposed or levied for each family unit for the service and facilities of the Fire and Police Departments of the City and for the maintenance and repair of any and all streets, sidewalks and alleys within the corporate limits of the City, such charge to be paid by the occupants or persons occupying each such family unit, or if unoccupied, then the charge to be paid by the titled owner of such unit.

(b) A monthly service fee of fourteen dollars (\$14.00) shall be imposed and levied for every mercantile unit, for the use of the services and facilities of the City Fire and Police Departments and for the repair and maintenance of any and all streets, alleys, and sidewalks within the corporate boundaries of the City, and such charge shall be paid by the occupants of each mercantile unit or, if unoccupied, the charges are to be paid by the owner of such mercantile unit. (Passed 3-4-96)

(c) Such monthly charges shall be due and payable at the same times and in the same manner as charges for water sold and furnished by the City to its water customers.

(d) Of each Municipal service fee collected, four dollars (\$4.00) per month per family unit and five dollars (\$5.00) per month per mercantile unit, less the Fire Department's prorata share of the cost of billing, such billing cost including the cost of postage and collection, shall be credited to the Fire Department and from the fund so created, the Fire Department shall be responsible for paying its own fuel. The remainder of the monthly Municipal service fee collected by the City from its family units, owners of family units, mercantile units, or owners of mercantile units shall be apportioned by Council for use by the Police Department and for the maintenance and repair of streets, alleys and sidewalks within the corporate limits. (Passed 3-16-83)

#### 753.03 LATE PAYMENTS; INTEREST.

If such charges or fees shall not be paid within ten days after same become due, the amount thereof, together with a penalty of ten percent (10%) per annum may be recovered by the City in a civil action instituted in the name of the City. (Passed 3-16-83)

ARTICLE 757  
Private Clubs

757.01	Definitions.	757.06	Certain acts prohibited.
757.02	License required.	757.07	Revocation of license.
757.03	License application.	757.99	Penalty.
757.04	Licensing procedure.		
757.05	Annual license fee; proration.		

CROSS REFERENCES

Authority to license - see W. Va. Code 8-13-7; 60-7-7  
Private clubs - see W. Va. Code Art. 60-7  
Liquor control - see GEN. OFF. Art. 521

757.01 DEFINITIONS.

For the purposes of this article, the definitions of “private club”, “licensee”, “applicant”, “commissioner” and “code” shall be the same as contained in West Virginia Code 60-7-2.

757.02 LICENSE REQUIRED.

No licensee authorized by the State to sell alcoholic liquors as provided by West Virginia Code 60-7-3, shall do so within the corporate limits of the City without first having obtained a City license issued by the City Clerk as hereinafter provided.

757.03 LICENSE APPLICATION.

(a) Application for a license to operate a private club shall be made on such forms as may be prescribed by the City Clerk and shall include:

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

- (8) Such other information as the City Clerk may reasonably require which shall include, but not be limited to the criminal records, if any, of each member of applicant's governing board and/or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(b) Such application shall be verified by each member of the governing board of the applicant if an unincorporated association, or, if the applicant be a corporation, by each of its officers and all members of its board of directors. Such application shall be accompanied by the license fee hereinafter prescribed.

#### 757.04 LICENSING PROCEDURE.

(a) Upon receipt of the application referred to in Section 757.03, together with the accompanying license fee hereinafter set out, the City Clerk may conduct such investigation as he may deem necessary to determine the accuracy of the matters contained in such application. The City Clerk shall withhold issuing such license until such time as the applicant exhibits a valid private club license issued by the West Virginia Alcohol Beverage Control Commissioner. Upon the exhibition thereof by the applicant, or within thirty days thereafter, the City Clerk shall issue the City license unless it appears from the investigation conducted by the City Clerk that the application submitted by the applicant contains one or more material inaccuracies or false statements in which event the City Clerk shall refuse to issue such license until such time as the applicant has corrected such inaccuracies or false statements.

(b) In the event the applicant fails or refuses to correct such inaccuracies or false statements contained in the application, the City Clerk shall deny the application and refuse to issue the license and shall forthwith refund to the applicant the fee accompanying his application. Further, the City Clerk shall advise the Commissioner, in writing, of his reasons for denying the application.

(c) Any license issued pursuant to an application received hereunder shall authorize the licensee to sell alcoholic liquors at only one location specified in the license.

(d) Any license issued hereunder shall expire on June 30 next following the date of issue and may be renewed upon the same showing as required for the issuance of the original license, together with the payment of fees hereinafter prescribed.

(e) A license issued under the provisions of this article shall not be transferable with regard to either licensee or location.

(f) The City Clerk shall attach to any license issued hereunder a copy of this article, together with a notice advising the licensee to fully acquaint himself with the provisions of this article.

**757.05 ANNUAL LICENSE FEE; PRORATION**

(a) The annual Municipal license fee for a license issued under the provisions of this article shall be as follows:

- (1) For a licensee having one hundred members or less: two hundred fifty dollars (\$250.00);
- (2) For a licensee having more than one hundred, but less than three hundred members: three hundred seventy-five dollars (\$375.00);
- (3) For a licensee having three hundred or more, but less than six hundred members: five hundred dollars (\$500.00);
- (4) For a licensee having six hundred or more members: seven hundred fifty dollars (\$750.00).

