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attorney, the county surveyor, the country engineer, or any other county employee may render assistance and service to a Planning Commission without compensation.

Section 4. Compensation and Expenses of Members.

Members of the Planning Commission shall serve without compensation but shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties.

Section 5. Expenditures; Gifts of Commission.

(1) The Town of Barrackville shall authorize expenditures reasonably necessary to acquire:

- a. Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and
- b. Appropriate money to defray the reasonable expenses of the Planning Commission.

(2) The Commission shall have authority to accept gifts, funds and donations which will be deposited with the Town Council in a special nonreverting Planning Commission fund to be available for expenditures by the Planning Commission for the purpose designated by donor.

Section 6. Planning Commission Meetings; Quorum; Open Meeting Requirements.

(1) *Regular Meetings* - Pursuant to §8A-2-7 of the West Virginia Code, the Planning Commission shall meet at least quarterly and may meet more frequently at the request of the President or by two or more members. The Planning Commission shall make its own rules of procedure and determine the time of meeting.

(2) *Special Meetings* - Notice for a special meeting must be in writing, include the date, time, place, and purpose of the special meeting. Notice for a special meeting must be posted and sent to all members at least two business days before the special meeting.

(3) *Quorum* - Pursuant to §8A-2-8 of the West Virginia Code, the Planning Commission must have a quorum to conduct a meeting. A simple majority of Planning Commission members present (minimum of 3), constitute a quorum. No action of the Planning Commission is official unless authorized by a majority of the members present at a regular or properly called special meeting.

(4) *Open Meetings and Public Record* - All Planning Commission meetings shall be open to the public unless discussing matters that are permitted under §6-9A-4 of the West Virginia Code as an exception to the State's open meeting regulations. The Planning Commission shall follow all rules and regulations pertaining to notice, setting the agenda, and taking minutes for each meeting.

Section 7. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 3rd day of March, 2020.

David J. Yankin
Mayor

ATTEST:

[Signature]
Recorder

ORDINANCE NO. 1

AN ORDINANCE PROVIDING FOR THE TIME AND PLACE
OF REGULAR AND SPECIAL MEETINGS OF THE
TOWN COUNCIL OF THE TOWN OF BARRACKVILLE

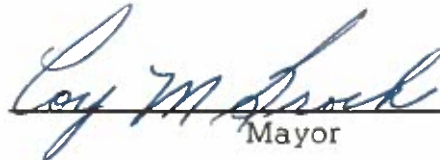
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

Section 1. Regular meetings of the Town Council shall be held on the first and third Tuesdays of every month at 7:00 o'clock p.m. in the Barrackville Town Hall; provided that the Town Council, at its regular meeting on the first Tuesday of any month, may waive the holding of a regular meeting on the third Tuesday of said month by a majority vote of the Council.

Section 2. Special meetings of the Town Council may be called by the Mayor or may be called by a majority vote of the Town Council at any regular or special meeting.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 13th day of March, 1968.


Mayor

Attest: 
Recorder

* * *

ORDINANCE NO. 2

AN ORDINANCE TO PROVIDE REVENUES FOR THE CONTINUANCE, MAINTENANCE, AND IMPROVEMENT OF THE ESSENTIAL SERVICE OF FIRE PROTECTION WITHIN THE TOWN OF BARRACKVILLE BY LEVYING AND ASSESSING RATES, FEES, AND RENTALS UPON THE USERS OF THE SERVICE OF FIRE PROTECTION FOR THE PURPOSE OF PAYING THE COST OF SUCH SPECIAL SERVICE, ESTABLISHING SUITABLE REGULATIONS GOVERNING SUCH SERVICE, PROVIDING FOR THE COLLECTION OF RATES, FEES, AND RENTALS,

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

Section 1. That in the judgment of the Town Council of The Town of Barrackville, the public health, safety, welfare, and wellbeing of the citizens thereof demands the continuance, maintenance, and improvement of the essential service of fire protection within The Town of Barrackville, and the public revenues of The Town of Barrackville are not sufficient for the purpose of providing adequate fire protection within The Town of Barrackville, and the public revenues of The Town of Barrackville are not sufficient for the purpose of providing adequate fire protection within The Town of Barrackville, and therefore it appears necessary under the provisions of Chapter 8, Article 4, Section 20, of the Code of West Virginia, that in order to provide for the continuance, maintenance, and improvement of the essential and special service of fire protection within The Town of Barrackville it is necessary

that there be imposed upon the users of such special service such rates, fees, and rentals as are required to pay the cost of the special service of fire protection. The proceeds and revenues received and collected from such rates, fees, and rentals from the users of such special service shall be used and expended in the continuance, maintenance, and improvements of the special service of fire protection and the facilities required therefor within The Town of Barrackville and for no other purpose or purposes.

Section 2. There shall be assessed, levied, and imposed upon each user of the special service of fire protection within The Town of Barrackville Ten Cents (10¢) per One Hundred Dollars (\$100.00) of the value of all buildings, structures, and improvements situate and located on real estate within the corporate limits of The Town of Barrackville, and Ten Cents (10¢) upon each One Hundred Dollars (\$100.00) of the value of all tangible personal property, goods, and chattels located within the Town of Barrackville. The value of buildings, structures, and improvements situate on real estate, and the value of tangible personal property, goods and chattels within the corporate limits of The Town of Barrackville shall be fixed and determined by the duly authorized and designated agents of the Town upon such principles as may be established by The Town Council, and shall insofar as possible conform to the assessments values of Marion County, as determined by the Marion County Assessor for the fiscal year involved, and such fees shall be paid by the owners, such owners being hereby declared to be the users and beneficiaries of such service. No fees shall be assessed, levied, or imposed, under the provisions of this ordinance, upon the value of the land upon which any buildings, structures, or improvements are situate. The above assessments, rates, and fees shall be assessed, levied, and imposed as of the 1st day of July, 1968, and for each fiscal year thereafter.

Section 3. The rates and fees hereby imposed shall be collected from each user of the service in two (2) semi-annual installments, the first installment being due and payable on the 1st day of September of each year and a like installment on the 1st day of March of each year, hereafter. Rates and fees imposed in accordance with this ordinance shall be collected in the same manner as those municipal taxes of The Town of Barrackville which are collected under the Statutes of the State of West Virginia by the Sheriff of Marion County, West Virginia, and The Town of Barrackville shall reimburse the Sheriff of said County for the actual cost of the collections. Provided, however, that such rates and fees as are imposed against property otherwise exempt from taxation and upon property owned by public utilities shall be collected by The Town of Barrackville.

Section 4. The Town Council of The Town of Barrackville shall have the right to make and promulgate from time to time hereafter suitable regulations governing the service herein and hereby provided, making of statements or accounts, the collection thereof and other property and appropriate regulations as it may deem proper or necessary for the enforcement of this ordinance.

Section 5. After the enactment of this ordinance it shall be published at least once a week for two successive weeks in two (2) newspapers of general circulation within The Town of Barrackville and said ordinance shall not become effective until fifteen (15) days after the date of passage.

Section 6. When used in this ordinance, the term "user" shall include any individual, firm, or corporation owning buildings or other structures or improvements situate on real estate located within the corporate limits of The Town of Barrackville, and shall also include the owners of any tangible personal property, goods, and chattels located within the corporate limits of the Town of Barrackville.

The pronoun "his" or "he" as used in this ordinance, shall refer equally to the male and female genders and to any firm, partnership, association, corporation, or business trust, as the case may be.

Section 7. The rates and fees hereby assessed, levied, and imposed shall be collected semi-annually as hereinbefore set forth. The collection year shall run from the 1st day of July through the 30th day of June of the following year, the first effective year hereof beginning July 1, 1968, and extending through June 30, 1969.

Section 8. The rates and fees provided by this ordinance shall be in addition to all other assessments, rates, fees, charges, licenses, and taxes imposed under authority of the statutes of the State of West Virginia or the ordinances of The Town of Barrackville. Such rates and fees shall be a debt due The Town of Barrackville from each user of the service of fire protection. The Mayor shall cause an appropriate civil action to be maintained in the name of the Town to recover any unpaid fees.

Section 9. No buildings, improvements, or structures, and no tangible personal property, goods, or chattels, located within The Town of Barrackville, which otherwise may be exempt from taxation because of ownership by a public entity, or because such property is used for educational, literary, scientific, religious, or charitable purposes, shall be exempt from the assessments, rates, and fees provided for by this ordinance.

Section 10. If any sentence, paragraph, or section or sections of this ordinance shall, for any reason, be adjudged invalid, or void, by any court of competent jurisdiction, such judgment shall not affect, nor impair, nor invalidate the remaining provisions of this ordinance, but shall be confined in its operation and effect to the sentence, paragraph, section or sections directly involved in the cause, action, or controversy in which such judgment shall have been rendered.

Passed by the Town Council this 19th day of March, 1968.

Eugene M. Lusk
Mayor

Attest:

W. Lester Merrifield
Recorder

* * *

ORDINANCE NO. 3

AN ORDINANCE PROVIDING FOR THE PASSAGE OF ORDINANCES OF THE TOWN OF BARRACKVILLE

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

Section 1. Proposed ordinances of The Town of Barrackville may be introduced by any member of the Council at any meeting of the Council, but no ordinance shall be ^{officially} voted upon or enacted until the next regular meeting after it has been introduced and read.

Section 2. Any ordinance enacted under the provisions of this ordinance shall be effective at such time as may be designated by the Council at the time of passage.

Section 3. If the statutes of the State of West Virginia provide for the publication of ordinances under any circumstances, or provide other requirements for the passage of any ordinance, this ordinance shall be deemed to be supplemented by the statutes of the State of West Virginia in such instances.

Passed by the Town Council this 26th day of March, 1968.

Eugene M. Lusk
Mayor

Attest:

W. Lester Merrifield
Recorder

4

ORDINANCE NO. 4

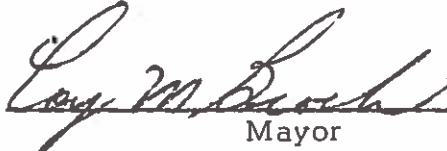
AN ORDINANCE PROVIDING PENALTIES FOR
ALLOWING DOGS TO RUN AT LARGE

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

Section 1. Any owner or keeper of any dog who permits such dog to run at large within the Town of Barrackville shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall be fined not more than \$500.00 for the second and subsequent offenses thereof.

Section 2. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 2d day of July, 1968.


Mayor

Attest:


Recorder

* * *

ORDINANCE NO. 5

AN ORDINANCE SETTING FORTH
LIMITATIONS ON SPEED OF MOTOR VEHICLE

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

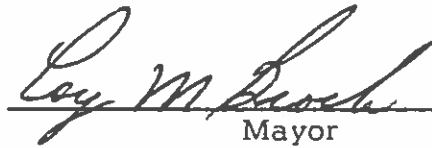
Section 1. No person shall drive a motor vehicle on streets or alleys within the Town of Barrackville at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards, then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the streets and highways in compliance with legal requirements and the duty of all persons to use due care.

Section 2. No person shall drive a motor vehicle on any street or alley within the Town of Barrackville at a speed greater than twenty-five (25) miles per hour.

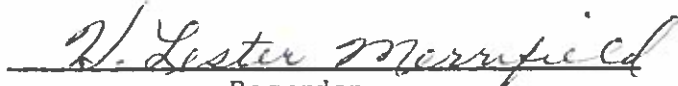
Section 3. Violation of this ordinance shall be a misdemeanor, and, upon conviction thereof, a person shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall be fined not more than \$500.00 for the second and subsequent offenses.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 16th day of July, 1968.


Mayor

Attest:


Recorder

* * *

ORDINANCE NO. 6

AN ORDINANCE PROVIDING PENALTIES FOR PARKING JUNKED, DISABLED,
UNLICENSED, OR INOPERATIVE MOTOR VEHICLES UPON STREETS OR ALLEYS

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

Section 1. No junked, disabled, unlicensed, or inoperative motor vehicle shall be parked or left upon any street or alley within the Town of Barrackville.

Section 2. The owner of such motor vehicle or any person who parks or leaves a motor vehicle upon any street or alley shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500.00.

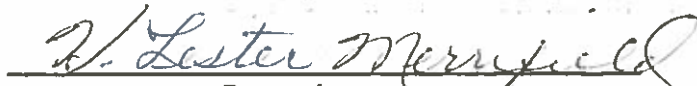
Section 3. In event of a violation of this ordinance, the Mayor may, after having given to the owner of such motor vehicle written notice by certified mail of his intention so to do, have such motor vehicle removed from any street or alley, and the owner of such motor vehicle shall pay and be liable for all costs involved in removing, towing, and storing such motor vehicle.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 3d day of September, 1968.


Mayor

Attest:


Recorder

ORDINANCE NO. 7

AN ORDINANCE GRANTING FRANCHISES FOR INSTALLATION
AND OPERATION OF TELEVISION CABLE SYSTEMS

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

Section 1. American Cablevision of West Virginia, Inc., a corporation, Barrackville Community Service Corporation, a corporation, and Donald F. Metheny, are hereby granted nonexclusive franchises for the purpose of installing and operating television cable systems on, under, and over the streets and public ways of the Town of Barrackville, insofar as the systems do not unreasonably interfere with the ordinary uses of such streets and ways by the public.

Section 2. On January 1 of each year, the holder of each franchise shall pay unto the Town of Barrackville a franchise fee at the rate of One Dollar (\$1.00) for each of its customers within the Town of Barrackville.

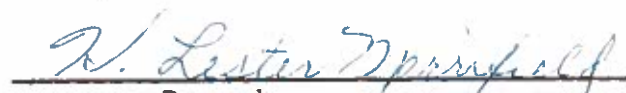
Section 3. These franchises shall be for terms of thirty years.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 5th day of November, 1968.


Mayor

Attest:


Recorder

* * *

ORDINANCE NO. 8

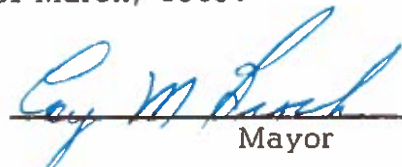
AN ORDINANCE REQUIRING PERMISSION TO PAVE, RESURFACE, ETC.,
STREETS, ALLEYS, SIDEWALKS, AND SEWERS

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

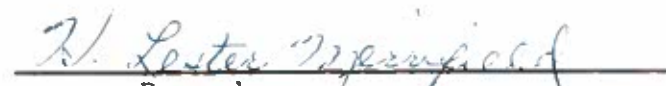
Section 1. No person shall pave, resurface, construct, build, or cause to be paved, resurfaced, constructed, or built, any street or alley, or sidewalk, gutter, or sewer upon a public street or alley, without first having obtained permission from the Town Council or its designated representative. In order to insure an orderly and uniform system of streets, alleys, sidewalks, gutters, and sewers within the municipality, the Town Council may set minimum standards for the construction thereof, and may require plans, drawings, and designs of said proposed paving, resurfacing, construction, or building to be submitted before granting or denying said permission.

Section 2. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 4th day of March, 1969.


Mayor

Attest:


Recorder

ORDINANCE NO. 9

AN ORDINANCE PROHIBITING HOUSE TRAILERS AND MOBILE HOMES WITHIN
CERTAIN AREAS AND REQUIRING PERMISSION FOR THE PLACING OF HOUSE
TRAILERS AND MOBILE HOMES WITHIN THE MUNICIPALITY

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

Section 1. No house trailer or mobile home shall be located, placed, erected, or situated in any residential area of this municipality, except in recognized trailer courts as established by the Town Council.

Section 2. For the purposes of this ordinance, all land lying within the municipality shall be considered a residential area, except those portions of land within the municipality which at the time of the enactment of this ordinance are used for the purposes of manufacturing or the mining of coal and its related facilities.

Section 3. No house trailer or mobile home shall be placed or located upon any land within the municipality unless and until application is made to the Town Council and permission is granted for said placement or location by the Town Council.

Section 4. Any person who shall violate any section of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding \$500.00 for each violation.

Section 5. In the event that any house trailer or mobile home is located, placed, erected, or situated within this municipality in violation of this ordinance, the Town Council may have said house trailer or mobile home removed from said land and transported to an appropriate storage area, without being liable to the owner thereof or any other person for damages incurred in the transportation and storage of said house trailer or mobile home, and the owner or any other person violating the provisions of this ordinance shall be liable and responsible for all costs of removal, transportation, storage, and any other costs incident thereto.

Section 6. In the event of any violation of this ordinance, the Town Council is authorized to institute an action for injunctive relief in the Circuit Court of Marion County against the violator, and the violator shall be responsible for all costs and expenses incident to said action.

Section 7. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 19th day of August, 1969.



Mayor

Attest:



Recorder

ORDINANCE NO. 10

AN ORDINANCE PROVIDING FOR
THE ELECTION OF MUNICIPAL OFFICERS

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

Section 1. It is hereby declared that the conduct of elections of municipal officers of the Town of Barrackville is hereby integrated with the system of permanent registration of voters of the State of West Virginia, and unless otherwise provided herein, all laws governing the conduct of elections as set forth in the West Virginia Code shall govern the conduct of municipal elections in the Town of Barrackville.

Section 2. The regular general election of officers of the municipality shall be held on the first Tuesday in June, 1970, and on the first Tuesday in June of every second year thereafter.

Section 3. Two precincts are hereby established for the municipality, the boundaries of which shall coincide with the voting precincts fixed by the County Court for state and county elections:

Precinct 28-29 Barrackville Municipal Building

Precinct 33 First Aid Hall at Barrackville Mine

Section 4. Two ballot commissioners shall be appointed by the Town Council between the 15th and 30th days of March in each year in which a general election is to be held, for a term of two years beginning on the 1st day of April next ensuing.

Section 5. Officers to be elected at each election shall be a mayor, recorder, and five councilmen.

Section 6. All eligible persons who desire to become candidates for election shall file with the Town Recorder a certificate of candidacy, along with a filing fee of \$10.00, between the 1st and 15th days of April immediately prior to the election.

Section 7. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 3rd day of February, 1970.

Attest:

Lester Merrifield
Recorder

Coy M. Louch
Mayor

ORDINANCE NO. 11

AN ORDINANCE REQUIRING REMOVAL OF MUD, DEBRIS, AND OTHER FOREIGN SUB-
STANCES FROM TOWN STREETS, AND PROVIDING PENALTIES FOR VIOLATION OF
THIS ORDINANCE

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

Section 1. Any person, firm, or corporation who deposits, places, or causes or allows to be deposited or placed, any dirt, mud, rocks, stone, debris, or other foreign substance, upon any paved street, shall remove or cause to be removed such mud, dirt, rocks, stone, debris, or other foreign substance, within two hours thereafter.

Section 2. Any person, firm, or corporation who shall violate this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding \$500.00 for each violation.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 20th day of February, 1973.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 12

AN ORDINANCE PROVIDING FOR THE VACATION, ABANDONMENT, AND ANNULMENT OF A
TWELVE FOOT ALLEY IN RIDGWAY ADDITION BETWEEN CHARLORA STREET AND PROPERTY OF
EVA REXRODE

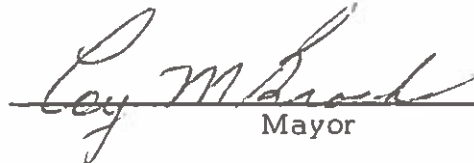
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

Section One. In the judgment of the Town Council of the Town of Barrackville, a twelve foot alley in Ridgway Addition to the Town of Barrackville, a map or plat of which Addition is of record in the office of the Clerk of the County Court of Marion County, West Virginia, in Deed Book No. 363, at page 587, running from Charlora Street a distance of 93.34 feet to property of Eva Rexrode, bounded on one side by Lots 5 and 6 of said Addition, and on the other side by Lot 7 of said Addition, is not used by the public or by an persons, and no use of said alley in the future is foreseen; that the rights of no persons will be injured if said alley is vacated and annuled; that notice of the proposed abandonment, vacation, and annulment of said alley has been given to all adjoining property owners, and none have objected; and that the vacating and annulment of said alley would be desirable and for the best interests of the Town of Barrackville, the public, and all concerned.

Section Two. Said twelve foot alley in said Ridgway Addition to the Town of Barrackville running from Charlora Street 93.34 feet to the property of Eva Rexrode, bounded on one side by Lots 5 and 6 of said Addition, and on the other side by Lot 7 of said Addition, is hereby vacated, abandoned, and annuled, insofar as it is within the power of the Town of Barrackville so to do.

Section Three. The Town of Barrackville retains all rights of way or easements now existing or which may hereafter be necessary or useful to the Town, together with the right and privilege to enter in and upon said vacated alley for the purpose of installing, maintaining, repairing, and removing sanitary and storm sewers, and for all other necessary purposes in connection with the installation, maintenance, repair, and removal of said storm and sanitary sewer lines.

Passed by the Town Council this 4th day of September, 1973.


Mayor

Attest:


Recorder

ORDINANCE NO. 13

AN ORDINANCE PROVIDING FOR THE VACATION, ABANDONMENT, AND ANNULMENT OF A TWELVE FOOT ALLEY OR STREET IN JOHN W. ICE REVISED SECOND ADDITION BETWEEN LOT NO. 2A AND LOT NO. 3

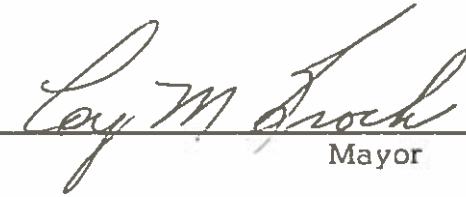
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

Section One. In the judgment of the Town Council of the Town of Barrackville, a twelve foot alley or street in John W. Ice revised second addition to the Town of Barrackville, a map or plat of which revised second addition is of record in the office of the Clerk of the County Court of Marion County, West Virginia, in Deed Book No. 727, at page 459, running from Saxman Street a distance of 120 feet to property of Arthur P. Farmer and Myrel G. Farmer, bounded on one side by Lot No. 2A of said addition, and on the other side by Lot No. 3 of said addition, is not used by the public, and no use of said alley in the future is foreseen; that the rights of no persons will be injured if said alley is vacated and annuled; that notice of the proposed abandonment, vacation, and annulment of said alley has been given to all adjoining property owners, and none have objected; and that the vacating and annulment of said alley would be desirable and for the best interests of the Town of Barrackville, the public, and all concerned.

Section Two. Said twelve foot alley or street in said John W. Ice revised second addition to the Town of Barrackville running from Saxman Street 120 feet to property of Arthur F. Farmer and Myrel G. Farmer, bounded on one side by Lot No. 2A of said addition and on the other side by Lot No. 3 of said addition, is hereby vacated, abandoned, and annuled, insofar as it is within the power of the Town of Barrackville to do so.

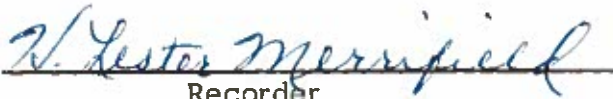
Section Three. The Town of Barrackville retains all rights of way or easements now existing or which may hereafter be necessary or useful to the Town, together with the right and privilege to enter in and upon said vacated alley or street for the purpose of installing, maintaining, repairing, and removing sanitary and storm sewers, and for all other necessary purposes in connection with the installation, maintenance, repair, and removal of said storm and sanitary sewer lines.

Passed by the Town Council this 18th day of June, 1974.



Mayor

Attest:



Recorder

ORDINANCE NO. 14

AN ORDINANCE REQUIRING A BUILDING PERMIT FOR ALL BUILDINGS WITHIN FLOOD HAZARD AREAS

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

Section 1. No person, firm, or corporation shall erect, construct, enlarge, alter, repair, improve, move, or demolish any building, or structure within a flood hazard area as designated by the Department of Housing and Urban Development, without first obtaining a separate building permit for each building or structure from the Town Council.

Section 2. The Town Council shall review all building permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must (i) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) use construction materials and utility equipment that are resistant to flood damage, and (iii) use construction methods and practices that will minimize flood damage.

Section 3. Any person, firm, or corporation who shall violate this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding \$500.00 for each violation.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 18th day of March, 1975.


Mayor

Attest:


Recorder

ORDINANCE NO. 15
AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION
OF A PUBLIC UTILITIES TAX

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

Section 1. Definitions.

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

Person. Individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character.

Public utility service. All services and tangible personal property purchased within this municipality 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 West Virginia; water service and sanitary sewer service; if purchased, used or consumed within the corporate limits of this municipality.

Purchaser. Every person who purchases, uses or consumes a public utility service.

Seller. 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 West Virginia, who sells, furnishes or supplies a public utility service.

User. 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 or description.

Section 2. Imposition and levying of tax; amount of tax.

There is hereby imposed and levied 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 this municipality, such public utility service. Such tax shall be in the amount of one percent of the charge, exclusive of any federal or state tax thereon, 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 shall become 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 this municipality.

Section 3. Collection; time of payment; accounting; effective date of article; proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality 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 this municipality and each seller shall remit the amount of tax shown by the report to have been collected to this municipality on or before the last day of the first calendar month following the month in which collected. The tax imposed and levied by this article shall apply to periodic statements rendered after September 5, 1975, for public utility service rendered subsequent to September 5, 1975, and when any such periodic statement covers public utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after September 5, 1975, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality.

Section 4. Records.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this municipality, 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 this municipality at reasonable times, and the duly authorized agents of this municipality shall have the right, power and authority to make at the expense of this municipality such transcripts thereof during such times as they may desire.

Section 5. 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 by a public utility for resale.
- (b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.
- (c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied.
- (d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points

outside the corporate limits of this municipality.

(e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

Section 6. Nonliability of utility; duty of municipality; refunds; rules and regulations.

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 such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the official of this municipality charged with the responsibility of collecting taxes due to this municipality and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such officials of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The official of this municipality charged with the responsibility of collecting taxes due this municipality shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.

Section 7. Enforcement provisions; penalties.

Any amount of tax due and unpaid under this article shall be a debt due this municipality. It shall be a personal obligation of the purchaser and shall be a lien upon all of the property of the purchaser. The lien shall have priority over all other liens and obligations except those due the state and the United States of America. Any such lien shall attach when the obligation to pay such tax accrues. The lien shall be enforceable by this municipality as any other lien against the property of a debtor.

Any purchaser who wilfully fails or refuses to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars. The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense.

Section 8. Notice to utilities.

The tax hereby imposed and levied shall not be effective until this municipality gives sixty days written notice by certified mail of the effective date of this article to any

public utility doing business within this municipality which is required to collect the tax imposed and levied hereby.

Passed by the Town Council this 1st day of July, 1975.

Donald L. Courtney
Mayor

Attest:

R. Lester Merrifield
Recorder

* * *

ORDINANCE NO. 16

AN ORDINANCE REPEALING ORDINANCE NO. 2 OF THE TOWN OF
BARRACKVILLE PROVIDING FOR A FIRE PROTECTION SERVICE CHARGE

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

Ordinance No. 2 of the Town of Barrackville is hereby repealed.

Passed by the Town Council this 1st day of July, 1975.

Donald L. Courtney
Mayor

Attest:

R. Lester Merrifield
Recorder

ORDINANCE NO. 17

AN ORDINANCE CREATING THE OFFICE OF POLICE OFFICER AND SETTING
COMPENSATION FOR SAME

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE

Section 1. There is hereby created the office of police officer of the municipality, and any police officer shall have all of the powers, authority, rights, and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of the police officer shall extend anywhere within the country or counties in which the municipality is located, and any police officer shall have the same authority of pursuit and arrest beyond his normal jurisdiction as has a sheriff. For an offense committed in his presence, any such officer may arrest the offender without a warrant and take him before the mayor to be dealt with according to law. He and his sureties shall be liable to all the fines, penalties, and forfeitures which a deputy sheriff is liable to for any failure or dereliction in such office, to be recovered in the same manner and in the same courts in which such fines, penalties, and forfeitures are recovered against a deputy sheriff. In addition to the mayor, a police officer shall have authority to administer oath to complaintants and to issue arrest warrants thereon for all violations of the ordinances of this municipality.

Section 2. It shall be the duty of the mayor and police officers of this municipality to aid in the enforcement of the criminal laws of the State of West Virginia within the municipality, independently of any ordinance or lack of an ordinance with respect thereto, and to cause the arrest of or arrest any offender and take him before a magistrate to be dealt with according to the law. Failure on the part of any such official or officer to discharge any duty imposed by the provisions of this ordinance shall be deemed official misconduct for which he may be removed from office. Any such official or officer shall have the same authority to execute a warrant issued by a magistrate and the same authority to arrest without a warrant for offenses committed in his presence, as a deputy sheriff.

Section 3. Effective January 4, 1977, the monthly salary of a police officer of this municipality shall be \$450.00 per month.

Passed by the Town Council this 4th day of January, 1977.

Harold Country
Mayor

ATTEST:

Lester Merrifield
Recorder

ORDINANCE NO. 18

AN ORDINANCE REGULATING THE REPAIR, CLOSING, AND DEMOLITION OF DWELLINGS OR BUILDINGS UNFIT FOR HUMAN HABITATION AND PROCEDURES AND PENALTIES THEREFOR

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

Section 1. Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless a different meaning clearly appears from the context:

Agency. The city housing enforcement agency established by this ordinance.

Dwelling. Any building or structure, or part thereof, used and occupied for human habitation, or intended to be so used, including any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Officer. The officers authorized by this ordinance to exercise the powers of the agency prescribed hereby.

Owner. The holder of the title in fee simple and every mortgagee of record.

Parties in interest. All individuals, firms, associations and corporation who have interests of record in a building or structure and any who are in possession thereof.

Section 2. Housing enforcement agency created; composition of agency.

There is hereby created the Town of Barrackville Housing Enforcement Agency (hereinafter referred to in this ordinance as the "agency"), which shall consist of the mayor, the building inspector, and one member at large to be selected by, and to serve at the will and pleasure of the Town Council. The chief

of the fire department shall serve as an ex officio member of the agency.

Section 3. Powers of agency generally.

The agency shall exercise such powers as may be necessary or convenient to carry out and effectuate the purposes of this ordinance, including the following powers in addition to others herein granted:

(a) To investiage the dwelling conditions in the town in order to determine which dwellings therein are unfit for human habitation;

(b) To administer oaths, affirmations, examine witnesses and receive evidence;

(c) To enter upon premises for the purpose of making examinations; provided, however, that any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(d) To appoint and fix the duties of such officers, agents and employees as it deems necessary to carry out the purpose of this ordinance; and

(e) To delegate any of its functions and powers under this ordinance to such officers and agents as it may designate.

Section 4. Enforcement officer generally.

Upon the adoption of this article, the agency may designate and appoint an officer to exercise the powers granted it hereby, and such officer shall serve at the will and pleasure of the agency and shall be paid such compensation as the agency may prescribe.

Section 5. Complaint, notice and hearing upon filing of petition charging dwelling unfit for human habitation; order upon determination; repair, alteration, demolition, etc., by city upon failure of owner to comply with order.

(a) Whenever a petition is filed with the agency or officer by at least five residents of the town who are property owners, charging that any dwelling is unfit for human habitation, or whenever it appears to the agency or officer that any dwelling is unfit for human habitation, the agency or officer shall, if the preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling a complaint stating the charges in that respect and containing a notice that a hearing will be held before the agency, at a place therein fixed, not less than ten nor more than thirty days after the serving of such complaint. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint. The hearing shall be informal and strict rules of procedure shall not be followed or required.

(b) If, after such notice and hearing, the agency determines that the dwelling under consideration is unfit for human habitation, it shall state in writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties in interest thereof an order requiring:

(1) If the repair, alteration or improvement of the dwelling can be made at a cost of not more than twenty-five per cent of the value of the dwelling, exclusive of the real estate upon which it stands, the owner shall within the time specified in the order repair, alter or improve such dwelling so as to render it fit for human habitation or vacate and close the dwelling as a human habitation; or

(2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of not more than twenty-five per cent of the value of the dwelling, exclusive of the real

estate upon which it stands, the owner shall within the time specified in the order remove or demolish such dwelling.

(c) If the owner fails to comply with the order of the agency to repair, alter or improve, or to vacate and close, the dwelling, the agency may cause such dwelling to be repaired, altered or improved, or to be vacated and closed, and from and after the date specified in the order of the agency for the repair, alteration or improvement, or vacation and closing of the dwelling, the officer may cause to be posted on such dwelling a placard with the following words:

"This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

(d) If the owner fails to comply with an order of the agency to remove or demolish the dwelling, the agency may cause such dwelling to be removed or demolished upon such condition as the agency may prescribe.

Section 6. Cost of repairs, improvements, demolition, etc., to be lien; sale of materials of removed or demolished dwelling and disposition of proceeds.

The amount of the costs of the repairs, alterations or improvements, or vacating and closing, or removal or demolition, as provided for by the preceding section, shall be a lien against the real property upon which such cost was incurred. If the dwelling is removed or demolished by the agency, it shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition, and any balance remaining shall be deposited as may be directed by the circuit court of the county in which the dwelling is located and shall be disbursed by such court to the persons found to be entitled thereto by its final order or decree; provided, however, that nothing in this section shall be construed to impair or limit in

any way the power of the town to define and declare nuisances and to cause their removal or abandonment, by summary proceedings or otherwise.

Section 7. Power of agency to determine dwelling unfit, conditions.

The agency may determine that a dwelling is unfit for human habitation if it finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of the town. Such conditions may include the following (without limiting the generality of the foregoing): Defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness. The agency may provide from time to time additional standards for determining the fitness of a dwelling for human habitation.

Section 8. Service of complaints and orders.

All complaints or orders issued by the enforcement agency shall be served personally or by publication in accordance with the laws of the state, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed for record in the office of the clerk of the county commission of the county in which the dwelling is located, and such filing of a copy of such complaint or order shall have the same force and effect as other lis pendens notices have under the laws of the state.

Section 9. Appeals from orders.

Any person affected by an order issued by the agency or its officer may petition the circuit court of the county in which

the premises affected are located for an injunction restraining the agency and officer from carrying out the provisions of such order, and the court may, upon such petition, issue a temporary injunction restraining the agency pending the final disposition of the cause; provided, however, that such petition shall be filed not more than sixty days after the service and posting of the order. Hearings may be had by the court on such petitions within ten days after the filing of the same, or as soon thereafter as possible, and upon the application of any party in interest may, in the discretion of the court, be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the finding of the agency as to facts, if supported by evidence, shall be conclusive. Costs shall be assessed in the discretion of the court against the party substantially prevailing in the proceeding.

The remedies herein provided shall be exclusive remedies, and no person affected by an order of the agency shall be entitled to recover any damages for action taken pursuant to its order, or because of noncompliance by such person with any order of the agency.

Section 10. Agency equipment, personnel and supplies; grants and donations.

The costs of equipment, personnel and supplies necessary for periodic examinations and investigations for the purpose of determining the fitness of dwellings in the town for human habitation, and for the enforcement and administration of this ordinance, shall be made by appropriation from the revenues of

the town as the Town Council may deem necessary, and the agency may accept and apply grants or donations to assist it in carrying out the provisions hereof.

Section 11. Liability of town officers, agents and employees.

No officer, agent or employee of the town shall be personally liable for any damage incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of his duties pursuant to this ordinance, and any suit brought against any officer, agent or employee of the town as a result of any act required, permitted or authorized in the discharge of his duties under this article may be defended by the town.

Section 12. Authority; construction of article.

This article is enacted pursuant to the authority of the Code of the State of West Virginia, and nothing herein contained shall be construed to abrogate or impair the powers of any department of the town to enforce any provisions of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law of the state or ordinance of the town.

Section 13. Violations and penalties.

(a) The owner or other person having dominion and control over any dwelling determined by the agency to be unfit for human habitation, who shall willfully fail to comply with any order to repair, vacate or demolish such dwelling, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars for each offense, and the further sum of ten dollars for each day such failure to comply continues beyond the date fixed for compliance.

(b) The occupant or lessee in possession who willfully fails to comply with any order to vacate, and who fails to repair such dwelling in accordance with any order given, as provided for in this ordinance, shall be guilty of a misdemeanor, shall be fined not exceeding one hundred dollars for each offense, and a further sum of ten dollars for each day such failure to comply continues beyond the date fixed for compliance.

(c) Any person who removes any notice or order of the agency posted as required under any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars.

(d) Any person who shall willfully obstruct, impede or interfere with the agency, or any representative or officer of the agency, or with any person who owns or holds any estate or interest in any dwelling which has been ordered by the agency to be vacated, demolished or removed, or with any person to whom such dwelling has been lawfully sold, pursuant to the provisions of this article, whenever any such representative or officer of the agency, purchaser or person having an interest or estate in such dwelling, is engaged in repairing, vacating, closing or demolishing any such dwelling, or in performing any necessary act preliminary to or incidental to such work, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars for each offense.

Section 14.

This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 19th day of April, 1977.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 19

AN ORDINANCE PROVIDING PENALTIES FOR PARKING CERTAIN NON-SELF-PROPELLED VEHICLES AND MOTOR HOMES UPON STREETS OR ALLEYS

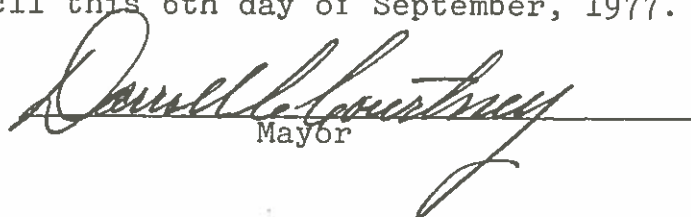
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

Section 1. No trailer, house trailer, boat, boat trailer, motor home, or any non-self-propelled motor vehicle shall be parked or left upon any street or alley within the Town of Barrackville.

Section 2. The owner of any such vehicle or any person who parks or leaves such a vehicle upon any street or alley shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500.00.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 6th day of September, 1977.


Mayor

ATTEST:


Recorder

* * *

ORDINANCE NO. 20

AN ORDINANCE PROVIDING PENALTIES FOR PARKING JUNKED, DISABLED, UNLICENSED, OR INOPERATIVE MOTOR VEHICLES UPON STREETS OR ALLEYS

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

Section 1. No junked, disabled, unlicensed, or inoperative motor vehicle shall be parked or left upon any street or alley within the Town of Barrackville.

Section 2. The owner of such motor vehicle or any person who parks or leaves a motor vehicle upon any street or alley shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500.00.

Section 3. In event of a violation of this ordinance, the Mayor may, after having given to the owner of such motor vehicle ten (10) days written notice by certified mail of his intention so to do, or a police officer of this Town may, after having given the owner

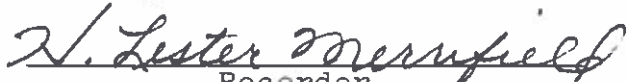
of such motor vehicle written notice of his intention so to do, have such motor vehicle removed from any street or alley, and the owner of such motor vehicle shall pay and be liable for all costs involved in removing, towing, and storing such motor vehicle.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 18th day of April, 1978.


Mayor

ATTEST:


Recorder

* * *

ORDINANCE NO. 21

AN ORDINANCE PROVIDING PENALTIES FOR SHOOTING OR DISCHARGING FIREARMS IN PARK-PLAYGROUND AREAS, AND PROVIDING PENALTIES FOR POSSESSION OF BEER AND ALCOHOLIC BEVERAGES ON PARK-PLAYGROUND AREA

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

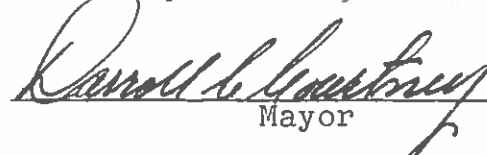
Section 1. It shall be unlawful for any person to shoot or discharge any firearm, pellet gun, or B-B gun at any park or playground area owned, controlled, and/or operated by the Town of Barrackville.

Section 2. It shall be unlawful in any park or playground area owned, operated, or controlled by the Town of Barrackville for any person to possess, consume, or bring onto such park or playground area, any beer, wine, or alcoholic beverage of any kind.

Section 3. Violation of this ordinance shall be a misdemeanor, and, upon conviction thereof, a person shall be fined not more than Five Hundred Dollars (\$500.00) for any offense thereof.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 6th day of June, 1968.


Mayor

ATTEST:


Recorder

* * *

ORDINANCE NO. 22

AN ORDINANCE PROVIDING FOR
THE ELECTION OF MUNICIPAL OFFICERS

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

Section 1. It is hereby declared that the conduct of elections of municipal officers of the Town of Barrackville is hereby integrated with the system of permanent registration of voters of the State of West Virginia, and unless otherwise provided herein, all laws governing the conduct of elections as set forth in the West Virginia Code shall govern the conduct of municipal elections in the Town of Barrackville.

Section 2. The regular general election of officers of the municipality shall be held on the first Tuesday in May, 1980, and on the first Tuesday in May of every second year thereafter.

Section 3. Two precincts are hereby established for the municipality, the boundaries of which shall coincide with the voting precincts fixed by the County Court for state and county elections:

Precinct 28-29 Barrackville Municipal Building

Precinct 33 First Aid Hall at Barrackville Mine

Section 4. Two ballot commissioners shall be appointed by the Town Council between the 15th and 28th days of February in each year in which a general election is to be held, for a term of two years beginning on the 1st day of March next ensuing.

Section 5. Officers to be elected at each election shall be a mayor, recorder, and five councilmen.

Section 6. All eligible persons who desire to become candidates for election shall file with the Town Recorder a certificate of candidacy, along with a filing fee of \$10.00, between the 1st and 15th days of March immediately prior to the election.

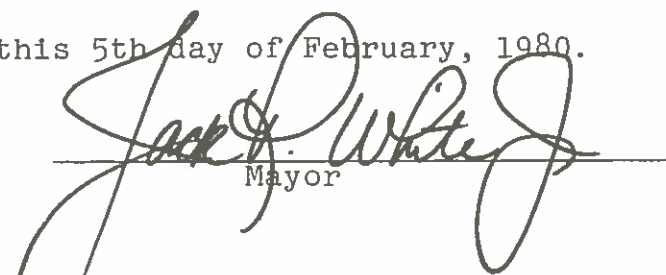
Section 7. This ordinance shall be effective immediately upon passage.

Section 8. Ordinance No. 10 of the Town of Barrackville is hereby repealed.

Passed by the Town Council this 5th day of February, 1980.

Attest:


Recorder


Mayor

ORDINANCE NO. 23

AN ORDINANCE PROVIDING FOR THE
SALARIES OF MUNICIPAL OFFICERS

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

Effective July 1, 1980, the following salaries shall be in effect
for municipal officers of the Town of Barrackville:

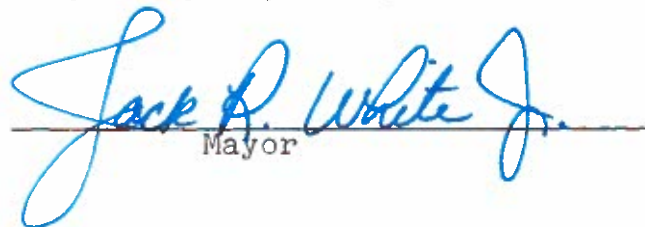
Mayor--\$500.00 per annum

Councilmen--\$100.00 per annum

Recorder--\$300.00 per annum

Treasurer--\$150.00 per annum

Passed by the Town Council this 1st day of April, 1980.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 24

AN ORDINANCE PROVIDING PENALTIES FOR
ALLOWING DOGS TO RUN AT LARGE

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

Section 1. Any owner or keeper of any dog who permits such dog to run at large within the Town of Barrackville shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall be fined not more than \$500.00 for the second and subsequent offenses thereof.

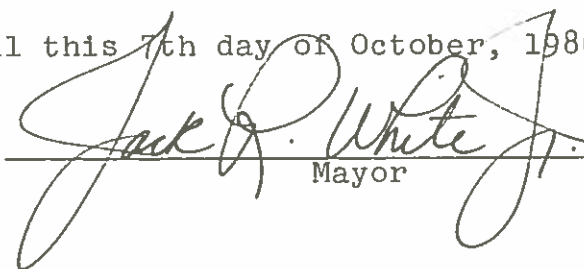
Section 2. Unrestrained dogs or dogs running at large may be taken by police, the city or county dog warden, or the humane society, and impounded in an animal shelter, and there confined in a humane manner. Impounded dogs shall be kept for not less than five (5) days unless reclaimed by their owners. If by a permit tag or other means the owner can be identified, the police or dog warden shall immediately upon impoundment notify the owner by telephone and registered mail of the impoundment of the animal. Dogs not claimed by their owners within five (5) days may be humanely disposed of by the humane society or by an agency delegated by the Mayor to exercise that authority.

Section 3. An owner reclaiming an impounded animal shall pay to the animal shelter the fee set by them for care of the animal, which fee shall be in addition to any fine levied under the provisions of this ordinance.

Section 4. Ordinance No. 4 of the Town of Barrackville is hereby repealed.

Section 5. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 7th day of October, 1980.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 25

AN ORDINANCE PROVIDING PENALTIES FOR
DISTURBING THE PEACE

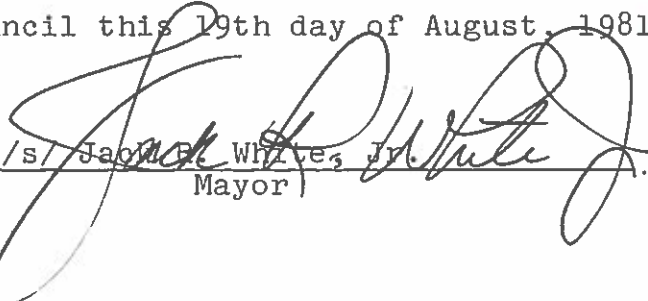
BE IT ORDNANED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE;

Section 1. No person in the Town of Barrackville shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control.

Section 2. Any person who shall violate any section of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00) for each violation.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 19th day of August, 1981.



/s/ Jacob B. White, Jr.
Mayor

ATTEST:



/s/ H. Lester Merrifield
Recorder

ORDINANCE NO. 26

AN ORDINANCE PROVIDING FOR REMOVAL OF VEHICLES ILLEGALLY PARKED;
LIABILITY FOR COSTS OF REMOVAL AND STORAGE;
LIENS FOR TOWING AND STORAGE

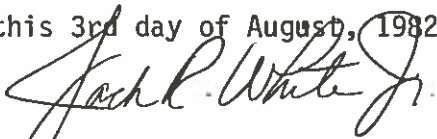
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

Section 1. Whenever a vehicle has been stopped, parked, or left standing in the Town of Barrackville in violation of any law of the State of West Virginia or ordinance of the Town of Barrackville, any police officer shall have the authority to remove or order the removal of the vehicle, by towing or otherwise, to an available established garage or parking lot for storage until called for by the owner or his agent.

Section 2. The owner shall be liable for the reasonable cost of such removal and storage, and until payment of such costs the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided for under the laws of the State of West Virginia for the enforcement of liens.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 3rd day of August, 1982.


/s/ Jack R. White, Jr.
Mayor

ATTEST:


/s/ H. Lester Merrifield
Recorder

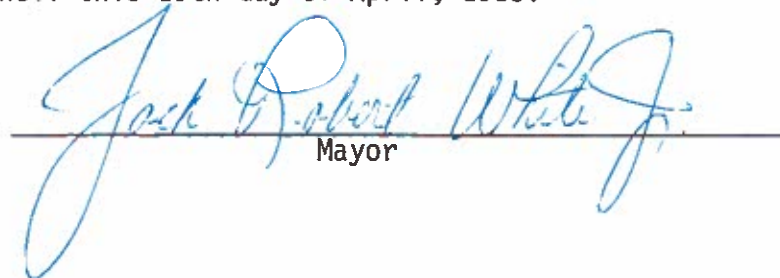
ORDINANCE NO. 27

AN ORDINANCE SETTING THE COMPENSATION FOR THE POLICE OFFICER
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE

Effective July 1, 1983, the monthly salary of the police officer of
this municipality shall be \$665.00 per month.

Insofar as prior ordinances set the salary of the police officer,
those ordinances are hereby repealed only to that extent.

Passed by the Town Council this 19th day of April, 1983.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 28

AN ORDINANCE AMENDING ORDINANCE NO. 22
PROVIDING FOR THE ELECTION OF MUNICIPAL OFFICERS

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

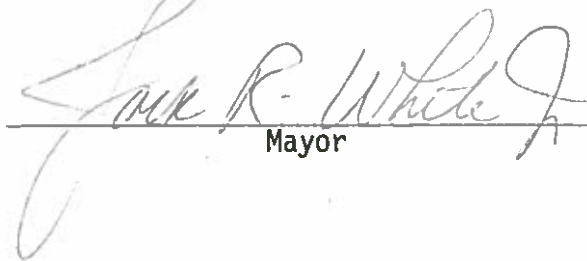
Section No. 3 of Ordinance No. 22 is hereby repealed, and the following is substituted for it:

Section No. 3. One precinct is hereby established for the municipality, encompassing all of the municipality, and the voting shall be at the Barrackville Municipal Building.

All other provisions of Ordinance No. 22 shall remain in full force and effect.

This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 6th day of March, 1984.