(b) The fee for any such license issued following January 1, and which expires on June 30, of such year shall be one-half of that prescribed by subsection (a)(2) hereof, provided, however, with respect to the 1966-1967 fiscal year only, the fee for any license issued hereunder shall be one-quarter of that prescribed by subsection (a) hereof.

**757.06 CERTAIN ACTS PROHIBITED.**

(a) No licensee, agent, employee or member thereof, shall do any of the following, on such licensee's premises:

- (1) Sell or offer for sale any alcoholic liquors other than from the original package or container;
- (2) Authorize or permit any disturbance of the peace; obscene, lewd, immoral or improper entertainment, conduct or practice;
- (3) Sell, give away or permit the sale of, gift to, or the procurement of any alcoholic liquors, for any minor, mental incompetent; or person who is physically incapacitated due to the consumption of alcoholic liquor, or the use of drugs;
- (4) Sell, give or dispense alcoholic liquors in or on any licensed premises or in any rooms directly connected therewith, between the hours of 2:00 a.m. and 1:00 p.m. on any Sunday;
- (5) Permit the consumption by, or serve to, on the licensed premises, any alcoholic liquors, covered by this article, to any person under the age of twenty-one years; or
- (6) With the intent to defraud, alter, change or misrepresent the quality, quantity or brand name of any alcoholic liquor.

(b) No licensee shall advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

**757.07 REVOCATION OF LICENSE.**

Upon final conviction of a licensee, or any employee thereof acting within the scope of his employment of any provision of this article or upon final conviction of a licensee or any employee thereof acting within the scope of his employment of any violation of any Municipal ordinance relating to the regulation, control and sale of alcoholic liquors, or to the regulation and control of gambling or prostitution, the City Clerk shall revoke the licensee's Municipal license. Such license so revoked shall not be reissued or reinstated for a period of one year from the date of such revocation. Upon final conviction of any licensee, or any employee thereof acting within the scope of his employment, as aforementioned, the City Clerk shall, in writing, immediately advise the Commissioner thereof.

**757.99 PENALTY.**

Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty days, or both.



ARTICLE 761  
Public Utility Service Tax

761.01	Definitions.	761.05	Exemptions.
761.02	Imposition and levying; amount.	761.06	Nonliability of utility; duty of City; refunds; rules.
761.03	Collection; time of payment; effective date.	761.07	Collection; additional remedies.
761.04	Maintenance of records; inspection.	761.08	Effective date; notice to utilities.

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-5a  
Business and occupation tax - see BUS. & TAX. 745.07

761.01 DEFINITIONS.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, except where the context clearly indicates a different meaning:

- (a) "Person" means individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form and character.
  - (b) "Public Utility Service" means all services and tangible personal property purchased within the City from a seller, as hereinafter in this section defined, namely, telephone service; electric service; gas service, including bottled or liquid gas, if the seller thereof is classified as a public utility subject to the jurisdiction of the Public Service Commission of the State; water service and sanitary sewer service, if purchased, used or consumed within the corporate limits of the City.
  - (c) "Purchaser" means every person who purchases, uses or consumes a public utility service.
  - (d) "Seller" means every person, whether a public service corporation, a municipality or private corporation, classified as a public utility and subject to the jurisdiction of the Public Service Commission of the State; who sells, furnishes or supplies a public utility service.
  - (e) "User" means the owner or tenant of private residential property or the owner or tenant of property used for commercial or industrial purposes and every combination thereof, of every kind and description.
- (Passed 6-27-05)

**761.02 IMPOSITION AND LEVYING; AMOUNT.**

(a) There is hereby imposed and levied by the City, upon each and every purchaser of a public utility service, an excise tax upon the privilege of purchasing, using or consuming, within the corporate limits of the City, such public utility service. Such tax shall be in the amount of two percent (2%) of the charge exclusive of any Federal or State tax thereon, imposed upon the purchaser, made by the seller against the purchaser with respect to each public utility service, which tax in every case shall be collected by the seller and paid by the purchaser upon the amount of each periodic statement rendered such purchaser by the seller and shall be paid by the purchaser to the seller at the time the purchase price or such charge becomes due and payable under the agreement between the purchaser and the seller. The tax imposed and levied by this section is in addition to all other taxes imposed and levied by the City. In the event the amount of the charge for any single public utility service exceeds the sum of twenty thousand dollars (\$20,000) in any given calendar month, to any single purchaser, no tax shall be imposed for such additional purchase, use or consumption in excess of the amount of twenty thousand dollars (\$20,000). In the event more than one public utility shall furnish the identical public utility service to the same purchaser, such purchaser shall be entitled to group the same as a single public utility service in calculating the amount of the charges in any calendar month for such public utility service.