Mayor

ATTEST:


Recorder

* * *

ORDINANCE NO. 29

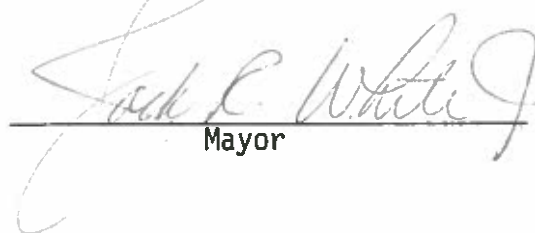
AN ORDINANCE SETTING THE COMPENSATION FOR THE POLICE OFFICER

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE

Effective July 1, 1984, the monthly salary of the police officer of this municipality shall be \$715.00 per month.

Insofar as prior ordinances set the salary of the police officer, those ordinances are hereby repealed only to that extent.

Passed by the Town Council this 1st day of May, 1984.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 30

AN ORDINANCE CREATING A SANITARY BOARD
FOR THE TOWN OF BARRACKVILLE

WHEREAS, the Town of Barrackville now contemplates the issuance of its Sewer Revenue Bonds, to finance the acquisition, construction and operation of a sewerage system, and additions, extensions and improvements thereto (the "System"), pursuant to Article 13 of Chapter 16 of the Official West Virginia Code of 1931, as amended (the "Act"); and

WHEREAS, the Act requires that a Sanitary Board be established in connection with the issuance of sewer revenue bonds, as aforesaid, and in connection with the custody, administration, operation and maintenance of such a sewer system by a municipal corporation;

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

Section 1. That the Council of the Town of Barrackville does hereby create and establish a Sanitary Board, with all powers and duties as provided in and pursuant to the Act.

Section 2. Composition; Chairman; Appointment of Members. The Sanitary Board shall be composed of the Mayor of the Town of Barrackville, and two persons appointed by the Council, one of whom, during the construction period, must be a registered professional engineer. The engineer member of the Board need not be a resident of said municipality. After the construction of the System has been completed, the engineer may be succeeded by a person not an engineer. Said appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each such term and each succeeding term, appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. No officer or employee of the Town of Barrackville, whether holding a paid or unpaid office, shall be eligible to appointment on said Sanitary Board until at least one year after the expiration of the term of his public office.

Section 3. Organizational Meetings; Vice Chairman, Secretary, Treasurer; Official Bonds. As soon as may be practicable following the appointment of a new member of the Sanitary Board, the Board shall hold an organizational meeting and choose a vice chairman from among its members, and a secretary and treasurer, who may be one person and need not be a Board member, and such officers shall hold office at the will of the Board. No bond shall be required of the Board members as such, but the treasurer, whether a member of the Board or not, shall give bond in the penalty of two thousand dollars for the proper application of all money received by him as treasurer of the Board, and otherwise conditioned according to law.

Section 4. Compensation and Expenses of Board Member. The members of the Sanitary Board as such shall be paid One Hundred Dollars (\$100.00) per year as compensation. All members of the Board shall be reimbursed from sewage works funds for all necessary expenses incurred in the discharge of their duties, but there shall be no liability upon the town for any salary or expenses so incurred.

Section 5. Powers, Duties and Limitations. A. The Sanitary Board shall have the supervision and control of the custody, administration, operation and maintenance of any and all works for the collection, treatment and disposal of sewage, which are now owned or may hereafter be acquired by the Town of Barrackville.

B. The Sanitary Board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of the powers granted to such Board by this chapter and under and by virtue of Article 13, of Chapter 16, of the Code of West Virginia, as the same now exists and may hereafter be amended; but the powers of the Sanitary Board shall be subject to all restrictions and limitations contained in said Article 13 as the same now exists or may hereafter be amended.

C. The Sanitary Board may employ engineers, architects, inspectors, superintendents, a manager, collectors, attorneys and such other personnel as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Board shall direct. All such compensation and all expenses incurred in carrying out the provisions of said Article 13 shall be paid solely and only from funds provided under the authority or power given it so as to bind the Board or the town beyond the extent to which money shall have been or may be provided under the authority of said Article 13. No contract or agreement with any contractor or contractors for labor or material exceeding in amount the sum of one thousand dollars shall be made without advertising for bids, which bids shall be publicly opened and award made to the best bidder, with power in the Board to reject any and all bids.

D. The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection of revenues therefrom for the service rendered thereby shall be under the supervision and control of the Sanitary Board.

E. After the construction, installation and completion of such works the Sanitary Board shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that the Board may deem expedient if funds therefor be available or made available as provided by law, and shall establish rules and regulations for the use and operation of the works and of other sewers and drains connected therewith so far as they may affect the operation of such works, and to do all

things necessary or expedient for the successful operation thereof, and the Board shall have in addition hereto any and all powers granted to it by said Article 13, or which may be granted to it by amendments to said Article 13, hereafter made, subject to any and all restrictions and limitations therein contained.

Section 6. Duty of Board to Restore Property Damaged by its Activities. All public ways or public works damaged or destroyed by the Sanitary Board in carrying out its authority under this chapter shall be restored or repaired by the Board and placed in their original condition, as nearly as practicable, if requested so to do by the proper authorities, out of the funds provided pursuant to the provisions of Article 13, Chapter 16 of the Code of West Virginia.

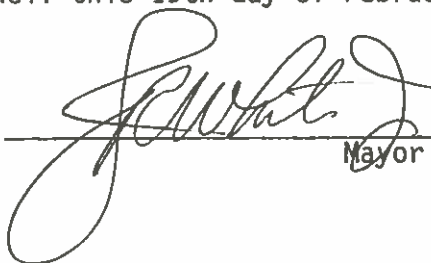
Section 7. Publication of Financial Statement. The Sanitary Board shall prepare a financial statement and cause it to be published as a Class I legal advertisement in compliance with the provisions of Article 3, Chapter 59 of the Code of West Virginia, and the publication area for such publication shall be the sanitary district. Such statement shall contain an itemized account of the receipts and expenditures of the Board during the previous fiscal year, showing the source from which all money was derived, and the name of the person to whom an order was issued, together with the amount of such order, and why such order was issued, arranging the same under distinct heads, and including all money received and expended from the sale of bonds, and also a specific statement of the debts of such Board, showing the purpose for which any debt was contracted, the amount of money in all funds at the end of the preceding year, and the amount of uncollected service charges. Such statement shall be prepared and published by the Board as soon as practicable after the close of the fiscal year. The statement shall be sworn to by the chairman and secretary and treasurer of the Board.

Section 8. Procedure for Disbursement of Funds. All funds under the supervision of the Sanitary Board shall be disbursed, as disbursements are required, by check drawn upon the proper fund or account, and such checks shall be properly signed by the authorized officer or agent of the Board. All such disbursements shall be approved by the Board.

Section 9. Bonding of Employees Who Handle Money. The Sanitary Board may from time to time, in its discretion, require any of its employees to furnish a good and suitable indemnity bond, with a recognized and reputable surety, conditioned upon the faithful discharge of their duties as such, and to deliver up and pay over all money as provided by law. The Board shall require all persons who collect or otherwise handle funds of the Board to furnish a good and proper bond, with a recognized and reputable corporate surety conditioned upon the faithful performance of their duties and for the proper handling and care of said funds in their hands. Such bond shall be in an amount equal to the sum of money which might at any one time be in the hands of such person or persons, as may be determined by the Board.

Section 10. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 19th day of February, 1985.



Mayor

ATTEST:



Recorder

TOWN OF BARRACKVILLE

ORDINANCE No. 31

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF BARRACKVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$800,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1985, AND NOT MORE THAN \$2,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF GRANT ANTICIPATION NOTES, SERIES 1985; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolutions supplemental hereto, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The Town of Barrackville (the "Issuer") is a municipal corporation of the State of West Virginia in Marion County of said State.

B. The Issuer presently owns and operates a public sewage collection system. It is deemed necessary and desirable for

for the health and welfare of the inhabitants of the Issuer that there be constructed certain additional sewerage collection facilities of the Issuer (the "Project") which constitute properties for the collection of liquid or solid wastes, sewage or industrial wastes (the existing facilities, the Project, and any additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$2,856,104, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Secretary of the Sanitary Board of the Issuer.

C. The estimated revenues to be derived in each year after the enactment hereof from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds (as hereinafter defined) and all Sinking Fund, Reserve Account and other payments provided for herein.

D. The Sanitary Board of the Issuer has presented a petition to the Issuer for enactment of this Bond and Notes Ordinance.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the principal amount of not more than \$800,000 (the "Bonds"), and contemporaneously therewith, or as soon as practicable thereafter, to issue its Sewerage System Grant Anticipation Notes, Series 1985 (the "Notes") in the principal amount of not more than \$2,500,000 to finance costs of construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes and the Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; engineering, and legal expenses; expenses for estimates of cost and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and Notes and such other expenses as may be necessary or incident to the financing herein authorized, the construction or acquisition of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, including, with respect to the Notes, any commitment fees to the Credit Bank, as hereinafter defined, and any costs of obtaining insurance thereon; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or Notes or the

repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. It is in the best interests of the Issuer that its Original Bonds be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") to be entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority.

H. There are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bonds and the Notes as to lien and source of and security for payment.

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds and the Notes by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds and Notes, respectively, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and between any one Note and any other Note, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the

Original Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Town of Barrackville or any acting Mayor duly appointed by the Governing Body.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder" or "Holder of the Bonds" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation" "Ordinance" or "Bond and Notes Ordinance" means this Bond and Notes Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means the Original Bonds, and any bonds on a parity therewith authorized to be issued hereunder.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Bernard G. Sampson Co., Inc., Fairmont, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02(E) hereof to be a part of the cost of construction and acquisition of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Eligible Costs" means Costs of the Project which are reimbursable in full on a dollar-for dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" means the grant from the EPA pursuant to the commitment therefor.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the common council of the Issuer, consisting of five councilmembers, the Mayor and the Recorder.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grant Agreement" means a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" means only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" means only those Grant Agreements relating to the Other Grants.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant after the date of issuance of the Notes; provided that "EPA Grant Receipts" means only Grant Receipts on account of the EPA Grant, and "Other Grant Receipts" means only Grant Receipts on account of any or all of the Other Grants.

"Grants" means, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous service.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" shall mean any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to

prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Indenture" or "Trust Indenture" means the Trust Indenture between the Issuer and the Trustee relating to the Notes and all supplements or amendments thereto.

"Issuer" means the Town of Barrackville in Marion County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer, the Sanitary Board and any other commission, board or department established by the Issuer to operate and maintain the System.

"Loan Agreement" shall mean the Loan Agreement to be entered into between the Authority and the Issuer providing for the purchase of the Original Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized by, the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Noteholder," "Holder of the Notes" or any similar term means the person, whenever used herein with respect to an outstanding Note or Notes, in whose name such Note is registered.

"Notes" or "GAN" means the not more than \$2,500,000 in aggregate principal amount of Sewerage System Grant Anticipation Notes, Series 1985, originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes" or "GAN" includes any refunding Notes or GAN of the Issuer.

"Notes Construction Trust Fund" means the Notes Construction Trust Fund established by Section 4.02 of the Indenture.

"Notes Debt Service Fund" means the Notes Debt Service Fund established by Section 4.01 of the Indenture.

"Notes Registrar" means the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the WDA, fiscal agents, the Registrar, Paying Agent and the Trustee (all as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds or Notes, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 5.01 hereof.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases mean the not more than \$800,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1985, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto, which Bonds shall be issued in one or more series as determined by a resolution or resolutions supplemental hereto and which are originally authorized hereby.

"Original Notes Purchaser" means G. L. Cottrill & Company, Inc., of Charleston, West Virginia.

"Other Grants" means collectively, the WDA Grant, together with any other grant hereafter received by the Issuer to aid in financing any Costs.

"Outstanding," when used with reference to Bonds or Notes and as of any particular date, describes all Bonds theretofore and thereupon being delivered or all Notes theretofore and thereupon being authenticated and delivered except (i) any Bond or Note cancelled by the Bond Registrar, or Notes Registrar, at or prior to said date; (ii) any Bond or Note for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be in trust hereunder or under the Indenture, as applicable, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond or Note deemed to have been paid as provided in Article X hereof or Article VIII of the Indenture, as applicable; and (iv) for purposes of consents or other action by a

specified percentage of Bondholders or Noteholders, any Bonds or Notes registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof, payable from Net Revenues on a parity with the Original Bonds.

"Paying Agent" means the bank or banks designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution.

"Program" means the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" means the acquisition and construction of certain sewerage collection and transportation facilities consisting of sewer mains, manholes, pump stations and all necessary appurtenances.

"Qualified Investments" means and includes any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations.

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Federal Farm Credit Bank; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National

Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of paid repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties; and

(h) The Investment Agreement by and between the Trustee and the bank designated as

"Investment Bank" in the Supplemental Resolution.

"Recorder" means the Recorder or Town Clerk of the Issuer.

"Registered Owner," "Noteholder," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond, Note, Bonds or Notes, the person in whose name such Bond or Note is registered.

"Registrar" means as appropriate, either the Bond Registrar or the Notes Registrar or both.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01 hereof.

"Reserve Account" means the Reserve Account established in the Sinking Fund pursuant to Section 5.02 hereof.

"Reserve Requirement" means, as of any date of calculation the maximum amount of principal and interest which will become due on the Bonds in any succeeding Fiscal Year.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Sanitary Board" means the Sanitary Board of the Issuer heretofore established by ordinance duly enacted by the Issuer and successors to the function thereof.

"Sinking Fund" means the Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of the Notes or the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Notes or the Original Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Renewal and Replacement Fund and the Reserve Account,

the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the complete properties of the Issuer for the collection, transportation and treatment of liquid or solid wastes, sewage or industrial wastes, in its entirety or any integral part thereof, and shall include the existing facilities, the Project and any further additions, betterments and improvements thereto hereafter constructed or acquired for said system from any sources whatsoever.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

"Trustee" means the banking institution designated as trustee for the Noteholders under the Indenture and for the Bond Construction Trust Fund created under Section 6.01 hereof, its successors and assigns.

"WDA Grant" means the grant from the West Virginia Water Development Authority pursuant to the commitment therefor.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION
AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of \$2,856,104, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Notes and the Bonds hereby authorized shall be applied as provided in Article IV of the Indenture and Article VI hereof, respectively.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purpose of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, and for such other purposes as may be set forth in the Supplemental Resolution, there shall be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than \$800,000. Said Bonds shall be designated "Sewer Revenue Bonds, Series 1985," of one or more series as determined by the Supplemental Resolution, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Notes. The proceeds of the Bonds (excluding accrued interest) remaining after capitalization of interest, if any, and payment of the costs of issuance thereof and related costs shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall bear interest at such rate or rates, not exceeding 12% per annum, or such other rate as shall then be the legal maximum, payable semiannually on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Bonds shall be payable as to principal at the office of the Commission, through a Paying Agent or Paying Agents selected by the original purchaser or purchasers thereof, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds, shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of the Bond issue, and shall mature in principal installments, all as provided in the Supplemental Resolution. Said Bonds shall be exchangeable at the option and expense of the Holder for other fully registered Bonds in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. The registered Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication on such Bond, substantially in the form set forth in Section 3.09 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered, if applicable, and delivered under this Bond Legislation. The Certificate of Authentication on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost.
In any case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer.
The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory

provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of all the Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Fund and the Reserve Account therein hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Original Bonds. The text of the Original Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Original Bond]

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 TOWN OF BARRACKVILLE
 SEWER REVENUE BOND, SERIES 1985

No. R-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BARRACKVILLE, a municipal corporation of the State of West Virginia in Marion County of said State, (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority or registered assigns (the "Payee") the sum of _____ (\$_____), in installments on _____ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Payee and payment therefor and until payment of such installment, and such interest shall be payable on the 1st day of _____, and the 1st day of _____ in each year beginning _____ 1, 19____. The principal of this Bond is payable in any coin or currency which, on the respective dates of payment of principal, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, through _____.

The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears _____.

This Bond is subject to redemption prior to its stated date of maturity as follows:

[REDEMPTION PROVISIONS]

This Bond is issued (i) to pay costs of acquisition and construction of certain new sewerage collection and transportation

facilities of the Issuer (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the _____ day of _____, 19____, and a Supplemental Resolution adopted by the Issuer on the _____ day of _____, 19____ (collectively called the "'Bond Legislation'"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation (the "Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least _____% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations payable from such revenues, provided however, that so long as there exists in the Reserve Account sufficient moneys to pay the maximum amount of principal and interest which will become due on the Bonds in any succeeding fiscal year, such percentage may be reduced to _____%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Bond Legislation, only upon the books of _____, as Bond

Registrar, kept for that purpose at the office of the Bond Registrar by the Payee, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Payee or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holder of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF BARRACKVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Town Clerk, and has caused this Bond to be dated _____, 1985.

[SEAL]



Mayor

ATTEST:

Town Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

as Bond Registrar

By _____
Its Authorized Officer

EXHIBIT A
SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.10. Sale of Original Bonds; Execution of Loan Agreement with Authority. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. The Mayor is specifically authorized and directed to execute the Loan Agreement in such form as may be approved by Supplemental Resolution, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority.

ARTICLE IV

NOTES

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts, the Issuer shall issue and sell its Notes in the aggregate principal amount of not to exceed \$2,500,000. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture and Supplemental Resolution.

Section 4.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture (which Indenture in substantially the form to be executed and delivered by the Issuer is attached hereto as "Exhibit A" and made a part hereof).

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the respective sources described in the Granting Clauses and Article III of the Indenture. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Indenture.

Section 4.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed \$300,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by, the Depository Bank:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

- (1) Sinking Fund; and
 - (a) Within the Sinking Fund, the Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first, each month, transfer from the Revenue Fund and Deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission, for deposit in the Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Bonds on the next ensuing semiannual interest payment date, less any moneys transferred from the Reserve Account for the purpose of making interest payments and investment earnings on sums previously deposited in the Sinking Fund for the purpose of making interest payments; provided, that, in the event the period to elapse

between the date of such initial deposit in the Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Bonds on the next ensuing principal payment date, less any moneys transferred from the Reserve Account for the purpose of making principal payments and investment earnings on sums previously deposited in the Sinking Fund for the purpose of making principal payments.

(4) The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Reserve Account, an amount equal to 1/120 of the Reserve Requirement; provided, that no further payments shall be made into the Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement.

Moneys in the Sinking Fund shall be used only for the purposes of paying principal of and interest on the Bonds as the same shall become due. Moneys in the Reserve Account in the Sinking Fund shall be used only for the purpose of paying principal of or interest on the Bonds, as the same shall come due, when other moneys in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Reserve Account shall be transferred, not less than once each year, to the Sinking Fund and applied in full to the next ensuing principal payment due on the Bonds.

Any withdrawals from the Reserve Account which result in a reduction in the balance of the Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Sinking Fund for payment of debt service on the Bonds have been made in full.

(5) The Issuer shall not be required to make any further payments into said Sinking Fund or into the Reserve Account in said Sinking Fund when the aggregate amount of funds in both said Sinking

Fund and said Reserve Account are at least equal to the aggregate principal amount of Bonds issued pursuant to this Bond Legislation then Outstanding, plus the amount of interest due or thereafter to become due on said Bonds then Outstanding.

As and when additional Bonds ranking on a parity with the Bonds are issued, provision shall be made for additional payments into said Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Reserve Account in said Sinking Fund in an amount equal to the maximum provided and required to be paid into the Sinking Fund in any Fiscal Year for account of all the Bonds, including such additional Bonds which by their terms are payable from said Sinking Fund.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Fund created hereunder, and all amounts required for said Sinking Fund shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Fund shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Sinking Fund, including the Reserve Account therein, shall be used solely and only for, and is hereby pledged for, the purpose of servicing the Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

(6) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after commencement of operation of the System, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Reserve Account in the Sinking Fund. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for

replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiency in the Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by Subsection 5.03(A)(4)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Fund, including the Reserve Account therein, and the Renewal and Replacement Fund during the following month, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the Issuer, including, but not limited to, payment to the Trustee for deposit in the Notes Debt Service Fund, as defined in the Indenture.

C. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Depository Bank's charges and the Paying Agent fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

F. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

G. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Original Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. Any accrued interest received from the sale shall be deposited in the Sinking Fund and applied to the first interest payment due on the Bonds.

B. The amount of the proceeds which together with the proceeds deposited pursuant to Subsection (A) of this section and together with the earnings thereon, shall be at least sufficient to pay interest on the Bonds for the period specified in the Supplemental Resolution shall be deposited in the Sinking Fund; provided, that such period may not extend beyond the date which is 6 months after the estimated date of completion of construction of the Project.

C. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank (which shall also be the Trustee) in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in the Indenture.

D. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Indenture. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Bonds.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Until the payment in full of the principal of and interest on the Notes when due, the covenants, agreements and provisions contained in this Bond Legislation shall, where applicable, also inure to the benefit of the Holders of the Notes and the Trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the Trustee or any Holder or Holders of said Notes as prescribed in the Indenture; provided, that Section 7.04 and Section 7.09 shall not be applied to the Notes.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds or Notes, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System, to the extent necessary to make the payments required under Section 5.03 of this Ordinance. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided in therein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges; Rules. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the ordinance of the Issuer dated September 3, 1985.

Section 7.05. Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds and Notes, if any, Outstanding, or to effectively defease this Ordinance in accordance with Section 10.01 hereof and, if not previously defeased, the Indenture in accordance with Section 8.01 thereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Fund, and, in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds about to mature. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System. With respect to the Notes, such proceeds in an amount sufficient to pay in full the Notes shall be remitted to the Trustee for deposit in the Notes Debt Service Fund, to apply to the payment of the Notes, prior to maturity if allowable under the Supplemental Resolution.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize

such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all the Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally to the Notes issued under the Indenture prior to or on a parity with the lien on behalf of such Notes until such Notes have been defeased in accordance with the provisions of the Indenture and the Bond Legislation; and, so long as any of the Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Bonds may be issued as provided for in Section 7.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into the Reserve Account and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(A) The Bonds then Outstanding;

(B) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(C) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity

Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued the lien of which on the revenues of the System is subject to the prior and superior lien of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

B. Notwithstanding the foregoing, Parity Bonds may be issued solely for the purpose of completing the Project without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the written consent of the Authority, and if any Notes are then Outstanding, the Trustee, to the issuance of such Parity Bonds.

Section 7.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds or of a Note or Notes issued pursuant to this Bond Legislation or the Trustee shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Trustee and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds or Notes, as the case may be, requesting the same, an annual report containing the following:

A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the Indenture with respect to said Bonds or Notes, as the case may be, and the status of all said funds and accounts.

C. The amount of any Bonds, Notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds or Notes, as the case may be, and shall file said report with the Trustee and the Authority, or any other original purchaser of the Bonds.

Section 7.09. Rates. Prior to the issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchasers thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues; provided that, in the event that an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account or junior bonds is funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues.

Section 7.10. Operating Budget and Audit. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Trustee and the Authority and to any Holder of any Bonds or Notes, as the case may be, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Trustee and to any Holder of any Bonds or Notes, as the case may be, or anyone acting for and in behalf of such Holder of any Bonds or Notes, as the case may be.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 7.11. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules of the

Issuer, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and any services and facilities of the water system, if then owned by the Issuer, to all delinquent users of services and facilities of the System and will not restore such services of either system until all billing for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, has been fully paid.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds or the Notes remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(A) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE,, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also

carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$100,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(C) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project.

Section 7.15. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods

approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.16. Completion of Project. The Issuer will complete the Project and operate and maintain the System in good condition.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation or the Indenture, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Trustee, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, and the Indenture, the need for such moneys for the purposes set forth herein and in the Indenture and the specific restrictions and provisions set forth in this Section 8.01 and in the Indenture.

Except as provided in the Indenture, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Trustee, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Trustee or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 8.02. Restrictions as to Arbitrage Bonds. The Issuer hereby covenants, and hereby so instructs the Bond Commission and the Trustee that they shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 103(c)(2) of the Internal Revenue Code, and an Authorized Officer shall deliver his certificate, based upon this covenant, with regard thereto to the purchaser of the Original Bonds.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Notes:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Notes; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Notes set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the Notes, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Note; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

B. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Bonds; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Note or Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System (iii) bring suit upon the Notes or Bonds, as the case may be, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Notes or Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Notes or Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for Reserve, Sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all

defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Bonds and Notes, the principal of and interest due or to become due thereon, at the times and in the manners respectively stipulated therein and in this Bond Legislation and the Indenture, then the respective pledges of Net Revenues, Bond proceeds and Grant Receipts, and other moneys and securities pledged under this Bond Legislation and the Indenture and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Notes and Bonds, as the case may be, shall thereupon cease, terminate and become void and be discharged and satisfied.

Bonds or Notes, as the case may be, for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due the respective principal of and interest on such Bonds or Notes, as the case may be, shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Bonds or Notes, as the case may be, shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or the Trustee, as the case may be, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Commission or the Trustee, as the case may be, at the same time, shall be sufficient, to pay when due the respective principal of and interest due and to become due on said Bonds or Notes, as the case may be, on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission or the Trustee, as the case may be, pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the respective principal of and interest on said Bonds or Notes, as the case may be; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or the Trustee, as the case may be, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the respective principal of and interest to become due on said Bonds or Notes, as the case may be,

on and prior to such maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or the Trustee, as the case may be, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Notes or Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Notes or Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or any Note or Notes or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes respectively, required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds and Notes, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution, Indenture, the Bonds or the Notes.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Amendments. The Issuer hereby covenants to make any amendment or supplements to this Ordinance and to the Indenture authorized hereby to enable the Notes or Bonds to be issued in such form as to render the interest thereon exempt from federal income taxation.

Section 11.06. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the the Town Council and the Sanitary Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Time. This Ordinance shall take effect following public hearing hereon in accordance with the Act.

Section 11.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance, determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the Times-West Virginian, a newspaper of general circulation in the Town of Barrackville, no newspaper being published in the Town of Barrackville, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Notes and Bonds, and that any person interested may appear before the Common Council upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Issuer for review by interested parties during the office hours of the Issuer.

At such hearing, all objections and suggestions shall be heard and the Town Council shall take such action as it shall deem proper in the premises.

Passed on First Reading August 6, 1985

Passed on Second Reading August 20, 1985

Effective following public
hearing held on September 3, 1985

[SEAL]



Mayor

ATTEST:

By _____
Recorder

ORDINANCE NO. 32

AN ORDINANCE ESTABLISHING AND FIXING RATES, FEES, CHARGES
AND DELAYED PAYMENT PENALTY CHARGES FOR SERVICE TO
CUSTOMERS OF THE SEWERAGE SYSTEM OF THE TOWN OF
BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to customers of the sewerage system of the Town of Barrackville throughout the territory served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable in entire area served.

AVAILABILITY OF SERVICE

Available for sanitary sewer service.

RATE (Based upon the metered amount of water supplied)

Flat Rate - \$3.62 per 1,000 gallons of water used.

MINIMUM MONTHLY CHARGE

The minimum monthly charge to any user of the sewerage system shall be \$7.24.

DELAYED PAYMENT PENALTY

A 10% penalty shall be added to all charges not paid within 20 days from the date of the billing. This delayed payment is not interest and is only to be collected once for each bill where it is appropriate.

SECTION 2. EFFECTIVE DATE

The rates, fees, charges and delayed payment penalty charges provided herein shall be effective 45 days after the enactment hereof.

SECTION 3. SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

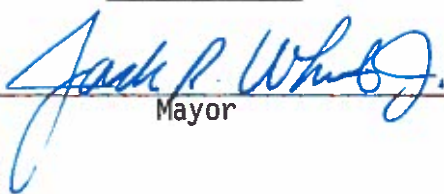
Upon introduction hereof, the Recorder shall publish a copy of this Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, being the only newspaper published and of general circulation in Marion County, West Virginia, and being of general circulation in the Town of Barrackville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before

Council on the 3rd day of September, 1985, at 7:15 p.m., which date is not less than 10 days subsequent to the date of the first publication of the Ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading August 20, 1985

Passed on Second Reading
Following Public Hearing September 3, 1985

Effective as of September 3, 1985



Mayor

ATTEST:

Recorder

ORDINANCE NO. 33

AN ORDINANCE ESTABLISHING AND FIXING RATES, FEES, CHARGES
AND DELAYED PAYMENT PENALTY CHARGES FOR SERVICE TO CUSTOMERS
OF THE SEWERAGE SYSTEM OF THE TOWN OF BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to customers of the sewerage system of the Town of Barrackville throughout the territory served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable in entire area served.

AVAILABILITY OF SERVICE

Available for sanitary sewer service.

RATE (Based upon the metered amount of water supplied)

Flat Rate - \$3.78 per 1,000 gallons of water used.

MINIMUM MONTHLY CHARGE

The minimum monthly charge to any user of the sewerage system shall be \$7.56.

DELAYED PAYMENT PENALTY

A 10% penalty shall be added to all charges not paid within 20 days from the date of the billing. This delayed payment is not interest and is only to be collected once for each bill where it is appropriate.

SECTION 2. EFFECTIVE DATE

The rates, fees, charges and delayed payment penalty charges provided herein shall be effective 45 days after the enactment hereof.

SECTION 3. SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall publish a copy of this Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, being the only newspaper published and of general circulation in Marion County, West Virginia, and being of general circulation in the Town of Barrackville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the 17th day of September, 1985, at 7:00 p.m., which date is not less than 10 days subsequent to the date of the first publication of the Ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading September 3 , 1985

Passed on Second Reading
Following Public Hearing September 17 , 1985

Effective as of September 17 , 1985

James R. White Jr.
Mayor

ATTEST:

Recorder

ORDINANCE NO. 34

AN ORDINANCE GRANTING FRANCHISES FOR
INSTALLATION AND OPERATION OF TELEVISION
CABLE SYSTEMS

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

Section 1. Ordinance No. 7 of the Town of Barrackville is hereby amended so that the ordinance of the Town of Barrackville granting franchises for installation and operation of television cable systems shall be as hereinafter set forth.

Section 2. Fairclark, Inc., a corporation is hereby granted a non-exclusive franchise for the purpose of installing and operating television cable systems on, under, and over the streets and public ways of the Town of Barrackville, insofar as the systems do not unreasonably interfere with the ordinary uses of such streets and ways by the public.

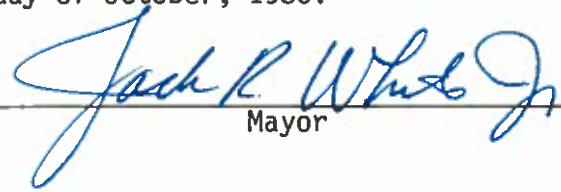
Section 3. On January 1 of each year, beginning on January 1, 1986, the holder of each franchise shall pay unto the Town of Barrackville a franchise fee at the rate of \$2.00 for each of its customers within the Town of Barrackville.

Section 4. These franchises shall be for terms of 30 years from November 5, 1968.

Section 5. All provisions of Ordinance No. 7 in conflict with the provisions of this ordinance are hereby repealed.

Section 6. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 1st day of October, 1985.



Mayor

ATTEST:

Recorder

TOWN OF BARRACKVILLE

ORDINANCE NO. 35

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF BARRACKVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$700,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1985 A, NOT MORE THAN \$350,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1985 B, AND NOT MORE THAN \$2,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF GRANT ANTICIPATION NOTES, SERIES 1985; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

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

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolutions supplemental hereto, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The Town of Barrackville (the "Issuer") is a municipal corporation of the State of West Virginia in Marion County of said State.

B. The Issuer presently owns and operates a public sewage collection system. It is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be constructed certain additional sewerage collection facilities of the Issuer (the "Project") which constitute properties for the collection of liquid or solid wastes, sewage or industrial wastes (the existing facilities, the Project, and any additions thereto or extensions thereof is herein called the "System") at an estimated cost of \$2,840,200, in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Secretary of the Sanitary Board of the Issuer.

C. The estimated revenues to be derived in each year after the enactment hereof from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Bonds (as hereinafter defined) and all Sinking Fund, Reserve Account and other payments provided for herein.

D. The Sanitary Board of the Issuer has presented a petition to the Issuer for enactment of this Bond and Notes Ordinance.

E. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds in the total aggregate principal amount of not more than \$1,050,000 in two series, being the Series 1985 A Bonds in the aggregate principal amount of not more than \$700,000 and the Series 1985 B Bonds in the aggregate principal amount of not more than \$350,000 (collectively, the "Bonds"), and contemporaneously therewith, or as soon as practicable thereafter, to issue its Sewerage System Grant Anticipation Notes, Series 1985 (the "Notes") in the principal amount of not more than \$2,500,000 to finance costs of construction and acquisition of the Project. Said costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Notes and the Bonds prior to and during construction or acquisition and for six months after completion of construction of the Project; engineering, and legal expenses; expenses for estimates of cost and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Bonds and Notes and such other expenses as may be necessary or incident to the financing herein authorized, the construction or acquisition of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof,

including, with respect to the Notes, any commitment fees to the Credit Bank, as hereinafter defined, and any costs of obtaining insurance thereon; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or Notes or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

F. The period of usefulness of the System after completion of the Project is not less than 40 years.

G. It is in the best interests of the Issuer that its Original Bonds (as hereinafter defined) be sold to the Authority (as hereinafter defined) pursuant to the terms and provisions of a loan agreement and a supplemental loan agreement (collectively, the "Loan Agreement") to be entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority.

H. There are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Bonds and the Notes as to lien and source of and security for payment.

I. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bonds and the Notes, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Bonds and the Notes by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Bonds and Notes, respectively, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and between any one Note and any other Note, by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13 of the West Virginia Code of 1931, as amended and in effect on the date of adoption hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Original Bonds, or any other agency of the State of West Virginia that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Town of Barrackville or any acting Mayor duly appointed by the Governing Body.

"Bond Construction Trust Fund" means the Bond Construction Trust Fund established by Section 5.01 hereof.

"Bondholder," "Holder of the Bonds," "Holder" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation," "Ordinance," "Bond and Notes Ordinance" or "Local Act" means this Bond and Notes Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means the Original Bonds, and any bonds on a parity therewith authorized to be issued hereunder.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Bernard G. Sampson Co., Inc., Fairmont, West Virginia, or any engineer or firm of engineers that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02(E) hereof to be a part of the cost of construction and acquisition of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

"Eligible Costs" means Costs of the Project which are reimbursable in full on a dollar-for dollar basis from EPA Grant Receipts, the total of which are equal in amount to the EPA Grant.

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" means the grant from the EPA pursuant to the commitment therefor.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the common council of the Issuer, consisting of five councilmembers, the Mayor and the Recorder.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Grant Agreement" means a written commitment for the payment of the EPA Grant or any of the Other Grants, specifying the amount of such Grant, the terms and conditions upon which such Grant is made and the date or dates or event or events upon which Grant is to be paid to the Issuer; provided that, "EPA Grant Agreement" means only the Grant Agreement relating to the EPA Grant and "Other Grant Agreements" means only those Grant Agreements relating to the Other Grants.

"Grant Receipts" means all moneys received by the Issuer on account of any Grant after the date of issuance of the Notes; provided that "EPA Grant Receipts" means only Grant Receipts on account of the EPA Grant, and "Other Grant Receipts" means only Grant Receipts on account of any or all of the Other Grants.

"Grants" means, collectively, the EPA Grant and the Other Grants, as hereinafter defined.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased

pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined, and for the furnishing by the Issuer of miscellaneous service.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" shall mean any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Indenture" or "Trust Indenture" means the Trust Indenture between the Issuer and the Trustee relating to the Notes and all supplements or amendments thereto.

"Issuer" means the Town of Barrackville in Marion County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer, the Sanitary Board and any other commission, board or department established by the Issuer to operate and maintain the System.

"Loan Agreement" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement to be entered into between the Authority and the Issuer providing for the purchase of the Original Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer authorized by, the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Noteholder," "Holder of the Notes" or any similar term means the person, whenever used herein with respect to an outstanding Note or Notes, in whose name such Note is registered.

"Notes" or "GAN" means the not more than \$2,500,000 in aggregate principal amount of Sewerage System Grant Anticipation Notes, Series 1985, originally authorized hereby, and unless the context clearly indicates otherwise, the terms "Notes" or "GAN" includes any refunding Notes or GAN of the Issuer.

"Notes Construction Trust Fund" means the Notes Construction Trust Fund established by Section 4.02 of the Indenture.

"Notes Debt Service Fund" means the Notes Debt Service Fund established by Section 4.01 of the Indenture.

"Notes Registrar" means the bank to be designated as such in the Indenture or the Supplemental Resolution and its successors and assigns.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Registrar, Paying Agent and the Trustee (all as hereinafter defined), other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds or Notes, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Operation and Maintenance Fund" means the Operation and Maintenance Fund established by Section 5.01 hereof.

"Original Bonds" or "Bonds originally authorized hereby" or similar phrases mean, collectively, the not more than \$700,000 in aggregate principal amount of Series 1985 A Bonds and not more than \$350,000 in aggregate principal amount of Series 1985 B Bonds, issued for the purpose of paying a portion of the Costs of the Project and for such other purposes permitted hereby and authorized by a resolution supplemental hereto, which Bonds shall be issued in accordance with a resolution or resolutions supplemental hereto and which are originally authorized hereby.

"Original Notes Purchaser" means G. L. Cottrill & Company, Inc., of Charleston, West Virginia.

"Other Grants" means any other grant or grants, other than the EPA Grant, hereafter received by the Issuer to aid in financing any Costs.

"Outstanding," when used with reference to Bonds or Notes and as of any particular date, describes all Bonds theretofore and thereupon being delivered or all Notes theretofore and thereupon being authenticated and delivered except (i) any Bond or Note cancelled by the Bond Registrar, or Notes Registrar, at or prior to said date; (ii) any Bond or Note for the payment of which moneys, equal to its principal amount, with interest to the date of maturity, shall be in trust hereunder or under the Indenture, as applicable, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond or Note deemed to have been paid as provided in Article X hereof or Article VIII of the Indenture, as applicable; and (iv) for purposes of consents or other action by a specified percentage of Bondholders or Noteholders, any Bonds or Notes registered to the Issuer.

"Parity Bonds" means additional Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof, payable from Net Revenues on a parity with the Series 1985 B Bonds.

"Paying Agent" means the bank or banks designated as such for the Bonds and/or the Notes in the Indenture or in the Supplemental Resolution.

"Program" means the Authority's loan program, under which the Authority purchases the water development revenue bonds of local governmental entities satisfying certain legal and other requirements with the proceeds of water development revenue bonds of the Authority.

"Project" means the acquisition and construction of certain sewerage collection and transportation facilities consisting of sewer mains, manholes, pump stations and all necessary appurtenances.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so

that the market value thereof is always at least equal to the principal amount of paid repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties; and

(h) The Investment Agreement by and between the Trustee and the bank designated as "Investment Bank" in the Supplemental Resolution.

"Recorder" means the Recorder or Town Clerk of the Issuer.

"Registered Owner," "Noteholder," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond, Note, Bonds or Notes, the person in whose name such Bond or Note is registered.

"Registrar" means as appropriate, either the Bond Registrar or the Notes Registrar or both.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Section 5.01 hereof.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Sanitary Board" means the Sanitary Board of the Issuer heretofore established by ordinance duly enacted by the Issuer and successors to the function thereof.

"Series 1985 A Bonds" means the not more than \$700,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1985 A, of the Issuer.

"Series 1985 A Bonds Reserve Account" means the Series 1985 A Bonds Reserve Account established in the Series 1985 A Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1985 A Bonds Reserve Requirement" means, as of any date of calculation the maximum amount of principal and interest which will become due on the Series 1985 A Bonds in any succeeding Fiscal Year.

"Series 1985 A Bonds Sinking Fund" means the Series 1985 A Sinking Fund established by Section 5.02 hereof.

"Series 1985 B Bonds" means the not more than \$350,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1985 B, of the Issuer.

"Series 1985 B Bonds Reserve Account" means the Series 1985 B Bonds Reserve Account established in the Series 1985 B Bonds Sinking Fund pursuant to Section 5.02 hereof.

"Series 1985 B Bonds Reserve Requirement" means, as of the date of calculation, the maximum amount of principal which will become due on the Series 1985 B Bonds in any succeeding Fiscal Year.

"Series 1985 B Bonds Sinking Fund" means the Series 1985 B Bonds Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolutions authorizing the sale of the Notes or the Original Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Notes or the Original Bonds, as the case may be, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including the Renewal and Replacement Fund and the Reserve Account, the proceeds of which Bonds or other obligations are to be used to pay Costs of the Project.

"System" means the complete properties of the Issuer for the collection, transportation and treatment of liquid or solid wastes, sewage or industrial wastes, in its entirety or any integral part thereof, and shall include the existing facilities, the Project and any further additions, betterments and improvements thereto hereafter constructed or acquired for said system from any sources whatsoever.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

"Trustee" means the banking institution designated as trustee for the Noteholders under the Indenture and for the Bond Construction Trust Fund created under Section 6.01 hereof, its successors and assigns.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION OF CONSTRUCTION
AND ACQUISITION OF THE PROJECT

Section 2.01. Authorization of Construction and Acquisition of the Project. There is hereby authorized the construction and acquisition of the Project, at an estimated cost of \$2,840,200, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Notes and the Bonds hereby authorized shall be applied as provided in Article IV of the Indenture and Article VI hereof, respectively.

ARTICLE IIIAUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND
SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purpose of paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, and for such other purposes as may be set forth in the Supplemental Resolution, there shall be issued negotiable Original Bonds of the Issuer, in an aggregate principal amount of not more than \$1,050,000. Said Bonds shall be issued in two series, to be designated respectively, "Sewer Revenue Bonds, Series 1985 A," in the aggregate principal amount of not more than \$700,000, and "Sewer Revenue Bonds, Series 1985 B," in the aggregate principal amount of \$350,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. Such Bonds shall be issued contemporaneously with or prior to issuance of the Notes. The proceeds of the Bonds (excluding accrued interest) remaining after capitalization of interest, if any, and payment of the costs of issuance thereof and related costs shall be deposited in the Bond Construction Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Bonds shall bear interest at such rate or rates, not exceeding 12% per annum, or such other rate as shall then be the legal maximum, payable semiannually on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution. The Bonds shall be payable as to principal at the office of the Commission, through a Paying Agent or Paying Agents selected by the original purchaser or purchasers thereof, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Bonds, shall be paid by check or draft mailed to the registered owner thereof at the address as it appears on the books of the Bond Registrar.

Unless otherwise provided by the Supplemental Resolution, the Original Bonds shall be issued in the form of a single bond for each series, fully registered to the Authority, with a payment record attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Bonds of each series shall be exchangeable at the option and expense of the Holder for other fully registered Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding, with principal installments or maturities, as applicable, corresponding to the

dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds may be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, all as determined by a Supplemental Resolution. The registered Bonds shall be dated as of the date specified in a Supplemental Resolution and shall bear interest from such date.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication on such Bond, substantially in the forms set forth in Section 3.09 shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered, if applicable, and delivered under this Bond Legislation. The Certificate of Authentication on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting any of said Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall

be incontestable in the hands of a bona fide holder for value in the manner provided hereinafter in the form of said Bonds.

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The registered Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Bonds or transferring the registered Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Bonds during the 15 days preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In any case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues; Series 1985 B Bonds to be Junior and Subordinate to Series 1985 A Bonds. The payment of the debt service of all the Series 1985 A Bonds shall be secured forthwith equally and ratably with each other by a first lien on the Net Revenues derived from the System. The payment of the debt service of all the Series 1985 B Bonds shall also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, but junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1985 A Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Fund and the Reserve Account therein hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 3.09. Form of Original Bonds. The text of the Series 1985 A Bonds and the Series 1985 B Bonds, respectively, shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 1985 A Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF BARRACKVILLE
SEWER REVENUE BOND, SERIES 1985 A

No. R-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BARRACKVILLE, a municipal corporation of the State of West Virginia in Marion County of said State, (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority or registered assigns (the "Payee") the sum of _____ (\$_____), in installments on _____ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Payee and payment therefor, and until payment of such installment, and such interest shall be payable on the 1st day of _____, and the 1st day of _____ in each year beginning _____ 1, 19____. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, through Kanawha Valley Bank, N.A., Charleston, West Virginia, as registrar and paying agent (the "Registrar"). The interest on this Bond is payable by check or draft mailed to the registered owner hereof at the address as it appears on the books of the Registrar on the _____ day of the month preceding an interest payment date.

This Bond may be redeemed prior to its stated date of maturity in whole or in part at any time, but only with the express written consent of West Virginia Water Development Authority.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain new sewerage collection and transportation facilities of the Issuer (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. This Bond

is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the _____ day of _____, 19____, and a Supplemental Resolution adopted by the Issuer on the _____ day of _____, 19____ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is issued contemporaneously with the Sewer Revenue Bonds, Series 1985 B, of the Issuer (the "Series 1985 B Bonds") issued in the aggregate principal amount of \$_____, which Series 1985 B Bonds are junior and subordinate with respect to liens and sources of and security for payment to the Bonds of this series.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds of this Series (the "Series 1985 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Series 1985 A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations payable from such revenues, provided however, that so long as there exists in the Series 1985 A Bonds Reserve Account and the reserve account established for the Series 1985 B Bonds sufficient moneys to pay the maximum amount of principal and interest which will become due on the Bonds in any succeeding fiscal year, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is

made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Payee, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Payee or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holder of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF BARRACKVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Town Clerk, and has caused this Bond to be dated _____, 1985.

[SEAL]

Mayor

Jack R. White Jr.

ATTEST:

Town Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1985 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

KANAWHA VALLEY BANK, N.A.,
as Bond Registrar

By _____
Its Authorized Officer

EXHIBIT A
SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

[Form of Series 1985 B Bond]

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 TOWN OF BARRACKVILLE
 SEWER REVENUE BOND, SERIES 1985 B

No. R-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BARRACKVILLE, a municipal corporation of the State of West Virginia in Marion County of said State, (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to West Virginia Water Development Authority or registered assigns (the "Payee") the sum of _____ (\$ _____), in _____ equal annual installments of \$ _____ each, on _____ 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia, through Kanawha Valley Bank, N.A., Charleston, West Virginia, as registrar and paying agent (the "Registrar").

This Bond may be redeemed prior to its stated date of maturity in whole or in part of any time, but only with the express written consent of West Virginia Water Development Authority.

This Bond is issued (i) to pay a portion of the costs of acquisition and construction of certain new sewerage collection and transportation facilities of the Issuer (the "Project") and (ii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), an Ordinance duly enacted by the Issuer on the _____ day of _____, 19____, and a Supplemental Resolution adopted by the Issuer on the _____ day of _____, 19____ (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of

additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System after there has first been paid from said Net Revenues all payments then due and owing on the Series 1985 A Bonds herein described, moneys in the Reserve Account created under the Bond Legislation for the Bonds of this Series (the "Series 1985 B Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest thereon except from said special fund provided from the Net Revenues, the moneys in the Series 1985 B Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any ensuing fiscal year of principal of and interest on all obligations payable from such revenues, provided however, that so long as there exists in the Series 1985 B Bonds Reserve Account and the reserve account established for the Series A Bonds sufficient moneys to pay the maximum amount of principal and interest which will become due on all obligations payable from such net revenues which may be issued in any succeeding fiscal year, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the Payee, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Payee or its attorney duly authorized in writing.

This Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation or to the appurtenant sinking fund, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holder of this Bond.

THIS BOND IS JUNIOR AND SUBORDINATE WITH RESPECT TO SOURCES OF AND SECURITY FOR PAYMENT TO THE OUTSTANDING SEWER REVENUE BONDS, SERIES 1985 A, OF THE ISSUER, ISSUED CONCURRENTLY HERewith AND DESCRIBED IN THE BOND LEGISLATION (THE "SERIES 1985 A BONDS").

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF BARRACKVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Town Clerk, and has caused this Bond to be dated _____, 1985.

[SEAL]

Mayor



ATTEST:

Town Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1985 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

KANAWHA VALLEY BANK, N.A.,
as Bond Registrar

By _____
Its Authorized Officer

EXHIBIT A

SCHEDULE OF ANNUAL DEBT SERVICE

[Form of Assignment]

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 3.10. Sale of Original Bonds; Execution of Loan Agreement with Authority. The Original Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. The Mayor is specifically authorized and directed to execute the Loan Agreement in such form or forms as may be approved by Supplemental Resolution, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority.

ARTICLE IV

NOTES

Section 4.01. Authorization and General Terms. In order to pay certain Costs of the Project pending receipt of the Grant Receipts, the Issuer shall issue and sell its Notes in the aggregate principal amount of not to exceed \$2,500,000. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the Indenture and Supplemental Resolution.

Section 4.02. Terms of and Security for Notes; Trust Indenture. The Notes shall be issued in fully registered form, in the denomination of \$5,000 or any integral multiple thereof, with such terms and secured in the manner set forth in the Indenture (which Indenture in substantially the form to be executed and delivered by the Issuer is attached hereto as "Exhibit A" and made a part hereof).

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the respective sources described in the Granting Clauses and Article III of the Indenture. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the Indenture.

Section 4.04. Letters of Credit. As additional security for the Notes, the Issuer may obtain a letter or letters of credit from a bank or banks, pursuant to which such bank or banks would agree to pay to the Trustee, upon presentation by the Trustee of certain certificates, the sum or sums set forth therein but not to exceed \$300,000 in the aggregate. In the event of a draw under any such letter of credit, the Issuer shall issue its refunding notes to the bank issuing such letter of credit. Any such letter of credit shall be authorized and shall have such terms as shall be set forth in a resolution supplemental hereto.