(b) If any utility at a future date should adopt lifeline utility rates, the City shall recognize such rates for its taxing purposes under this article and impose and levy the two percent (2%) on the lower amount.  
(Passed 6-27-05)

**761.03 COLLECTION; TIME OF PAYMENT; EFFECTIVE DATE.**

Every seller, in acting as the tax collecting medium or agency for the City, shall collect from each purchaser, for the use of the City, the tax hereby imposed and levied at the time of collecting the purchase price charged for its public utility service, and the amount of tax actually collected during each calendar month shall be reported by each seller to the City, and each seller shall remit the amount of tax shown by such report to have been collected to the City on or before the last day of the first calendar month following the month in which collected, together with the name and address of any purchaser who has failed or refused to pay the tax so imposed and levied. The tax imposed and levied by this article shall apply to periodic statements rendered after the effective date of this Article, for public utility service rendered subsequent to the effective date of this Article. The required reports shall be in the form prescribed by the City Manager.  
(Passed 6-27-05)

**761.04 MAINTENANCE OF RECORDS; INSPECTION.**

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of the City, which records shall show the charge made against each purchaser, the dates such public utility service was furnished, the date of payment therefor and the amount of tax imposed hereunder and such records shall be kept open for inspection by the duly authorized agents of the City at reasonable times, and the duly authorized agents of the City shall have the right, power and authority to make, at the expense of the City, such transcripts thereof during such times as they may desire.  
(Passed 6-27-05)

#### 761.05 EXEMPTIONS.

The tax hereby imposed and levied shall not apply to the following transactions, which transactions are hereby exempted from such tax:

- (a) Purchases of public utility service for resale.
  - (b) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied.
  - (c) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones and specified charges or tolls for telephone calls to points outside the corporate limits of the City.
  - (d) Nonrecurring or one-time charges incidental to the furnishing of public utility service.
  - (e) Purchases of public utility service by the United States, the State of West Virginia, and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (Passed 6-27-05)

#### 761.06 NONLIABILITY OF UTILITY; DUTY OF CITY; REFUNDS; RULES.

(a) There shall be no liability upon the seller for erroneously collecting the tax hereby imposed and levied or for erroneously failing to bill for such tax as a result of a good faith mistake on the part of the seller. When any purchaser contends that such tax is not owed by the purchaser on the grounds that the public utility service was not purchased, used or consumed within the corporate limits of the City, the seller shall refer the question to the City Manager, and such seller shall thereafter collect or refrain from collecting such tax from the purchaser for such utility service as instructed in writing to do by the City Manager. Any and all claims for refunds of any such tax shall be presented to the City Manager and not to the seller.

(b) The City Manager shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.  
(Passed 6-27-05)

#### 761.07 COLLECTION; ADDITIONAL REMEDIES.

Any amount of tax due and unpaid under this article shall be a debt due to the City. In addition to all other methods set forth and prescribed in this article for the collection of the taxes due hereunder, the City, through its City Manager, is authorized and empowered to collect the same, 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 State, County and Municipal taxes. (Passed 6-27-05)

#### 761.08 EFFECTIVE DATE; NOTICE TO UTILITIES.

This article shall be and become in effect from September 1, 2005, and all taxes prescribed hereunder shall be calculated beginning with such date; provided, that in accordance with the provisions of West Virginia Code-8-13-5a, as amended, such tax shall not be effective until the City gives sixty days written notice by certified mail to all utilities doing business within the corporate limits of the City of the effective date of the article.  
(Passed 6-27-05)



ARTICLE 765  
Wine Distributors and Retailers

765.01	License required.	765.04	License restrictions.
765.02	Annual fee.	765.05	Suspension and revocation.
765.03	License period.		

CROSS REFERENCES

Authority to levy - see W. Va. Code 8-13-4

Liquor control - see GEN. OFF. Art. 521

Intoxicating liquor tax - see BUS. & TAX. Art. 749

765.01 LICENSE REQUIRED.

No person shall engage in the business of distributing or selling wine as a distributor or retailer as defined under West Virginia Code 60-8-2, without first obtaining a license from the City Treasurer, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed in more than one of such capacities at the same time. (Passed 4-5-82.)

765.02 ANNUAL FEE.

The City Treasurer shall collect an annual fee for licenses issued under this article as follows:

- (a) One thousand five hundred dollars (\$1,500) per year for a distributor's license.
  - (b) One hundred twenty-five dollars (\$125.00) per year for a retailer's license.
- (Passed 4-5-82.)

765.03 LICENSE PERIOD.

The license period shall begin on July 1 of each year and end on June 30 of the following year, and if the initial license is granted for less than a year, the fee shall be computed in proportion to the number of quarters remaining in the fiscal year, including the quarter in which application was made. (Passed 4-5-82.)

**765.04 LICENSE RESTRICTIONS.**

No retailer may be licensed as a private club as provided by West Virginia Code 60-7 or as a Class A retailer dealer in non-intoxicating beer as provided by West Virginia Code 11-16. 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 of a bona fide grocery store or wine specialty shop as defined by the West Virginia Code. (Passed 4-5-82.)

**765.05 SUSPENSION AND REVOCATION.**

In the event that any person's State license, under the applicable provisions of the West Virginia Code shall be revoked or suspended, the City Treasurer shall suspend or revoke the licensee's City license for the same period of time.