ARTICLE V

SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created with and shall be held by, the Depository Bank:

- (1) Revenue Fund;
- (2) Operation and Maintenance Fund;
- (3) Renewal and Replacement Fund; and
- (4) Bond Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

- (1) Series 1985 A Bonds Sinking Fund;
 - (a) Within the Series 1985 A Bonds Sinking Fund, the Series 1985 A Bonds Reserve Account.
- (2) Series 1985 B Bonds Sinking Fund;
 - (a) Within the Series 1985 B Bonds Sinking Fund the Series 1985 B Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner herein provided.

(1) The Issuer shall first, each month, transfer from the Revenue Fund and Deposit in the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(2) Thereafter, from the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing 7 months prior to the first date of payment of interest on the Series 1985 A Bonds, apportion and set apart out of the Revenue Fund and remit to the

Commission, for deposit in the Series 1985 A Bonds Sinking Fund, a sum equal to 1/6th of the amount of interest which will become due on said Series 1985 A Bonds on the next ensuing semiannual interest payment date, less any moneys transferred from the Series 1985 A Bonds Reserve Account for the purpose of making interest payments and investment earnings on sums previously deposited in the Series 1985 A Bonds Sinking Fund for the purpose of making interest payments on the Series 1985 A Bonds; provided, that, in the event the period to elapse between the date of such initial deposit in the Series 1985 A Bonds Sinking Fund and the next semiannual interest payment date is less than 7 months, then such monthly payments shall be increased proportionately to provide, one month prior to the next semiannual interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1985 A Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1985 A Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1985 A Bonds on the next ensuing principal payment date, less any moneys transferred from the Series 1985 A Bonds Reserve Account for the purpose of making principal payments and investment earnings on sums previously deposited in the Series 1985 A Bonds Sinking Fund for the purpose of making principal payments on the Series 1985 A Bonds.

(4) The Issuer shall also, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1985 A Bonds Reserve Account, an amount equal to 1/120 of the Series 1985 A Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1985 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1985 A Bonds Reserve Requirement.

Moneys in the Series 1985 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 1985 A Bonds as the same shall become due. Moneys in the Series 1985 A Bonds Reserve Account in the Series 1985 A Bonds Sinking Fund shall be used only for the purpose of paying principal of or

interest on the Series 1985 A Bonds, as the same shall come due, when other moneys in the Series 1985 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1985 A Bonds Reserve Account shall be transferred, not less than once each year, to the Series 1985 A Bonds Sinking Fund and applied in full to the next ensuing principal payment due on the Series 1985 A Bonds.

Any withdrawals from the Series 1985 A Bonds Reserve Account which result in a reduction in the balance of the Series 1985 A Bonds Reserve Account to below the Series 1985 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments to the Series 1985 A Bonds Sinking Fund for payment of debt service on the Bonds have been made in full.

(5) The Issuer shall not be required to make any further payments into the Series 1985 A Bonds Sinking Fund or the Series 1985 B Bonds Sinking Fund or into the Reserve Accounts therein when the aggregate amount of funds in both said Sinking Funds and said Reserve Accounts are at least equal to the aggregate principal amount of Bonds issued pursuant to this Bond Legislation then Outstanding.

(6) From the moneys remaining in the Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after commencement of operation of the System, transfer to the Renewal and Replacement Fund a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of the Reserve Accounts in the Sinking Funds. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided, that any deficiency in either Reserve Account [except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required by

Subsection 5.03(A)(4)] shall be promptly eliminated with moneys from the Renewal and Replacement Fund.

(7) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal on the Series 1985 B Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1985 B Bonds Sinking Fund, a sum equal to 1/12th of the amount of principal which will mature and become due on said Series 1985 B Bonds on the next ensuing principal payment date, less any moneys transferred from the Series 1985 B Bonds Reserve Account for the purpose of making principal payments and investment earnings on sums previously deposited in the Series 1985 B Bonds Sinking Fund for the purpose of making principal payments on the Series 1985 B Bonds.

(8) The Issuer shall next, on the first day of each month, commencing 13 months prior to the first date of payment of principal of the Bonds, apportion and set apart out of the Revenue Fund and remit to the Commission for deposit in the Series 1985 B Bonds Reserve Account, an amount equal to 1/120 of the Series 1985 B Bonds Reserve Requirement; provided, that no further payments shall be made into the Series 1985 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 1985 B Bonds Reserve Requirement.

Moneys in the Series 1985 B Bonds Sinking Fund shall be used only for the purposes of paying principal of the Series 1985 B Bonds as the same shall become due. Moneys in the Series 1985 B Bonds Reserve Account in the Series 1985 B Bonds Sinking Fund shall be used only for the purpose of paying principal of the Series 1985 B Bonds, as the same shall come due, when other moneys in the Series 1985 B Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on moneys in the Series 1985 B Bonds Reserve Account shall be transferred, not less than once each year, to the Series 1985 B Bonds Sinking Fund and applied in full to the next ensuing principal payment due on the Series 1985 B Bonds.

Any withdrawals from the Series 1985 B Bonds Reserve Account which result in a reduction in the balance of the Series 1985 B Bonds Reserve Account to below the Series 1985 B Bonds Reserve Requirement shall be

subsequently restored from the first Net Revenues available after all required payments to the Series 1985 A and Series 1985 B Bonds Sinking Funds for payment of debt service on the Bonds have been made in full.

As and when additional Bonds ranking on a parity with the Series 1985 B Bonds are issued, provision shall be made for additional payments into the Series B Sinking Fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the Series B Reserve Account in an amount equal to the maximum provided and required to be paid into the Series B Sinking Fund in any Fiscal Year for account of all the Series 1985 B Bonds, including such additional Series 1985 B Bonds which by their terms are payable from such Sinking Fund.

The Commission is hereby designated as the fiscal agent for the administration of the Sinking Funds created hereunder, and all amounts required for said Sinking Funds shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein.

The payments into the Sinking Funds shall be made on the first day of each month, except that when the first day of any month shall be a Sunday or legal holiday then such payments shall be made on the next succeeding business day, and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

Moneys in the Reserve Accounts shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Sinking Funds, including the Reserve Accounts therein, shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Bonds and any additional Bonds ranking on a parity therewith that may be issued and Outstanding under the conditions and restrictions hereinafter set forth.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in said Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into the Sinking Funds, including the Reserve Accounts therein, and the Renewal and Replacement Fund

during the following month, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the Issuer, including, but not limited to, payment to the Trustee for deposit in the Notes Debt Service Fund, as defined in the Indenture.

C. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank, on such dates as the Commission or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay the Depository Bank's charges and the Paying Agent fees then due.

D. The moneys in excess of the sum insured by the maximum amounts insured by FDIC in the Revenue Fund and the Renewal and Replacement Fund shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates.

F. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

G. The Gross Revenues of the System shall only be used for purposes of the System.

ARTICLE VI

BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Original Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. Any accrued interest received from the sale shall be deposited in the appropriate Sinking Fund and applied to the first interest payment due on the applicable Series of Bonds.

B. The amount of the proceeds which together with the proceeds deposited pursuant to Subsection (A) of this section and together with the earnings thereon, shall be at least sufficient to pay interest, if any, on the applicable Series of Bonds for the period specified in the Supplemental Resolution shall be deposited in the appropriate Sinking Fund; provided, that such period may not extend beyond the date which is 6 months after the estimated date of completion of construction of the Project.

C. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank (which shall also be the Trustee) in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in the Indenture.

D. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Indenture. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Bonds.

ARTICLE VII

ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Until the payment in full of the principal of and interest on the Notes when due, the covenants, agreements and provisions contained in this Bond Legislation shall, where applicable, also inure to the benefit of the Holders of the Notes and the Trustee therefor and constitute valid and legally binding covenants of the Issuer, enforceable in any court of competent jurisdiction by the Trustee or any Holder or Holders of said Notes as prescribed in the Indenture; provided, that Section 7.04 and Section 7.09 shall not be applied to the Notes.

Section 7.02. Bonds and Notes not to be Indebtedness of the Issuer. Neither the Bonds nor the Notes shall be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of any Bonds or Notes, shall ever have the right to compel the exercise of the taxing power of the Issuer to pay said Bonds or Notes or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Series 1985 A Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System and payment of the debt service of the Series 1985 B Bonds issued hereunder shall be secured forthwith equally and ratably by a lien on said Net Revenues, but such lien shall be junior and subordinate to the lien on said Net Revenues in favor of the Holders of the Series 1985 A Bonds, to the extent necessary to make the payments required under Section 5.03 of this Ordinance. The revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Bonds and to make the payments into the Sinking Fund, including the Reserve Account therein, and all other payments

provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided in therein, to the payment of the principal of and interest on the Bonds as the same become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges; Rules. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the ordinance of the Issuer dated September 3, 1985.

Section 7.05. Sale of the System. The System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Bonds and Notes, if any, Outstanding, or to effectively defease this Ordinance in accordance with Section 10.01 hereof and, if not previously defeased, the Indenture in accordance with Section 8.01 thereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Bonds, immediately be remitted to the Commission for deposit in the Sinking Fund, and, in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal at maturity of and interest on the Bonds about to mature. Any balance remaining after the payment of all the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System. With respect to the Notes, such proceeds in an amount sufficient to pay in full the Notes shall be remitted to the Trustee for deposit in the Notes Debt Service Fund, to apply to the payment of the Notes, prior to maturity if allowable under the Supplemental Resolution.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of \$10,000, the Issuer shall, by resolution, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in

excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property upon public bidding. The proceeds derived from any such sale, lease or other disposition of such property, aggregating during such Fiscal Year in excess of \$10,000 and not in excess of \$50,000, shall be remitted by the Issuer to the Commission for deposit in the Sinking Fund and shall be applied only to the purchase of Bonds of the last maturities then Outstanding at prices not greater than the par value thereof plus 3% of such par value. Such payment of such proceeds into the Sinking Fund or the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases, or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all the Bonds then Outstanding without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of over 50% in amount of the Bonds then Outstanding and the Consulting Engineers. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any obligations whatsoever with a lien on or otherwise payable from any source of payment pledged originally to the Notes issued under the Indenture prior to or on a parity with the lien on behalf of such Notes until such Notes have been defeased in accordance with the provisions of the Indenture and the Bond Legislation; and, so long as any of the Bonds are Outstanding, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Bonds; provided, however, that additional Bonds on a parity with the Series 1985 B Bonds only may be issued as provided for in Section 7.07 hereof. All obligations issued by the Issuer after the issuance of the Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to both the Series 1985 A Bonds and the Series 1985 B Bonds; provided, that no such subordinate obligations

shall be issued unless all payments required to be made into the Reserve Accounts and the Renewal and Replacement Fund at the time of the issuance of such subordinate obligations have been made and are current.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. A. No Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of any Bonds pursuant to this Bond Legislation, except under the conditions and in the manner herein provided.

No Parity Bonds shall be issued which shall be payable out of the revenues of the System prior to or on a parity with the Series 1985 A Bonds. All Parity Bonds issued hereunder shall be on a parity in all respects with the Series 1985 B Bonds.

No such Parity Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, improvements or betterments to the System or refunding one or more series of Bonds issued pursuant hereto, or both such purposes.

No Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Recorder a written statement by the Independent Certified Public Accountants, based upon the necessary investigation and certification by the Consulting Engineers, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(A) The Bonds then Outstanding;

(B) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and

(C) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the period for appeal of which has expired prior to the date of delivery of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Consulting Engineers, which shall be filed in the office of the Recorder prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Consulting Engineers and the said Independent Certified Public Accountants, as stated in a certificate jointly made and signed by the Consulting Engineers and said Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the period for appeal of which has expired prior to issuance of such Parity Bonds.

Not later than simultaneously with the delivery of such Parity Bonds, the Issuer shall have entered into written contracts for the immediate construction or acquisition of such additions, betterments or improvements, if any, to the System that are to be financed by such Parity Bonds.

All covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

All Parity Bonds shall mature on the day of the years of maturities, and the semiannual interest thereon shall be payable on the days of each year, specified in a Supplemental Resolution.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of both the Series 1985 A Bonds and the Series 1985 B Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to lien on and source of and security for payment from such revenues, with either the Series 1985 A Bonds or the Series 1985 B Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation with respect to the Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation.

B. Notwithstanding the foregoing, Parity Bonds may be issued solely for the purpose of completing the Project without regard to the restrictions set forth in this Section 7.07, if there is first obtained by the Issuer the written consent of the Authority, and if any Notes are then Outstanding, the Trustee, to the issuance of such Parity Bonds.

Section 7.08. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds or of a Note or Notes issued pursuant to this Bond Legislation or the Trustee shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Governing Body. The Governing Body shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Governing Body shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Consulting Engineers, the Trustee and the Authority, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds or Notes, as the case may be, requesting the same, an annual report containing the following:

A. A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

B. A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the Indenture with respect to said Bonds or Notes, as the case may be, and the status of all said funds and accounts.

C. The amount of any Bonds, Notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds or Notes, as the case may be, and shall file said report with the Trustee and the Authority or any other original purchaser of the Bonds.

Section 7.09. Rates. Prior to the issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file with the Recorder, which copies will be open to inspection by all interested parties. The schedule of rates and charges shall at all times be adequate to produce Gross Revenues from said System sufficient to pay Operating Expenses and to make the prescribed payments into the funds created hereunder. Such schedule of rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. The Issuer shall take the necessary actions with respect to the imposition of rates at such times and with such provisions with respect to interest rate and maturity of the Bonds to finance the issuance of the Bonds as the purchasers thereof shall require. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable expenses of operation, repair and maintenance of the System and (ii) to leave a balance each Fiscal

Year equal to at least 115% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues; provided that, in the event that an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Account or junior bonds is funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any succeeding Fiscal Year for payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues.

Section 7.10. Operating Budget and Audit. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated expenditures for operation and maintenance of the System during the succeeding Fiscal Year. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by the Consulting Engineers, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of the Consulting Engineers that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Trustee and the Authority and to any Holder of any Bonds or Notes, as the case may be, who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Trustee and to any Holder of any Bonds or Notes, as the case may be, or anyone acting for and in behalf of such Holder of any Bonds or Notes, as the case may be.

In addition, the Issuer shall annually cause the records of the System to be audited by an independent certified public accountant, the report of which audit shall be submitted to the Authority and which audit report shall include a statement that the Issuer is in compliance with the terms and provisions of this Bond Legislation and the Loan Agreement.

Section 7.11. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or

allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.12. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules of the Issuer, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid and to the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, all delinquent rates, rentals and other changes, if not paid, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services and facilities of the System and any services and facilities of the water system, if then owned by the Issuer, to all delinquent users of services and facilities of the System and will not restore such services of either system until all billing for charges for the services and facilities of the System, plus reasonable interest penalty charges for the restoration of service, has been fully paid.

Section 7.13. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.14. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as any of the Bonds or the Notes remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(A) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE,, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for said Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$100,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(C) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

B. The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and

as is customarily carried with respect to works and properties similar to the Project.

Section 7.15. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30 day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.16. Completion of Project. The Issuer will complete the Project and operate and maintain the System in good condition.

ARTICLE VIII

INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any moneys held as a part of the funds and accounts created by this Bond Legislation or the Indenture, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Trustee, or such other bank or national banking association holding such fund or account, as the case may be, at the direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, and the Indenture, the need for such moneys for the purposes set forth herein and in the Indenture and the specific restrictions and provisions set forth in this Section 8.01 and in the Indenture.

Except as provided in the Indenture, any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount. The Commission, the Trustee, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Trustee or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

Section 8.02. Restrictions as to Arbitrage Bonds. The Issuer hereby covenants, and hereby so instructs the Bond Commission and the Trustee that they shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations the acquisition of which would cause any Bond to be an "arbitrage bond" as defined in Section 103(c)(2) of the Internal Revenue Code, and an Authorized Officer shall deliver his certificate, based upon this covenant, with regard thereto to the purchaser of the Original Bonds.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Notes:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Notes; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Notes set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the Notes, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Note; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

B. Each of the following events shall constitute an "Event of Default" with respect to the Bonds:

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds; or

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Bond Legislation, any supplemental resolution, the Indenture or in the Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Trustee, any other bank or banking association holding any fund or account hereunder or a Holder of a Bonds; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Note or Bond, as the case may be, may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System (iii) bring suit upon the Notes or Bonds, as the case may be, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Notes or Bonds, as the case may be, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Notes or Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System on behalf of the Issuer with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for Reserve, Sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all

defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

ARTICLE X

DEFEASANCE

Section 10.01. Defeasance of Series 1985 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1985 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1985 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1985 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1985 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1985 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1985 A Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1985 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any

trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.02. Defeasance of Series 1985 B Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1985 B Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series B Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1985 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1985 B Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due the principal installments of and interest on such Series 1985 B Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1985 B Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1985 B Bonds on and prior to the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1985 B Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 10.03. Defeasance of Notes. If the Issuer shall pay or cause to be paid, or these shall otherwise be paid, to the respective Holders of all Notes, the principal of and interest due or to become due thereon, at the times and in the manner set forth in the Indenture, then with respect to the Notes only, this Bond Legislation, the Indenture and the pledges of Grant Receipts and other moneys and securities pledged thereby, and all covenants, agreements and other obligations of the Issuer to the Holders of the Notes shall thereupon cease, terminate and become void and be discharged and satisfied.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Notes or Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Notes or Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or any Note or Notes or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds or Notes respectively, required for consent to the above-permitted amendments or modifications.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds and Notes, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution, Indenture, the Bonds or the Notes.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Amendments to Maintain Tax Exemption. The Issuer hereby covenants to make any amendment or supplements to this Ordinance and to the Indenture authorized hereby to enable the Notes or Bonds to be issued in such form as to render the interest thereon exempt from federal income taxation, without further consent of the Holders of the Bonds or the Notes.

Section 11.06. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Recorder and members of the the Town Council and the Sanitary Board were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.08. Effective Time. This Ordinance shall take effect following public hearing hereon in accordance with the Act.

Section 11.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance, determined by the Issuer to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the Times-West Virginian, a newspaper of general circulation in the Town of Barrackville, no newspaper being published in the Town of Barrackville, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Notes and Bonds, and that any person interested may appear before the Common Council upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the Issuer for review by interested parties during the office hours of the Issuer.

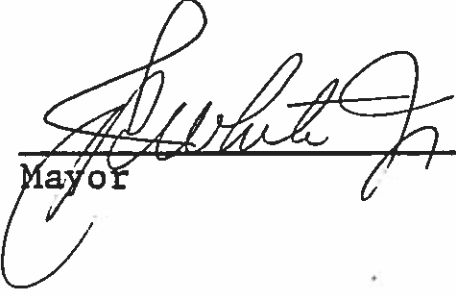
At such hearing, all objections and suggestions shall be heard and the Town Council shall take such action as it shall deem proper in the premises.

Passed on First Reading November 12, 1985

Passed on Second Reading November 19, 1985

Effective following public
hearing held on December 3, 1985

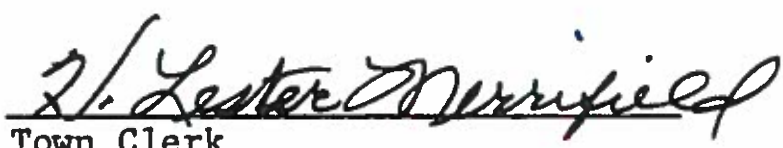
[SEAL]



Mayor

ATTEST:

By



Town Clerk

ORDINANCE NO. 36

AN ORDINANCE PROVIDING FOR
THE ELECTION OF MUNICIPAL OFFICERS

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

Section 1. It is hereby declared that the conduct of elections of municipal officers of the Town of Barrackville is hereby integrated with the system of permanent registration of voters of the State of West Virginia, and unless otherwise provided herein, all laws governing the conduct of elections as set forth in the West Virginia Code shall govern the conduct of municipal elections in the Town of Barrackville.

Section 2. The regular general election of officers of the municipality shall be held on the first Tuesday in June, 1986, and on the first Tuesday in June of every second year thereafter.

Section 3. One precinct is hereby established for the municipality, and all voting shall take place at the Barrackville Municipal Building.

Section 4. Two ballot commissioners shall be appointed by the Town Council between the 15th and 31st days of March in each year in which a general election is to be held, for a term of two years beginning on the 1st day of April next ensuing.

Section 5. Officers to be elected at each election shall be a mayor, recorder, and five councilmen.

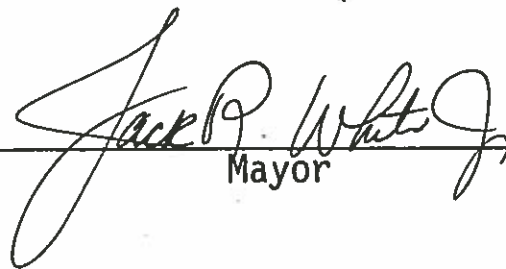
Section 6. All eligible persons who desire to become candidates for election shall file with the Town Recorder a certificate of candidacy, along with a filing fee of \$10.00,

between the 1st and 15th days of April immediately prior to the election.

Section 7. This ordinance shall be effective immediately upon passage.

Section 8. Ordinance No. 22 of the Town of Barrackville is hereby repealed.

Passed by the Town Council this 4th day of March, 1986.



Mayor

Attest:



Recorder

ORDINANCE NO. 37
AN ORDINANCE PROVIDING FOR THE LEVY AND COLLECTION
OF A PUBLIC UTILITIES TAX

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

Section 1. Definitions.

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

Person. Individuals, firms, partnerships, associations, corporations and combinations thereof, of whatever form or character.

Public utility service. All services and tangible personal property purchased within this municipality 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 West Virginia; water service and sanitary sewer service; if purchased, used or consumed within the corporate limits of this municipality.

Purchaser. Every person who purchases, uses or consumes a public utility service.

Seller. 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 West Virginia, who sells, furnishes or supplies a public utility service.

User. 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 or description.

Section 2. Imposition and levying of tax; amount of tax.

There is hereby imposed and levied 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 this municipality, such public utility service. Such tax shall be in the amount of two percent of the charge, exclusive of any federal or state tax thereon, 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 shall become 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 this municipality.

Section 3. Collection; time of payment; accounting; effective date of article; proration.

It shall be the duty of every seller in acting as the tax collecting medium or agency for this municipality to collect from each purchaser for the use of this municipality 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 this municipality and each seller shall remit the amount of tax shown by the report to have been collected to this municipality on or before the last day of the first calendar month following the month in which collected. The tax imposed and levied by this article shall apply to periodic statements rendered after July 5, 1986, for public utility service rendered subsequent to July 5, 1986, and when any such periodic statement covers public

utility service rendered both before and after such date, only that portion of the charge for public utility service rendered after such date shall be subject to such tax, and the portion subject to such tax shall be such portion of the total charge as the number of days after July 5, 1986, within the period covered by such periodic statement, bear to the total number of days covered by such periodic statement. The required reports shall be in the form prescribed by the official of this municipality charged with the responsibility of collecting taxes due this municipality.

Section 4. Records.

Each and every seller shall keep and maintain complete records showing all purchases of public utility service within the corporate limits of this municipality, 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 this municipality at reasonable times, and the duly authorized agents of this municipality shall have the right, power and authority to make at the expense of this municipality such transcripts thereof during such times as they may desire.

Section 5. 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 by a public utility for resale.

(b) Purchases of public utility service by the United States of America, the State of West Virginia and the political subdivisions, municipalities, boards, commissions, authorities and public corporations thereof.

(c) Purchases of tangible personal property such as appliances or the like, as distinguished from the public service supplied.

(d) Charges for telephone services which are paid by the insertion of coins into coin-operated telephones, and specific charges or tolls for telephone calls to points outside the corporate limits of this municipality.

(e) Nonrecurring or one-time charges incidental to the furnishing of public utility service.

Section 6. Nonliability of utility; duty of municipality; refunds; rules and regulations.

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 such purchaser on the ground that the public utility service was not purchased, used or consumed within the corporate limits of this municipality, the seller shall refer the question to the official of this municipality charged with the responsibility of collecting taxes due to this municipality and such seller shall thereafter collect or refrain from collecting such tax from such purchaser for such public utility service as instructed in writing to do by such officials of this municipality. Any and all claims for refunds of any such tax shall be presented to this municipality and not to the seller.

The official of this municipality charged with the responsibility of collecting taxes due this municipality shall have the authority to promulgate and enforce reasonable rules and regulations necessary for the administration and enforcement of this article.

Section 7. Enforcement provisions; penalties.

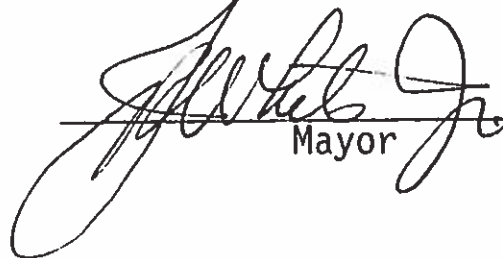
Any amount of tax due and unpaid under this article shall be a debt due this municipality. It shall be a personal obligation of the purchaser and shall be a lien upon all of the property of the purchaser. The lien shall have priority over all other liens and obligations except those due the state and the United States of America. Any such lien shall attach when the obligation to pay such tax accrues. The lien shall be enforceable by this municipality as any other lien against the property of a debtor.

Any purchaser who wilfully fails or refuses to pay the tax hereby imposed and levied and any seller or purchaser violating any of the provisions hereof or any lawful rule and regulation promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than five hundred dollars. The failure or refusal to pay the tax for public utility service purchased, used or consumed during different periodic statement periods shall constitute a separate and distinct offense.

Section 8. Notice to utilities.

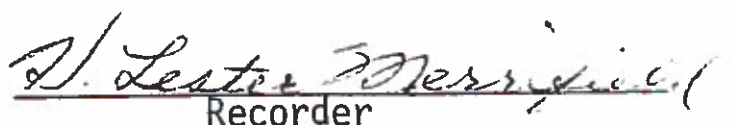
The tax hereby imposed and levied shall not be effective until this municipality gives sixty days written notice by certified mail of the effective date of this article to any public utility doing business within this municipality which is required to collect the tax imposed and levied hereby.

Passed by the Town Council this 6th day of May, 1986.



Mayor

Attest:



Recorder

ORDINANCE NO. 39

AN ORDINANCE PROVIDING FOR THE
USAGE AND OPERATION OF SEWERS

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

39.01 DEFINITIONS. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"B.O.D." (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in milligrams per liter.

"Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning 5 feet outside the inner face of the building wall.

"Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

"Combined sewer" shall mean a sewer receiving both surface runoff and sewage.

"Garbage" shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

"Industrial wastes" shall mean the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

"Natural outlet" shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

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

"pH" shall mean the logarithm of the reciprocal of the concentration of hydrogen ions in grams per liter of solution.

"Properly shredded garbage" shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

"Public sewer" shall mean a sewer in which all owners abutting properties have equal rights, and is controlled by public authority.

"Sanitary sewer" shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

"Sewage" shall mean a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

"Sewage treatment plant" shall mean any arrangement of devices and structures used for treating sewage.

"Sewage works" shall mean all facilities for collecting, pumping, treating, and disposing of sewage.

"Sewer" shall mean a pipe or conduit for carrying sewage.

"Shall" is mandatory; "may" is permissive.

"Slug" shall mean any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than 5 times the average 24 hour concentration or flows during normal operation.

"Storm drain" (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

"Superintendent" shall mean the Superintendent of Municipal Sewage Works of the town, or his authorized deputy, agent or representative.

"Suspended solids" shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

"Watercourse" shall mean a channel in which a flow of water occurs, either continuously or intermittently.

"Domestic sewage" shall mean the liquid wastes from homes and industrial-commercial facilities that do not present a greater than ordinary degree of treatment difficulty.

"Unpolluted cooling water" shall mean water used to reduce temperature in a process that does not come in direct contact with the product and does not require any special treatment by governing state, federal, or local agencies to be discharged into a storm sewer or natural body of water.

39.02 DISPOSITION OF WASTES. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner upon public or private property within the town, or in any area under the jurisdiction of the town any human or animal excrement, garbage, or other objectionable waste.

It shall be unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of the town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter.

39.03 PRIVIES AND SEPTIC TANKS. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

39.04 CONNECTION TO SEWER. The owner of any house, building, or property used for human occupancy, employment, or commercial or public recreation, situated within the town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the town is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within 90 days after date of official notice to do so.

Authority of city to maintain sewer system, W. Va.
Code, Sec. 8-12-5, subsecs. (7) (8) (9) (32) (33).

39.05 INDUSTRIAL WASTES. (a) Any industry or structure discharging process flow to the sanitary sewer, storm sewer or receiving stream shall file the material listed below with the Sanitary Board.

(b) The Sanitary Board may require each person who applies for or receives sewer service, or through the nature of the enterprise creates a potential environmental problem to file the material listed below:

1. File a written statement setting forth the nature of the enterprise, the source and amount of water used, the amount of water to be discharged, with its present or expected bacterial, physical, chemical, radioactive, or other pertinent characteristics of the wastes.

2. Provide a plan map of the building, works, or complex, with each outfall to the surface waters, sanitary sewer, storm sewer, natural watercourse, or ground waters noted, described, and the waste stream identified.

3. Sample test, and file reports with the Sanitary Board and the appropriate state agencies on appropriate characteristics of wastes on a schedule, at locations, and according to methods approved by the Sanitary Board.

4. Place waste treatment facilities, process facilities, waste streams, or other potential waste problems under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities.

5. Provide a report on raw materials entering the process or support systems, intermediate materials, final products, and waste byproducts as those factors may affect waste control.

6. Maintain records and file reports on the final disposal of specific liquid, solid, sludges, oils, radioactive materials, solvents, or other wastes.

7. If any industrial process is to be altered as to include or negate a process waste or potential waste, written notification shall be given to the Sanitary Board subject to approval.

39.06 PRIVATE SEWAGE DISPOSAL. (a) Required. Where a public sanitary or combined sewer is not available under the provisions of Section 39.04 the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

(b) Permit. Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the Sanitary Board. The application for such a permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the town. A permit and inspection fee of 0.1 percent of the estimated construction cost, but no less than \$50 nor more than \$1,000 shall be paid to the Town Treasurer at the time the application is filed.

(c) Inspections. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the town representative. He shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the town when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 3 working days of the receipt of notice by the town.

(d) Specifications. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the town. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than required by the state or county Health Department. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.

(e) Connection to Sewer. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 39.04, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(f) Maintenance. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the town.

(g) State Regulations. No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the State of West Virginia.

(h) Connection to Public Sewers. When public sewer becomes available, the building sewer shall be connected to said sewer within 90 days and private sewage disposal system shall be cleaned of a sludge and filled with clean bank-run gravel or sand.

39.07 BUILDING SEWERS AND CONNECTIONS. (a) Permit Required. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Sanitary Board.

(b) Classes of Permits. There shall be three classes of building sewer permits: (1) for residential; (2) for commercial service, and (3) for service to establishments producing industrial wastes. In either case, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Sanitary Board. A permit and inspection fee of \$10 for a residential building sewer permit, \$10 for a commercial building sewer permit, and \$25 for an industrial building sewer permit shall be paid to the Town Treasurer at the time the application is filed.

(c) Cost of Installation. All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(d) Separate Connection Each Building. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(e) Old Sewers, Re-use. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the town, to meet all requirements of this chapter.

(f) Construction Standards. The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the city. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

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

(h) Surface Water Drainage. No person shall make connection of roof downspouts, exterior foundation drains or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(i) Connection Regulations. The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the town, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gastight and watertight.

(j) Deviations, Approval. Any deviation from the prescribed procedures and materials must be approved by the Sanitary Board before installation.

(k) Supervisions of Connection. The applicant for the building sewer permit shall notify the town when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Superintendent.

(l) Excavations. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

39.08 STORM WATER DISPOSITION. (a) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(b) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the appropriate state agency. Industrial cooling water or unpolluted process waters may be discharged upon approval of the appropriate state agency, to a storm sewer or natural outlet.

39.09 DELETERIOUS WASTES. (a) Wastes Prohibited. Except as hereinafter provided by subsection (b) no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

1. BOD₅ in excess of 200 mg/l.
2. SS in excess of 250 mg/l.
3. COD in excess of 450 mg/l.
4. Chlorine demand in excess of 15 mg/l.
5. Color, as from but not limited to dyes, inks, vegetable tanning solutions, shall be controlled to prevent light absorbency which would interfere with treatment plant processes or that prevent analytical determinations.
6. Explosive liquid, solid, or gas, gasoline, benzene, naphtha, fuel oil, or other flammables shall not be admitted.
7. Garbage not properly shredded (no particle size greater than 1/2 inch) shall not be allowed.
8. Grease, oils, wax, fat, whether emulsified or not, in excess of 50 mg/l; or other substances which may solidify or become viscous at temperatures between 32° F. and 150°F. shall not be admitted to the sanitary sewer.
9. Industrial wastes in concentrations above those listed below shall not be allowed to enter sanitary sewers: Cd; Cn, DR⁺6, CR total, CU, FE, Ni, Pb, Phenols, Zn, Hg. Limitations set forth by appropriate state agencies to comply with federal guidelines for protection of treatment plant and receiving watercourse, or any other metallic compounds in sufficient quantity to impair the operation of the sewage treatment processes.
10. Inert suspended solids (such as but not limited to Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as but not limited to sodium chloride and sodium sulfate) in unusual concentrations shall not be allowed.

11. Insoluble, solid, or viscous substances such as but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, tar, feathers, plastics, wood, hair, fleshings, etc., shall not be admitted to sanitary sewers.

12. Noxious or malodorous gas, such as but not limited to hydrogen sulfide, sulphur dioxide, or oxides of nitrogen, and other substances capable of producing a public nuisance shall not be allowed.

13. pH less than 5.5 and greater than 9.5 shall not be allowed.

14. Radioactive wastes or isotopes of such half-life or concentration which may exceed limits established by applicable state and federal regulations, shall not be allowed.

15. Temperature of wastes less than 32° F. and greater than 150°F. shall not be allowed.

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

(b) Disposition. If any waters are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or poses the characteristics enumerated in this section, and which in the judgment of the Superintendent may have a deleterious effect upon the sewage works, process, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

1. Reject the wastes.

2. Require pre-treatment to an acceptable condition for discharge to the public sewers.

3. Require control over the quantities and rates of discharge.

4. Require payment to cover the added cost of handling and treating the wastes not covered by sewer charges under the provisions of Section 39.13.

5. Where the strength of sewage from an industrial, commercial or institutional establishment exceeds normal domestic sewage of (a) 200 milligrams per liter of 5-day biochemical oxygen demand or (b) 250 milligrams per liter of suspended solids and where such wastes are permitted to be discharged to the sewer system by the town, an added charge, as noted below, will be made against such establishment according to the strength of such wastes. The strength of such wastes shall be determined by composite samples taken over a sufficient period of time to insure a representative sample. The cost of sampling and testing shall be borne by the industry or establishment whether owner or lessee. Tests shall be made by an independent laboratory or at the town waste water treatment plant.

Added charges shall be determined by the formula below. These charges shall be based on the cost of operation and maintenance for the sewage works. The surcharge to be computed by the formula:

$$C_s = (B_c(B) + S_c(s)) V_u$$

Where:

C_s = A surcharge for waste waters of excessive strength.

V_u = Volume contribution from a user per unit of time.

B_c = O & M cost for treatment of a unit of biochemical oxygen demand (BOD).

B = Concentration of BOD from a user above a base level.

S_c = O & M cost for treatment of a unit of suspended solids.

S = Concentration of ss from a user above a base level.

(c) Approval of Treatment or Control. If the town permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the city, and subject to the requirements of all applicable state agencies' codes, ordinances and laws. Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

39.10 INTERCEPTORS. Grease, oil and sand interceptors shall be provided when, in the opinion of the city they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the town, and shall be located as to be readily and easily accessible for cleaning and inspection.

39.11 CONTROL MANHOLES. When required by the town, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the town. The manhole metering and sampling devices shall be installed by the owner at his expense, and shall be maintained by him so as to be safe, operable and accessible at all times.

39.12 TESTS AND MEASUREMENTS. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the most recent edition of "Standard Methods for the Examination of Water and Sewage," and shall be determined at the control manhole provided for, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the location determined by the Superintendent.

Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a 24 hour composite of all outfalls of a premise is appropriate or whether grab sample or samples should be taken.

39.13 SEWAGE FLOW DETERMINATION. To determine the sewage flow from any establishment, the Sanitary Board may use one of the following methods:

(a) The amount of water supplied to the premises by the town or a private water company as shown upon the water meter if the premises are metered, or

(b) If the premises are supplied with river water from private wells, the amount of water supplied from such sources may be metered at the source or metered at its point of discharge prior to entry into the town sewer, or

(c) If such premises are used for an industrial or commercial purpose of such a nature that the water supplied to the premises cannot be entirely discharged into the sewer system, the estimate of the amount of sewage discharged into the sewer system made by the Sanitary Board from the water, gas or electric supply, or metered at its point of discharge prior to entry into the town sewer, or

(d) The volume of sewage discharged into the sewer system as determined by measurements and samples taken at a manhole installed by the owner of the property served by the sewer system at his own expense in accordance with the terms and conditions of the permit issued by the Sanitary Board pursuant to this section, or

(e) A figure determined by the Sanitary Board by any combination of the foregoing or by any other equitable method.

39.14 TREATMENT BY TOWN. No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to equitable payment therefor by the industrial concern as set forth in formula.

39.15 PROTECTION FROM DAMAGE. No unauthorized person shall maliciously, wilfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage works. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

39.16 POWERS AND AUTHORITY OF INSPECTORS. (a) The Superintendent and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Superintendent or his representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(b) While performing the necessary work on private properties referred to in this section the Superintendent or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the town employees and the town shall indemnify the company against loss or damage to its property by town employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required by this chapter.

39.17 ASSESSMENTS FOR SEWER CONSTRUCTION. Whenever the Town Council shall order the construction of any public sewer or sewer system within the city, the owners of the property abutting upon any street in which such sewer shall be constructed shall be charged with and liable for sewerage assessments for the cost of such construction and the Council shall make such assessments in conformity with the applicable provisions of Chapter 8 of the West Virginia Code.

State law re assessments for town sewer construction
W. Va. Code, Sec. 8-18-1 et seq.

39.18 PENALTIES. (a) Any person found to be violating any provision of this chapter except Section 39.15 shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

(b) Any person who shall continue any violation beyond the time limit provided for in subsection (a) of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the amount not exceeding \$500 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

(c) Any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss, or damage occasioned the town by reason of such violation.

This ordinance shall be effective on passage.

Passed by the Town Council this 15th day of July, 1986.

Mark A. Baayand
Mayor

ATTEST:

James D. Wolfe
Recorder

ORDINANCE NO. 40AN ORDINANCE ESTABLISHING AND FIXING RATES,
FEES, CHARGES AND DELAYED PAYMENT PENALTY
CHARGES FOR SERVICE TO CUSTOMERS OF THE
SEWERAGE SYSTEM OF THE TOWN OF BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS: The following schedule of rates, fees, charges and delayed payment penalty charges are hereby fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to customers of the sewerage system of the town of Barrackville throughout the territory served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable in entire area served.

AVAILABILITY OF SERVICE

Available for sanitary sewer service.

RATE (Based upon the metered amount of water supplied)

Flat Rate - \$4.58 per 1,000 gallons of water used.

MINIMUM MONTHLY CHARGE

The minimum monthly charge to any user of the sewerage system shall be \$9.16.

NON-METERED CUSTOMER CHARGE

The monthly charge to users without public water service shall be \$9.16.

DELAYED PAYMENT PENALTY

A 10% penalty shall be added to all charges not paid within 20 days from the date of the billing. This delayed payment is not interest and is only to be collected once for each bill where it is appropriate.

SECTION 2. EFFECTIVE DATE

The rates, fees, charges and delayed payment penalty charges provided herein shall be effective 45 days after the enactment thereof.

SECTION 3. SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect. All prior rate ordinances are hereby repealed.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall publish a copy of this Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, being the only newspaper published and of general circulation in Marion County, West Virginia, and being of general circulation in the Town of Barrackville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the 6th day of October, 1987, at 7:00 p.m., which date is not less than 10 days subsequent to the date of the first publication of the Ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

1987. The above Ordinance has been introduced at a meeting of Council held September 15,

Passed on First Reading: September 15, 1987

Passed on Second Reading
Following Public Hearing: October 6, 1987

Effective as of October 6, 1987


Recorder

1987

ORDINANCE NO. 41

TOWN OF BARRACKVILLE
SEWER REVENUE BONDS, SERIES 1987 A AND SERIES 1987 B
SUPPLEMENTAL AND AMENDATORY
BOND ORDINANCE

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11/03/87
TNBAR2-B

TOWN OF BARRACKVILLE

SUPPLEMENTAL AND AMENDATORY ORDINANCE

SUPPLEMENTAL AND AMENDATORY ORDINANCE SUPPLEMENTING AND AMENDING AN ORDINANCE OF THE TOWN OF BARRACKVILLE ENTITLED:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF BARRACKVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$700,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1985 A, NOT MORE THAN \$350,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1985 B, AND NOT MORE THAN \$2,500,000 IN AGGREGATE PRINCIPAL AMOUNT OF GRANT ANTICIPATION NOTES, SERIES 1985; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS AND NOTES; AUTHORIZING EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

AUTHORIZING THE COMPLETION OF ACQUISITION AND CONSTRUCTION OF PUBLIC SEWERAGE FACILITIES OF THE TOWN OF BARRACKVILLE AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF NOT MORE THAN \$150,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 A, AND NOT MORE THAN \$50,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 1987 B, PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; APPROVING AND RATIFYING A LOAN AGREEMENT AND SUPPLEMENTAL LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF BARRACKVILLE:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Supplemental and Amendatory Ordinance. This Supplemental and Amendatory Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is adopted pursuant to the provisions of Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The Town of Barrackville (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State.

B. The Issuer has heretofore issued its Sewer Revenue Bonds, Series 1985 A and 1985 B, both dated December 9, 1985, in the aggregate principal amount of \$927,000 (collectively, the "Prior Bonds"). The Prior Bonds were issued pursuant to a bond and notes ordinance enacted by the Issuer on December 3, 1985 (the "Prior Ordinance"). Proceeds of the Prior Bonds were used to pay a portion of the costs of acquisition, construction and equipping of certain sewerage collection facilities (the "Project"). However, such proceeds and available grant proceeds are deemed insufficient to complete the Project. Accordingly, it is necessary for the Issuer to borrow an additional amount to finance the remaining costs of the Project.

C. The estimated revenues to be derived in each year after completion of the Project from the operation of the System (as hereinafter defined) will be sufficient to pay all the costs of the operation and maintenance of said System, the principal of and interest on the Prior Bonds and the Series 1987 Bonds (as hereinafter defined) and all Sinking Fund, Reserve Account and other payments provided for herein and in the Prior Ordinance.

D. It is therefore deemed necessary for the Issuer to issue its completion bonds in the total aggregate principal amount of not more than \$200,000 in two series, being the Series 1987 A Bonds in the aggregate principal amount of not more than \$150,000, and the Series 1987 B Bonds in the aggregate principal amount of not more than \$50,000 (collectively, the "Series 1987 Bonds") to finance costs of construction and acquisition of the Project not otherwise provided for. Said costs shall be deemed to include the cost of all

property rights, easements and franchises deemed necessary or convenient therefor; interest upon the Bonds prior to and during construction or acquisition and for 6 months after completion of construction of the Project; amounts which may be deposited in the Reserve Accounts; engineering, and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees of the Authority (as hereinafter defined), discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 1987 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the completion of construction or acquisition of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof; provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Bonds or the repayment of indebtedness incurred by the Issuer for such purposes, shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that the Series 1987 Bonds be sold to the West Virginia Water Development Authority (the "Authority") pursuant to the terms and provisions of a loan agreement and a supplemental loan agreement (collectively, the "Loan Agreement") both dated October 21, 1987, entered into between the Issuer and the Authority, in form satisfactory to the Issuer and the Authority, and attached hereto as "Exhibit A," and made a part hereof.

G. Except for the Prior Bonds, there are not outstanding any obligations of the Issuer which will rank prior to or on a parity with the Series 1987 Bonds as to lien and source of and security for payment. The Series 1987 B Bonds shall be on a parity with the Series 1985 B Bonds, both of which series shall be junior and subordinate to both the Series 1985 A Bonds and the Series 1987 A Bonds; and the Series 1987 A Bonds shall be on a parity with the Series 1985 A Bonds, all as set forth herein.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Prior Bonds and the Series 1987 Bonds, or will have so complied prior to issuance thereof, including, among other things, the obtaining of a Certificate of Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing

and appeal of which have expired, which Order was received prior to delivery of the Prior Bonds.

I. The Issuer has general taxing powers to finance operations of or facilities of the nature of the System, and the Issuer and all subordinate entities reasonably expect to issue less than \$5,000,000 aggregate principal amount of tax-exempt bonds during the calendar year in which the Bonds are to be issued.

J. The Issuer has been presented with a petition by the Barrackville Sanitary Board requesting that the Issuer proceed with issuance of the Series 1987 Bonds for the purposes stated herein.

K. The Prior Ordinance, in Section 7.07(B) thereof, permits the issuance of the Series 1987 Bonds on parity with the Prior Bonds for the purpose of completion of the Project with no further restrictions if there is first obtained the written consent of the Authority, which written consent will be obtained prior to issuance of the Series 1987 Bonds.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 1987 Bonds by those who shall be the registered owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the registered owners of any and all of such Series 1987 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond of a series and any other Bonds of the same series by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. Unless expressly changed herein, all capitalized terms used in the Prior Ordinance shall have the same meanings herein. In addition, the following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Bond Year" means the 12 month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year except that the first Bond Year shall begin on the Closing Date.

"Bonds" means the Original Bonds, the Series 1987 Bonds and any bonds on a parity therewith authorized to be issued hereunder.

"Closing Date" means the date upon which there is an exchange of the Series 1987 Bonds for the proceeds representing the purchase of the Bonds by the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Excess Investment Earnings" means an amount equal to the sum of:

(A) The excess of

(i) The aggregate amount earned from the Closing Date on all Nonpurpose Investments in which Gross Proceeds of the Bonds are invested [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings], over

(ii) The amount that would have been earned if the Yield on such Nonpurpose Investments [other than amounts attributable to an excess described in this clause (A) of this definition of Excess Investment Earnings] had been equal to the Yield on the Bond, plus

(B) Any income attributable to the excess described in clause (A) of this definition of Excess Investment Earnings.

"Gross Proceeds" means the sum of the following amounts:

(i) Original proceeds, namely, net amounts received by or for the Issuer as a result of the sale of the Bonds, excluding original proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(ii) Investment proceeds, namely, amounts received at any time by or for the Issuer, such as interest and dividends, resulting from the

investment of any original proceeds (as referenced in clause (i) above) or investment proceeds (as referenced in this clause (ii)) in Nonpurpose Investments, increased by any profits and decreased (if necessary, below zero) by any losses on such investments, excluding investment proceeds which become transferred proceeds (determined in accordance with applicable Regulations) of obligations issued to refund in whole or in part the Bonds;

(iii) Transferred proceeds, namely, original proceeds of any prior obligations, and interest earnings and profits less losses resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any prior bonds and which are deemed to become proceeds of the Bonds ratably as original proceeds of the Bonds, and interest earnings and profits resulting from investment of such original proceeds in Nonpurpose Investments, which are used to discharge the outstanding principal of any such prior obligations, all on the date of such ratable discharge;

(iv) Sinking fund proceeds, namely, amounts, other than original proceeds, investment proceeds or transferred proceeds (as referenced in clauses (i) through (iii) above) of the Bonds, which are held in any fund to the extent that the Issuer reasonably expects to use such other fund to pay Debt Service;

(v) Amounts in the Reserve Accounts and in any other fund established as a reasonably required reserve or replacement fund;

(vi) Investment Property pledged as security for payment of Debt Service on the Bonds by the Issuer;

(vii) Amounts, other than as specified in this definition, used to pay Debt Service on the Bonds; and

(viii) Amounts received as a result of investing amounts described in this definition.

"Investment Property" means any security (as said term is defined in Section 165(g)(2)(A) or (B) of the Code), obligation, annuity contract or investment-type property, excluding, however, obligations the interest on which is excluded from gross income, under Section 103 of the Code, for federal income tax purposes.

"Loan Agreement" shall mean, collectively, the Loan Agreement and the Supplemental Loan Agreement, both dated October 21, 1987, heretofore entered into between the Authority and the Issuer providing for the purchase of the Series 1987 Bonds from the Issuer by the Authority, the forms of which shall be approved, and the execution and delivery by the Issuer ratified and confirmed by, this Ordinance or a resolution adopted by the Issuer prior to the adoption of this Ordinance.

"Net Proceeds" means the face amount of the Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds deposited in the Reserve Accounts.

"Nonpurpose Investment" means any Investment Property which is acquired with the Gross Proceeds of the Bonds and is not acquired in order to carry out the governmental purpose of the Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

"Purchase Price," for the purpose of computation of the Yield of the Bonds, has the same meaning as the term "issue price" in Sections 1273(b) and 1274 of the Code, and, in general, means the initial offering price of the Bonds to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which price a substantial amount of the Bonds of each maturity is sold or, if the Bonds are privately placed, the price paid by the first buyer of the Bonds or the acquisition cost of the first buyer. "Purchase Price," for purposes of computing Yield of Nonpurpose Investments, means the fair market value of the Nonpurpose Investments on the date of use of Gross Proceeds of the Bonds for acquisition thereof, or if later, on the date that Investment Property constituting a Nonpurpose Investment becomes a Nonpurpose Investment of the Bonds.

"Qualified Investments" means and includes any of the following:

- (a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or

national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6 of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is exempt from federal income taxation, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Regulations" means temporary temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Series 1987 A Bonds" or "Series A Bonds" means the not more than \$150,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1987 A, of the Issuer.

"Series 1987 B Bonds" or "Series B Bonds" means the not more than \$50,000 in aggregate principal amount of Sewer Revenue Bonds, Series 1987 B, of the Issuer.

"Yield" means that yield which, when used in computing the present worth of all payments of principal and interest (or other payments in the case of Nonpurpose Investments which require payments in a form not characterized as principal and interest) on a Nonpurpose Investment or on the Bonds produces an amount equal to the Purchase Price of such Nonpurpose Investment or the Bonds, all computed as prescribed in applicable Regulations.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF SERIES 1987 BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 2.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 1987 A Bonds, funding a reserve account for each series of Series 1987 Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any of such purposes, there shall be issued negotiable Series 1987 Bonds of the Issuer, in an aggregate principal amount of not more than \$200,000. Said Series 1987 Bonds shall be issued in two series, to be designated respectively, "Sewer Revenue Bonds, Series 1987 A," in the aggregate principal amount of not more than \$150,000, and "Sewer Revenue Bonds, Series 1987 B," in the aggregate principal amount of not more than \$50,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 1987 Bonds remaining after funding of the Reserve Accounts (if funded from Series 1987 Bond proceeds) and capitalization of interest, if any, shall be deposited in the Bond Construction Trust Fund established by Section 5.01 of the Prior Ordinance.

Provisions regarding the execution, authentication, registration, negotiability and transfer of the Series 1987 Bonds shall be as set forth in the Prior Ordinance. Other terms of the Series 1987 Bonds, including their interest rate, maturities, date and other provisions applicable only to the Series 1987 Bonds and not the Prior Bonds, shall be as set forth in the Supplemental Resolution.

Section 2.02. Series 1987 Bonds not to be Indebtedness of the Issuer. The Series 1987 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the respective Reserve Accounts. No holder or holders of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Bonds or the interest thereon.

Section 2.03. Series 1987 Bonds Secured by Pledge of Net Revenues; Lien Positions. The payment of the debt service of all the Series 1987 A Bonds shall be secured forthwith equally and ratably with each other, by a first lien on the Net Revenues derived from the System on a parity with the Series 1985 A Bonds. The payment of the debt service of all the Series 1987 B Bonds shall

also be secured forthwith equally and ratably with each other by a lien on the Net Revenues derived from the System, on a parity with the Series 1985 B Bonds, but junior and subordinate to the lien on such Net Revenues in favor of the Holders of the Series 1985 A Bonds and the Series 1987 A Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds and to make the payments into the Sinking Funds, the Reserve Accounts therein and the Renewal and Replacement Fund hereinafter established, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 2.04. Form of Series 1987 Bonds. The text of the Series 1987 Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Series 1987 A Bond]

UNITED STATES OF AMERICA
 STATE OF WEST VIRGINIA
 TOWN OF BARRACKVILLE
 SEWER REVENUE BOND, SERIES 1987 A

No. AR-_____

\$_____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BARRACKVILLE, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ (\$_____), in installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference with interest on each installment at the rate per annum set forth on said Exhibit A.

The interest rate on each installment shall run from the original date of delivery of this Bond to the Authority and payment therefor, and until payment of such installment, and such interest shall be payable on April 1 and October 1 in each year, beginning _____ 1, 19____. Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar") on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement between the Issuer and the Authority, dated _____, 198__.

This Bond is a completion bond and is issued (i) to pay a portion of the costs of completion of acquisition and construction of certain new sewage collection and transportation facilities of the Issuer (the "Project") not otherwise provided for; (ii) to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted on December 3, 1985, a supplemental and amendatory ordinance duly enacted on October 6, 1987, and a Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on _____, 1987 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

This Bond is issued contemporaneously with the Sewer Revenue Bonds, Series 1987 B, of the Issuer (the "Series 1987 B Bonds"), issued in the aggregate principal amount of \$_____, which Series 1987 B Bonds are junior and subordinate with respect to liens and sources of and security for payment to the Bonds.

THIS BOND IS ON A PARITY WITH THE SEWER REVENUE BONDS, SERIES 1985 A, OF THE ISSUER, DATED DECEMBER 9, 1985, ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$618,894 (THE "SERIES 1985 A BONDS").

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, moneys in the Reserve Account created under the Bond Legislation for the Bonds (the "Series A Bonds Reserve Account"), and unexpended proceeds of the Bonds and the Series 1987 B Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from said special fund provided from the Net Revenues, the moneys in the Series A Bonds Reserve Account and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the

System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any year of principal of and interest on the Series 1985 A Bonds, the Series 1985 B Bonds, the Bonds, the Series 1987 B Bonds, and all other obligations secured by or payable from such revenues prior to or on a parity with the Series 1985 A Bonds, the Bonds or the Series 1987 B Bonds, provided however, that so long as there exists in the Series A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in any year, and in the respective reserve accounts established for the Series 1987 B Bonds and any other obligations outstanding prior to or on a parity with the Bonds or the Series 1987 B Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

This Bond is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be

performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF BARRACKVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed hereon and attested by its Town Clerk, and has caused this Bond to be dated _____, 1987.

[SEAL]

Mayor

ATTEST:

Town Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1987 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

Date: _____

ONE VALLEY BANK, NATIONAL ASSOCIATION,
as Registrar

By _____
Its Authorized Officer

EXHIBIT A
SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

[Form of Series 1987 B Bond]

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
TOWN OF BARRACKVILLE
SEWER REVENUE BOND, SERIES 1987 B

No. BR-_____

\$ _____

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BARRACKVILLE, a municipal corporation and political subdivision of the State of West Virginia in Marion County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the West Virginia Water Development Authority (the "Authority") or registered assigns the sum of _____ (\$ _____), in annual installments on October 1 of each year as set forth on the "Schedule of Annual Debt Service" attached as Exhibit A hereto and incorporated herein by reference, without interest.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent").

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Supplemental Loan Agreement between the Issuer and the Authority, dated _____, 198__.

This Bond is a completion bond and is issued (i) to pay a portion of the costs of completion of acquisition and construction of certain new sewage collection and transportation facilities of the Issuer (the "Project") not otherwise provided for; (ii) to fund a reserve account for the Bonds of this Series (the "Bonds"); and (iii) to pay certain costs of issuance hereof and related costs. This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and an Ordinance duly enacted on December 3, 1985, a supplemental and amendatory ordinance duly

enacted on October 6, 1987, and a Supplemental Resolution, duly enacted and adopted, respectively, by the Issuer on _____, 1987 (collectively called the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ON PARITY WITH THE SEWER REVENUE BONDS, SERIES 1985 B, OF THE ISSUER, DATED DECEMBER 9, 1985, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$308,106 (THE "SERIES 1985 B BONDS") AND IS JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGES AND SOURCES OF AND SECURITY FOR PAYMENT TO THE OUTSTANDING SEWER REVENUE BONDS, SERIES 1987 A, OF THE ISSUER (THE "SERIES 1987 A BONDS"), ISSUED CONCURRENTLY HERewith AND THE SEWER REVENUE BONDS, SERIES 1985 A, OF THE ISSUER (THE "SERIES 1985 A BONDS") HERETOFORE ISSUED, ALL AS DESCRIBED IN THE BOND LEGISLATION.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System after there has first been paid from said Net Revenues all payments then due and owing on account of the Series 1985 A Bonds and the Series 1987 A Bonds herein described and to all moneys in the Reserve Account created under the Bond Legislation for the Bonds of this Series, and unexpended proceeds of the Bonds of this series. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the moneys in the reserve account for the Series B Bonds and unexpended Bond proceeds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the amount required to pay the maximum amount due in any year of principal of and interest, if any, on the Series 1985 A Bonds, the Series 1985 B Bonds, the Bonds, the Series 1987 A Bonds and all other obligations secured by or payable from such revenues prior to or on a parity with the Series 1987 A Bonds or the Bonds, provided however, that so long as there exists in the the reserve accounts

established for the Series A Bonds and Series B Bonds, respectively, amounts at least equal to the maximum amount of principal and interest which will become due on the Series 1985 A Bonds, the Series 1985 B Bonds, the Bonds and the Series 1987 A Bonds in any year, and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of One Valley Bank, National Association, Charleston, West Virginia, as registrar (the "Registrar") by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements as set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law, shall be applied solely to the payment of the Costs of the Project described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the registered owners of the Bonds, which lien is subordinate to the lien in favor of the registered owners of the Series 1987 A Bonds.

This Bond is a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the

System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the TOWN OF BARRACKVILLE has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed hereon and attested by its Town Clerk, and has caused this Bond to be dated _____, 1987.

[SEAL]

Mayor

ATTEST:

Town Clerk

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 1987 B Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above.

Date: _____

ONE VALLEY BANK, NATIONAL ASSOCIATION,
as Registrar

By _____
Its Authorized Officer

EXHIBIT A
SCHEDULE OF ANNUAL DEBT SERVICE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

the within Bond and does hereby irrevocably constitute and appoint _____, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: _____, _____.

In the presence of:

Section 2.05. Sale of Series 1987 Bonds; Ratification of Execution of Loan Agreement with Authority. The Series 1987 Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, ratified and approved.

ARTICLE III

SYSTEM REVENUES AND APPLICATION THEREOF

Section 3.01. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby established with the Commission:

(1) Series 1987 A Bonds Sinking Fund;

(a) Within the Series 1987 A Bonds Sinking Fund, the Series 1987 A Bonds Reserve Account.

(2) Series 1987 B Bonds Sinking Fund;

(a) Within the Series 1987 B Bonds Sinking Fund, the Series 1987 B Bonds Reserve Account.

Section 3.02. Payment of Debt Service on Series 1987 Bonds. In addition to the payments required by the Prior Ordinance to be made with respect to the Prior Bonds, the Issuer shall pay into the sinking funds and reserve accounts established hereunder for the Series 1987 Bonds, the amounts prescribed by Article V of the Prior Ordinance, adjusted to reflect the different principal amounts of the Series 1987 Bonds. Payment of principal of and interest on the Series 1987 A Bonds, and deposits into the Series 1987 A Bonds Reserve Account shall be made on parity with such payments and deposits required for the Series 1985 A Bonds. Payment of principal of and interest on the Series 1987 B Bonds Reserve Account shall be made subsequent to such payments on account of the Series A Bonds, and on parity with such payments on account of the Series 1985 B Bonds.

ARTICLE IV

SERIES 1987 BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01. Application of Series 1987 Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the moneys received from the sale of any or all of the Series 1987 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 1987 A Bonds, there shall first be deposited with the Commission in the Series 1987 A Bonds Sinking Fund, the amount, if any, specified in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 1987 A Bonds for the period commencing on the date of issuance of the Bonds and ending 6 months after the estimated date of completion of construction of the Project.

B. Next, from the proceeds of the Series 1987 A Bonds, there shall be deposited with the Commission in the Series 1985 A Bonds Reserve Account and from the proceeds of the Series 1987 B Bonds, there shall be deposited with the Commission in the Series 1985 B Reserve Account the respective sums, if any, set forth in the Supplemental Resolution for additional funding of the Reserve Accounts on account of the Series 1987 Bonds.

C. The remaining moneys derived from the sale of the Bonds shall be deposited with the Depository Bank in the Bond Construction Trust Fund and applied solely to payment of Costs of the Project in the manner set forth in Section 6.02 of the Prior Ordinance.

D. The Depository Bank shall act as a trustee and fiduciary for the Bondholder with respect to the Bond Construction Trust Fund and shall comply with all requirements with respect to the disposition of the Bond Construction Trust Fund set forth in the Bond Legislation. Moneys in the Bond Construction Trust Fund shall be used solely to pay Costs of the Project and until so expended, are hereby pledged as additional security for the Series 1987 A Bonds, and thereafter for the Series 1987 B Bonds.

ARTICLE V

ADDITIONAL COVENANTS OF THE ISSUER

Section 5.01. Covenants in Prior Ordinance to Apply to Series 1987 Bonds. All the covenants, agreements and provisions of the Prior Ordinance shall be applicable to the Series 1987 Bonds, and shall constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 1987 Bonds. In addition to the other covenants, agreements and provisions of the Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 1987 Bonds as hereinafter provided in this Article V. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Series 1987 Bonds or the interest thereon is Outstanding and unpaid.

Section 5.02. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 1987 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 1987 Bonds during the term thereof is, under the terms of the Series 1987 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 1987 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 1987 Bonds during the term thereof is, under the terms of the Series 1987 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 1987 Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 1987 Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental

use of that portion of the Project to which such Private Business Use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 1987 Bonds or \$5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 1987 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code and Regulations promulgated thereunder.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 1987 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 1987 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.03. Arbitrage. The Issuer covenants that (i) it will restrict the use of the proceeds of the Series 1987 Bonds in such manner and to such extent as may be necessary, in view of the Issuer's reasonable expectations at the time of issuance of the Series 1987 Bonds, so that the Series 1987 Bonds will not constitute "arbitrage bonds" under Section 148 of the Code and Regulations, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 1987 Bonds) so that the interest on the Series 1987 Bonds will be and remain excludable from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 5.04. Rebate of Excess Investment Earnings to the United States. In the event the Issuer receives an opinion of Bond Counsel to the effect that any of the funds or accounts described herein are subject to the "rebate" requirements of Section 148(f) of the Code, and not exempted from such requirements, the Issuer shall take the following actions as set forth in this Section 5.04.

A. CREATION OF FUNDS. There are hereby created, to be held by the Depository Bank as separate funds distinct from all other funds and accounts held by the Depository Bank under this Bond Legislation, the Earnings Fund and the Rebate Fund. All interest earnings and profits on amounts in all funds and accounts established under this Bond Legislation, other than (i) interest earnings and profits on any funds referenced in Subsection C(5) of this Section if such earnings in any Bond Year are less than \$100,000, (ii) interest earnings and profits on amounts in funds and accounts which do not constitute Gross Proceeds, and (iii) interest earnings and profits on the Rebate Fund shall, upon receipt by the Depository Bank, be deposited in the Earnings Fund. In addition, all interest earnings and profits on Gross Proceeds in funds held by the Issuer shall, upon receipt, be paid to the Depository Bank for deposit in the Earnings Fund. Annually, on the last day of each Bond Year or on the preceding business day in the event that such last day is not a business day, the Depository Bank shall transfer from the Earnings Fund to the Rebate Fund for purposes of ultimate payment to the United States an amount equal to Excess Investment Earnings, all as more particularly described in this Section. Following the transfer referenced in the preceding sentence, the Depository Bank shall transfer all amounts remaining in the Earnings Fund to be used for the payment of Debt Service on the next interest payment date and for such purpose, Debt Service due from the Issuer on such date shall be credited by an amount equal to the amount so transferred.

B. DUTIES OF ISSUER IN GENERAL. The Issuer shall calculate Excess Investment Earnings in accordance with Subsection C and shall assure payment of an amount equal to Excess Investment Earnings to the United States in accordance with Subsections D and E.

C. CALCULATION OF EXCESS INVESTMENT EARNINGS. Within 30 days following the last day of the first Bond Year, the Issuer shall calculate, and shall provide written notice to the Original Purchaser and Depository Bank of, the Excess Investment Earnings referenced in clause (A) of the definition of Excess Investment Earnings. Thereafter, within 30 days following the last day of each Bond Year and within 30 days following the date of the retirement of the Bond, the Issuer shall calculate, and shall provide written notice to the Purchaser and Depository Bank of, the amount of Excess Investment Earnings. Said calculations shall be made or caused to be made by the Issuer in accordance with the following:

- (1) Except as provided in (2), in determining the amount described in clause A(i) of the definition of Excess Investment Earnings, the aggregate amount earned on Nonpurpose Investments shall include (i) all income

realized under federal income tax accounting principles (whether or not the person earning such income is subject to federal income tax) with respect to such Nonpurpose Investments and with respect to the reinvestment of investment receipts from such Nonpurpose Investments (without regard to the transaction costs incurred in acquiring, carrying, selling or redeeming such Nonpurpose Investments), including, but not limited to, gain or loss realized on the disposition of such Nonpurpose Investments (without regard to when such gains are taken into account under Section 453 of the Code relating to taxable year of inclusion of gross income), and income under Section 1272 of the Code (relating to original issue discount) and (ii) any unrealized gain or loss as of the date of retirement of the Series 1987 Bonds in the event that any Nonpurpose Investment is retained after such date.

(2) In determining the amount described in clause (A) of the definition of Excess Investment Earnings, Investment Property shall be treated as acquired for its fair market value at the time it becomes a Nonpurpose Investment, so that gain or loss on the disposition of such Investment Property shall be computed with reference to such fair market value as its adjusted basis.

(3) In determining the amount described in clause (A)(ii) of the definition of Excess Investment Earnings, the Yield on the Series 1987 Bonds shall be determined based on the actual Yield of the Series 1987 Bonds during the period between the Closing Date of the Series 1987 Bonds and the date the computation is made (with adjustments for original issue discount or premium).

(4) In determining the amount described in clause (B) of the definition of Excess Investment Earnings, all income attributable to the excess described in clause (A) of said definition must be taken into account, whether or not that income exceeds the Yield of the Bond, and no amount may be treated as "negative arbitrage."

(5) In determining the amount of Excess Investment Earnings, there shall be excluded any amount earned on any fund or account which is used primarily to achieve a proper matching of revenues and Debt Service within each Bond Year and which is depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1 year's earnings on such fund or account

or 1/12th of annual Debt Service as well as amounts earned on said earnings if the gross earnings on such fund or account for the Bond Year is less than \$100,000.

D. PAYMENT TO THE UNITED STATES. The Issuer shall direct the Depository Bank to pay from the Rebate Fund an amount equal to Excess Investment Earnings to the United States in installments with the first payment to be made not later than 30 days after the end of the 5th Bond Year and with subsequent payments to be made not later than 5 years after the preceding payment was due. The Issuer shall assure that each such installment is in an amount equal to at least 90% of the Excess Investment Earnings with respect to the Gross Proceeds as of the close of the computation period. Not later than 60 days after the retirement of the Series 1987 Bonds, the Issuer shall direct the Depository Bank to pay from the Rebate Fund to the United States 100% of the theretofore unpaid Excess Investment Earnings in the Rebate Fund. In the event that there are any amounts remaining in the Rebate Fund following the payment required by the preceding sentence, the Depository Bank shall pay said amounts to the Issuer to be used for any lawful purpose of the System. The Issuer shall remit payments to the United States at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. In the event that, for any reason, amounts in the Rebate Fund are insufficient to make the payments to the United States which are required by this Subsection D, the Issuer shall assure that such payments are made by the Issuer to the United States, on a timely basis, from any funds lawfully available therefor.

E. FURTHER OBLIGATIONS OF ISSUER. The Issuer shall assure that Excess Investment Earnings are not paid or disbursed except as required in this Section. To that end the Issuer shall assure that investment transactions are on an arm's length basis and that Nonpurpose Investments are acquired at their fair market value. In the event that Nonpurpose Investments consist of certificates of deposit or investment contracts, investment in such Nonpurpose Investments shall be made in accordance with the procedures described in applicable Regulations as from time to time in effect. The Depository Bank shall keep the moneys in the Earnings Fund and Rebate Fund invested and reinvested to the fullest extent practicable in Government Obligations with maturities consonant with the required use thereof and investment profits and earnings shall be credited to the account of such fund on which earned.

F. MAINTENANCE OF RECORDS. The Issuer shall keep, and retain for a period of 6 years following the retirement of the Series 1987 Bonds, records of the determinations made pursuant to this Section 5.04.

G. INDEPENDENT CONSULTANTS. In order to provide for the administration of this Section 5.04, the Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate.

H. FURTHER AGREEMENT. Notwithstanding the foregoing, the Issuer further covenants to comply with all Regulations from time to time in effect and applicable to the Series 1987 Bonds, as may be necessary in order to fully comply with Section 148(f) of the Code.

ARTICLE VI

DEFEASANCE

Section 6.01. Defeasance of Series 1987 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1987 A Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1987 A Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1987 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1987 A Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 1987 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1987 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1987 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1987 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or

its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

Section 6.02. Defeasance of Series 1987 B Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the respective Holders of all Series 1987 B Bonds, the principal due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 1987 B Bonds only, the pledge of Net Revenues and other moneys and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 1987 B Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

Series 1987 B Bonds for the payment of which either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with the moneys, if any, deposited with the Paying Agents at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date the principal installments of and interest on such Series 1987 B Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 1987 B Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either moneys in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide moneys which, together with other moneys, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 1987 B Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor moneys deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 1987 B Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the

purpose of this section, securities shall mean and include only Government Obligations.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Amendment or Modification of Bond Legislation. No material modification or amendment of this Bond Legislation, or of any resolution amendatory or supplemental hereto, that would materially and adversely affect the respective rights of Registered Owners of the Bonds shall be made without the consent in writing of the Registered Owners of 66-2/3% or more in principal amount of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein respectively pledged therefor without the consent of the respective Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder or Noteholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure exemption from federal income taxation of interest on the Bonds.

Section 7.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Series 1987 Bonds and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 7.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the Prior Ordinance, this Ordinance, the Supplemental Resolution or the Bonds.

Section 7.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 7.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof (including

the Prior Ordinance) in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 7.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Town Clerk and members of the the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 7.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 7.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Times-West Virginian, a qualified newspaper of general circulation in the Town of Barrackville, no newspaper being published in the Town of Barrackville, together with a notice stating that this Bond Legislation has been adopted and that the Issuer contemplates the issuance of the Bond, and that any person interested may appear before the City Council upon a date certain, not less than ten days subsequent to the date of the first publication of this Bond Legislation and notice, and present protests, and that a certified copy of the Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At

such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading - September 15, 1987

Passed on Second Reading - September 22, 1987

Passed on Final Reading
Following Public
Hearing - October 6, 1987

Mark A. Belyard
Mayor

James D. Doyle
Town Clerk

ORDINANCE NO. 42

AN ORDINANCE ESTABLISHING A FLOOD PLAIN DISTRICT AND REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESS, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR THE ISSUANCE OF SUCH PERMITS; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOOD PLAIN DISTRICT AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISION OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the TOWN OF BARRACKVILLE, MARION County, West Virginia as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal, and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.2 Abrogation and Greater Restrictions

This Ordinance supersedes any ordinances currently in effect in flood prone areas. However, any ordinance shall remain in full force and effect to the extent that its provision are more restrictive.

Section 1.3 Applicability

Provisions of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the municipality's and/or county's need to minimize the hazards and damage resulting from flooding.

ARTICLE II - DEFINITIONSBase Flood

The flood which has been selected to serve as the basis upon which the flood plain management provisions of this and other ordinances have been prepared; for purposes of this Ordinance, the one-hundred (100) year flood.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Flood

A general and temporary inundation of normally dry land areas.

Flood Plain

(1) a relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; (2) an area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Floodproofing

Any combination of structural and non-structural additions, changes or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured Home Park or Subdivision

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New Construction

Structures for which the Start of Construction as herein defined commenced on or after the effective date of this Ordinance. This term does not apply to any work on a structure existing before the effective date of this Ordinance.

One Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value is above ground.

Start of Construction

The first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure

A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial Improvement

Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either,

- (a) before the improvement or repair is started or
- (b) if the structure has been damaged, and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimension of the structure. the term does not, however, include either,

- (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or
- (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

ARTICLE III - ESTABLISHMENT OF THE FLOOD PLAIN DISTRICT

Section 3.1 - Identification

The identified floodplain area shall be those areas of the Town of Barrackville, which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) which accompanies the Flood Insurance Study (FIS) prepared for the Town of Barrackville by the Federal Emergency Management Agency (FEMA) dated March 16, 1988, or the most recent revision thereof.

Section 3.2 - Description of Floodplain Areas/Districts

The identified floodplain area shall consist of the following two specific areas/districts:

- a. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA and for which one hundred (100) year flood elevations have been provided in the FIS. For this Area/District, floodway information from other Federal, State, or other acceptable source shall be used when available.

- b. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site. The Town of Barrackville may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted to sufficient detail to allow a thorough technical review by the Town of Barrackville.

Section 3.3 - Changes in Designation of Area(s)

The delineation of any of the identified flood-prone area(s) may be revised by the Barrackville Town Council where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, River Basin Commission or other qualified agency or individual documents the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

Section 3.4 - Boundary Disputes

Should a dispute concerning any district boundary arise, an initial determination shall be made by the Permit Officer and any party aggrieved by this decision may appeal to the Barrackville Town Council. The burden of proof shall be on the appellant.

ARTICLE IV - UTILIZATION OF THE FLOODPLAIN DISTRICT

1. In the Floodplain District any development and/or use of land may be permitted provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the floodproofing and related provisions contained herein and in all other applicable codes, ordinances and regulations. For any manufactured home park or subdivision an evacuation plan which indicated alternate access routes shall be filed with the Town of Barrackville and Disaster Preparedness Authorities of Marion County.
2. Within any Floodway area, no development shall be permitted that would cause any increase in the 100 Year Flood elevation.
3. Within any A/E Area/District, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one (1) foot at any point. The Town of Barrackville shall require documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one foot at any point.
4. In addition, whenever a developer intends to alter or relocate a watercourse with the floodplain District, the developer shall notify in writing by certified mail all adjacent communities and the State Coordinating Office of all such intended activities prior to any alteration or relocation of the water course, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the Town of Barrackville in writing, that

ARTICLE V - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 - General

Building Permits are required in order to determine whether all new construction or substantial improvements are:

- (1) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement.
- (2) constructed with materials and utility equipment resistant to flood damage.
- (3) constructed by methods and practices that minimize flood damage.

Section 5.2 Basic Format

The basic format of the Building Permit shall include the following:

- (1) Name and address of applicant.
- (2) Name and address of owner of land on which proposed construction is to occur.
- (3) Name and address of contractor.
- (4) Site location.
- (5) Brief description of proposed work and estimated cost.
- (6) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- (7) For new construction or development, documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one (1) foot at any point.

Section 5.3 Elevation and Floodproofing Information

Depending on the type of structure involved, the following information shall also be included in the building permit for work within the Flood Plan District:

A. For structures to be elevated to the Base Flood Elevation:

- 1) a plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
- 2) a determination of elevations of the existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer, Surveyor or Architect.
- 3) plans showing the method of elevating the proposed structure, includes details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Permit Officer, these plans shall be prepared by a Registered Professional Engineer or Architect.

- 4) plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to the Base Flood Elevation at the building site.
- B. For structures to be floodproofed to the Base Flood Elevation (nonresidential structures only):
- 1) plans showing details of all floodproofing measures, prepared by a Registered Professional Engineer or Architect, and showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - 2) a determination of elevations of existing ground, proposed finished ground, lowest floor, and floodproofing limits; certified by a Registered Professional Engineer, Surveyor, or Architect.
 - 3) a certificate prepared by the registered Professional Engineer or Architect who prepared the plans in 1) above, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
 - a. below the Base Flood Elevation the structure is watertight with walls substantially impermeable to the passage of water.
 - b. the structure will withstand the hydrostatic, hydrodynamic buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

Section 5.4 Site Plan Criteria

The owner or developer of any proposed subdivision manufactured home park or subdivision or other development shall submit a site plan to the Permit Officer which includes the following information:

- 1) Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.
- 2) A map showing the location of the proposed subdivision and/or development with respect to the municipality's flood-prone areas, proposed lots and sites, fills, flood or erosion protective facilities and areas subject to special deed restriction. In addition, it is required that all subdivision proposals and other proposed new developments greater than 50 lots or five (5) acres, whichever is the lesser, shall include base flood elevation data.
- 3) Where the subdivision and/or development lies partially or completely in the flood-prone areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the flood-prone areas.

ARTICLE VI - SPECIFIC REQUIREMENTS

6.1 Design and Construction Standards

In order to prevent excessive damage to buildings and structures, the following restrictions shall apply to all new construction and to construction of substantial improvements to existing structures occurring in the Flood Plain District.

A. Basements and Lowest Floors

All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to the Base Flood Elevation. All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated to the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that below the Base Flood Elevation the structure is floodproofed in accordance with Section 5.3B.

For all new construction and substantial improvements, those fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- 1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- 2) The bottom of all openings shall be no higher than one foot above grade.
- 3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Fill

If fill is used to raise the finished surface of the lowest floor to the Base Flood Elevation:

- 1) Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points. For non-residential structures, fill shall be placed to provide access acceptable for intended use. At-grade access, with fill extending laterally fifteen (15) feet beyond the building line, shall be provided to a minimum of twenty-five (25) percent of the perimeter of a non-residential structure.
- 2) Fill shall consist of soil or rock materials only. Sanitary land fills shall not be permitted.
- 3) Fill materials shall be compacted to provide the necessary stability and resistance to erosion, scouring, or settling.
- 4) Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Permit Officer.
- 5) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

C. Placement of Buildings, Structures, and Manufactured Homes

- 1) All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of flood water.

- 2) Manufactured homes shall be elevated on a permanent foundation so that the lowest floor of each manufactured home will be at the Base Flood Elevation.
- 3) When manufactured homes are to be elevated on pilings, lots shall be large enough to permit steps, piles shall be placed in stable soil no more than ten feet apart, and reinforcement shall be provided for pilings more than six feet above the ground level.
- 4) All manufactured homes shall be provided with adequate surface drainage and access for a manufactured home hauler.

D. Anchoring

- 1) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
- 2) All air ducts, large pipes and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.
- 3) All manufactured homes shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties to ground anchors such as the following:
 - a. over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations or one additional tie per side for manufactured homes less than 50 feet long.
 - b. frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side.
 - c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.
 - d. any additions to a manufactured home shall be similarly anchored.

E. Storage

No materials that are bouyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.

F. Utility and Facility Requirements

- 1) All new or replacement water systems, located in the Flood Plain District, whether public or private, shall be floodproofed to the Base Flood Elevation.

- 2) All new or replacement sanitary disposal systems, located within Flood Plain District, whether public or private, shall be floodproofed to the Base Flood Elevation.
- 3) All other new or replacement public and/or private utilities and facilities shall be elevated or floodproofed to the Base Flood Elevation.

G. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

H. Non-Conforming Uses

- 1) Any modification, alteration, reconstruction or improvement of any kind to an existing structure or use, regardless of the amount involved, located within the A/E zone/district shall comply with the requirements of sections 4.2 and 4.3.
- 2) Any modification, alteration, reconstruction or improvement of any kind to an existing structure or use, regardless of the amount involved, located within the Floodway area shall comply with the requirements of sections 4.2 and 4.3.

ARTICLE VII - ADMINISTRATION

Section 7.1 Building Permits and Site Plan Approvals Required

It shall be unlawful for any person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement or relocation of any structure (including manufactured homes) with the Flood Plain District, unless the necessary permits have been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.

Section 7.2 Approval of Permits and Plans

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the State and all other applicable codes and ordinances.

The Permit Officer shall require copies of all necessary permits from those governmental agencies from which approval is required by Federal or State Law.

A record of all information supplied to the Permit Officer shall be kept on file by the Town of Barrackville.

Section 7.3 Application Procedures

Application for building permit and site plan approvals shall be made, in writing, to the Permit Officer, and shall include all information stipulated under Article V of this Ordinance.

Section 7.4 Changes

After the issuance of a building permit or site plan approval by the Permit Officer, no changes of any kind shall be made to the application, permit, or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Permit Officer.

Section 7.5 Placards

In addition to the building permit, the Permit Officer shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the building permit, the date of it issuance and be signed by the Permit Officer.

Section 7.6 Start of Construction

Work on the proposed construction shall begin within six (6) months after the date of issuance of the building permit or the permit shall expire unless a time extension is granted, in writing, by the Permit Officer.

Section 7.7 Inspection and Revocation

During the construction period, the Permit Officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances. In the event the Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances or that there has been a false statement/or misrepresentation by any applicant, the Permit Officer shall revoke the building permit and report such fact to the Town of Barrackville for whatever action it considers necessary.

Section 7.8 Fees

Applications for a building permit shall be accompanied by a fee, payable to the Barrackville Town Council, based upon the estimated cost of the proposed construction as determined by the Permit Officer at the following rates.

<u>Estimated Cost</u>	<u>Fee</u>
\$0.00 to \$50.00	\$
\$51.00 to \$500.00	\$ All fees \$25.
501.00 to 1,000.00 and over	\$
first thousand, each additional	\$
thousand or part thereof.	

(including manufactured homes) with the Flood Plain District, unless the necessary permits have been obtained from the Permit Officer. In addition, where land is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a site plan must be submitted to, and approved by, the Permit Officer prior to any development.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

Whenever any person is aggrieved by a decision of the Permit Officer with respect to the provision of this Ordinance, it is the right of that person to appeal to the Barrackville Town Council. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Permit Officer. Upon receipt of such appeal, the Barrackville Town Council shall set a time and place not less than ten (10) nor more than thirty (30) days for the purpose of hearing the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties at which time they may appear and be hear. The determination by the Barrackville Town Council shall be final in all cases.

Section 8.2 Appeal Review Criteria

All appeals contesting only the permit fee established by the Permit Officer may be handled at the discretion of the Barrackville Town Council.

All decisions on appeals to all other provisions of this Ordinance shall adhere to the following criteria:

- 1) Affirmative decisions shall only be issued by the Barrackville Town Council upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
- 2) An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief.
- 3) The Barrackville Town Council shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation may result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
- 4) The Barrackville Town Council shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its annual report submitted to the Federal Insurance Administration.
- 5) No variance shall be granted for any construction, development, use or activity within any floodway area that would cause any increase in the one hundred (100) year flood.
- 6) No variance shall be granted for any construction, development, use or activity within any AE area that would together with all other existing and anticipated development, increase the one hundred (100) year flood elevation more than one (1) foot at any point.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Permit Officer or any other authorized employee of the municipality shall be guilty of an offense and, upon conviction, shall pay a fine to the Town of Barrackville of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00). Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this Ordinance shall not excuse the violation or non-compliance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in non-compliance with this Ordinance may be declared by the Barrackville Town Council to be a public nuisance and abatable as such.

ARTICLE IX - SEVERABILITY AND MUNICIPAL LIABILITY

Section 9.1 - Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 9.2 - Municipal Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Town of Barrackville or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Barrackville its officials or employees.

ARTICLE X - REPEAL OF PRIOR ORDINANCE

Section 10.1 - Ordinance No. 14 is hereby repealed.

ARTICLE XI - ENACTMENT

Section 11.1 - This Ordinance shall be effective immediately upon passage

Passed on FIRST READING February 16, 1988

Passed on SECOND AND FINAL READING March 1, 1988, by the Town Council of the Town of Barrackville, Marion County, West Virginia.

Mark A. Bolyard
Mark A. Bolyard, Mayor

ATTEST:

James D. Doyle
James D. Doyle, Recorder

ORDINANCE NO. 42 A

AN ORDINANCE SETTING THE COMPENSATION FOR THE POLICE OFFICER

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE

Effective July 1, 1989, the monthly salary of the police officer of this municipality shall be \$765.00 per month.

Insofar as prior ordinances set the salary of the police officer, those ordinances are hereby repealed only to that extent.

Passed by the Town Council this 4th day of April, 1989.

Mark A. Belyand
Mayor

ATTEST:

James D. Dyk
Recorder

ORDINANCE NO. 43

AN ORDINANCE TO PROVIDE FOR THE RAISING OF REVENUE FOR THE TOWN OF BARRACKVILLE BY IMPOSING A PRIVILEGE TAX UPON THE EXERCISING OF CERTAIN BUSINESSES AND OCCUPATIONS WITHIN THE TOWN

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

Section 1. Definitions

When used in this ordinance the term "person" or the term "company," herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax Year" or "taxable year" means the fiscal year beginning on and including the first day of July of each year and extending to and including the thirtieth day of June of the following year.

"Sales," "sales" or "selling" includes any transfer of the ownership of or title to property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.

"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 (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

"Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sale" shall not be construed to include (1) cash discounts allowed and taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; (3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; (4) excise taxes imposed by this State; or (5) money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

"Business" shall include 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 not 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.

Section 2. Imposition of Privilege Tax

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections 2A to 2C.

If any person liable for any tax under sections 2A or 2B shall ship or transport his products or any part thereof out of the town without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the town shall be the basis for the assessment of the tax imposed in such sections, except in those instances in which another measure of the tax is expressly provided. The collector shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the collector shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections 2A and 2B shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising privileges taxable under the other sections of this ordinance, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under section 2, and using or consuming the same in his business, or transferring or delivering the same as any royalty payment, in kind, or the like shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the collector shall prescribe.

Section 2A. Production of Coal and Other Natural Resource Products

Upon every person exercising the privilege of engaging or continuing within this town in the business of severing, extracting, reducing to possession and 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 rate as follows: Coal, limestone or sandstone, quarried or mined, oil, natural gas, in excess of the value of five thousand dollars, sand, gravel or other mineral product not quarried or mined, and timber, other natural resource products, one percent.

The measure of this tax is the value of the entire production in this town, regardless of the place of sale or the fact that the delivery may be made to points outside the town; provided that for the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple coowners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined in section 1, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors or a part of such natural resources as rents or royalties. Recipients of royalties or rents in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of section 2I.

Section 2B. Manufactured or Compounded Products

Upon every person engaging or continuing within this town 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 articles, substances or commodities, or electric power produced by public utilities or others and not taxed under other provisions of this ordinance, the amount of the tax referred to in section 2 shall be equal to the value of the article, substance, commodity or electric power manufactured, compounded or 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 otherwise provided, multiplied by a rate of two-tenths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this town for sale, profit, or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the town. However, the dressing and processing of food by a person, which food is to be sold on a wholesale basis by such person shall not be considered as manufacturing or compounding.

It is further provided, that in those instances in which the same person partially manufactures, compounds or prepares products within this town and partially manufactures, compounds or prepares such products outside of this town, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this town bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in the town bears to the full cost of manufacture of the articles.

Section 2C. Public Service or Utility Business

Upon any person engaging or continuing within this town in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship, and motor vehicle carriers, there is likewise 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:

Electric light and power companies, four percent; natural gas companies, three and one-half percent on the gross income; and upon all other public service or utility business, two percent.

The measure of this tax shall not include gross income derived from outside the town.

Section 3. Businesses Exempt

The provisions of this ordinance shall not apply to:

- (a) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (b) Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.

Section 4. Computation of Tax Generally

The taxes levied under this ordinance shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by section 11, of the amount of tax to the office of the collector. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the collector, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the collector, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year periods.

Section 5. Return and Remittance by Taxpayer

On or before the expiration of one month after the end of the tax year each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this ordinance and deduct the amount of quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by section 12 covering the residue of the tax chargeable against him to the office of the collector. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The collector, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Section 6. Erroneous Computation

If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him under the provisions of this article, the collector shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the collector, and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

Section 7. Failure to make Return

If the collector believes that the tax imposed by this ordinance is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.

Section 8. Correction of Assessment

If any person, having made the return and paid the tax as provided by this ordinance, feels aggrieved by the assessment so made upon him for any year by the collector, he shall apply to the town council by petition in writing within thirty days after notice is mailed to him by the collector, for a hearing and a correction of the amount of the tax so assessed upon him by the collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The town council

shall promptly consider such petition, and may grant such hearing or deny the same. If denied the petitioner shall be forthwith notified thereof; if granted, the town council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the town council may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same may recover the amount paid, together with interest, in such proper action or suit against the collector, as may be authorized by law.

Section 9. Tax Year

The assessment of taxes made pursuant to this ordinance and the returns required therefor shall be for the year ending on June 30. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the collector, make annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

Section 10. Tax to be Cumulative

The tax imposed by this ordinance shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this ordinance subject to the payments of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay tax accruing under this article.

Section 11. Form of Payment

Every remittance of taxes imposed by this ordinance shall be made in lawful money of the United States or by bank draft, certified check, money order or certificate of deposit, to the collector who shall issue his receipt therefor to the taxpayer and pay the moneys into the town treasury to be kept and accounted for as provided by law.

Section 12. Tax a Debt; Lien of Unpaid Tax

A tax due and unpaid under this ordinance shall be a debt due the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that such lien shall be subject to the restrictions and conditions embodied in article 10C, chapter 38 of the Code of West Virginia, and any amendment made or which may hereafter be made thereto.

Section 13. Collection by Suit

The collector may by himself, or a duly appointed agent, collect taxes due and unpaid under this ordinance, together with all accrued penalties under the power conferred on the collector by law. After delinquency shall have continued sixty days, the collector may proceed by himself or his agent, in the circuit court of the 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 ordinance. In any proceeding under this section, upon judgment or decree for the plaintiff, he shall be awarded his costs.

Section 14. Payment when Person Sells Out or Quits Business

Any person exercising any privilege taxable under this ordinance who shall sell out his business or stock of goods, or shall cease doing such business, shall file the return prescribed by section 5 and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out his business or stock of goods, or ceasing to do such business. The tax imposed by this ordinance shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the collector evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty-day period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the collector by action or suit as provided by law.

Section 15. Interstate Commerce Exception

The measure of tax assessed in this ordinance shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign companies.

Section 16. Certificate of Payment Prerequisite to Final Settlement with Contractor

All officers and agents making contracts on behalf of the town shall withhold payment in the final settlement of such contract until the receipt of a certificate from the collector to the effect that all taxes levied or accrued under this ordinance against the contractor with respect to such contracts have been paid.

Section 17. Recordation of Assessment; Notice of Lien; Release of Lien

The collector for the more effective collection of the tax imposed by this ordinance may file with the clerk of the county commission a certified copy of the assessment of taxes under this ordinance for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded and thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the town as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this article the line of which shall have been recorded the collector shall certify in duplicate the fact and amount of payment and balance due, if any and shall forward the certificates, one to taxpayer, and one to clerk of the county commission. The clerk of the county commission shall record such certificates 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 town shall be free from any lien for taxes under this ordinance accrued to the date that the certificate was issued.

Section 18. Collection by Distraint, etc.

The collector may distraint upon any goods, chattels or intangibles represented by negotiable evidences or indebtedness, of any taxpayer delinquent under this ordinance for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this ordinance on real estate may be enforced by suit in equity and other means provided by law.

Section 19. Offenses and Penalties

It shall be unlawful for any person to refuse to make the return provided to be made in section 5; or to make any false or fraudulent return or false statement in any return, with the intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this ordinance; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof imposed by this ordinance; 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 ordinance, with the intent to evade the payment of any tax hereunder.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not more than five hundred dollars or imprisoned not exceeding thirty days in the city jail or punished by both fine and imprisonment, at the discretion of the municipal court within the limitations aforesaid. 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 of conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement as aforesaid, shall be made shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars.

Section 20. Administration of Ordinance

In order to effectively carry out and enforce the provisions of this ordinance there is hereby created the office of collector of all business privilege and occupational taxes hereinbefore provided for, said collector to be appointed by the town council to hold this office during the will and pleasure of said council. The administration of this ordinance is vested in, and shall be exercised by the collector who shall prescribe forms and reasonable rules of procedure in conformity with this ordinance 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 ordinance in any of the courts of the State shall be under the exclusive jurisdiction of the collector.

Section 21. Validity of Ordinance

If any section of this ordinance shall be held invalid, or unconstitutional, its validity shall not affect any other sections of this ordinance that can be given effect without the invalid section, and for this purpose the sections of this ordinance are hereby declared to be severable.

Section 22. Repeal of Inconsistent Ordinances

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 23. Effective Date of Ordinance

This ordinance shall be effective November 17, 1990.

Adopted by the Town Council this 18th day of September, 1990.

Maria Bayard
Mayor

ATTEST:

Recorder

ORDINANCE NO. 43A

AN ORDINANCE TO PROVIDE FOR THE RAISING OF REVENUE FOR THE TOWN OF BARRACKVILLE BY IMPOSING A PRIVILEGE TAX UPON THE EXERCISING OF CERTAIN BUSINESSES AND OCCUPATIONS WITHIN THE TOWN

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

Section 1. Definitions

When used in this ordinance the term "person" or the term "company," herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax Year" or "taxable year" means the fiscal year beginning on and including the first day of July of each year and extending to and including the thirtieth day of June of the following year.

"Sales," "sales" or "selling" includes any transfer of the ownership of or title to property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.

"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 (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

"Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sale" shall not be construed to include (1) cash discounts allowed and taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; (3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; (4) excise taxes imposed by this State; or (5) money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

"Business" shall include 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 not 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.

"Contracting" shall include 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 or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, but shall include only contracts exceeding \$100,000.00 for any one project, and shall not include contracts for construction of a one family residence.

Section 2. Imposition of Privilege Tax

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections 2A to 2C.

If any person liable for any tax under sections 2A or 2B shall ship or transport his products or any part thereof out of the town without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the town shall be the basis for the assessment of the tax imposed in such sections, except in those instances in which another measure of the tax is expressly provided. The collector shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the collector shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections 2A and 2B shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising privileges taxable under the other sections of this ordinance, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under section 2, and using or consuming the same in his business, or transferring or delivering the same as any royalty payment, in kind, or the like shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with

uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the collector shall prescribe.

Section 2A. Production of Coal and Other Natural Resource Products

Upon every person exercising the privilege of engaging or continuing within this town in the business of severing, extracting, reducing to possession and 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 rate as follows: Coal, limestone or sandstone, quarried or mined, oil, natural gas, in excess of the value of five thousand dollars, sand, gravel or other mineral product not quarried or mined, and timber, other natural resource products, one percent.

The measure of this tax is the value of the entire production in this town, regardless of the place of sale or the fact that the delivery may be made to points outside the town; provided that for the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple coowners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined in section 1, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors or a part of such natural resources as rents or royalties. Recipients of royalties or rents in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of section 21.

Section 2B. Manufactured or Compounded Products

Upon every person engaging or continuing within this town 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 articles, substances or commodities, or electric power produced by public utilities or others and not taxed under other provisions of this ordinance, the amount of the tax referred to in section 2 shall be equal to the value of the article, substance, commodity or electric power manufactured, compounded or 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 otherwise provided, multiplied by a rate of two-tenths of one

percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this town for sale, profit, or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the town. However, the dressing and processing of foot by a person, which food is to be sold on a wholesale basis by such person shall not be considered as manufacturing or compounding.

It is further provided, that in those instances in which the same person partially manufactures, compounds or prepares products within this town and partially manufactures, compounds or prepares such products outside of this town, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this town bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in the town bears to the full cost of manufacture of the articles.

Section 2C. Public Service or Utility Business

Upon any person engaging or continuing within this town in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship, and motor vehicle carriers, there is likewise 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:

Electric light and power companies, four percent on charges for domestic purposes and commercial lighting, and three percent on all other sales and demand charges; natural gas companies, three percent on the gross income; and upon all other public service or utility business, two percent.

The measure of this tax shall not include gross income derived from outside the town.

Section 2D. Business of Contracting

Upon every person engaging or continuing within this town in the business of contracting, the tax imposed shall be equal to one and two-tenths percent of the gross income.

Section 3. Businesses Exempt

The provisions of this ordinance shall not apply to:

- (a) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (b) Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.

Section 4. Computation of Tax Generally

The taxes levied under this ordinance shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by section 11, of the amount of tax to the office of the collector. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the collector, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the collector, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year periods.

Section 5. Return and Remittance by Taxpayer

On or before the expiration of one month after the end of the tax year each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this ordinance and deduct the amount of quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by section 12 covering the residue of the tax chargeable against him to the office of the collector. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The collector, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Section 6. Erroneous Computation

If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him under the provisions of this article, the collector shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the collector, and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

Section 7. Failure to make Return

If the collector believes that the tax imposed by this ordinance is insufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.

Section 8. Correction of Assessment

If any person, having made the return and paid the tax as provided by this ordinance, feels aggrieved by the assessment so made upon him for any year by the collector, he shall apply to the town council by petition in writing within thirty days after notice is mailed to him by the collector, for a hearing and a correction of the amount of the tax so assessed upon him by the collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The town council shall promptly consider such petition, and may grant such hearing or deny the same. If denied the petitioner shall be forthwith notified thereof; if granted, the town council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the town council may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same may recover the amount paid, together with interest, in such proper action or suit against the collector, as may be authorized by law.

Section 9. Tax Year

The assessment of taxes made pursuant to this ordinance and the returns required therefor shall be for the year ending on June 30. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the collector, make annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

Section 10. Tax to be Cumulative

The tax imposed by this ordinance shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under this ordinance subject to the payments of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay tax accruing under this article.

Section 11. Form of Payment

Every remittance of taxes imposed by this ordinance shall be made in lawful money of the United States or by bank draft, certified check, money order or certificate of deposit, to the collector who shall issue his receipt therefor to the taxpayer and pay the moneys into the town treasury to be kept and accounted for as provided by law.

Section 12. Tax a Debt; Lien of Unpaid Tax

A tax due and unpaid under this ordinance shall be a debt due the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that such lien shall be subject to the restrictions and conditions embodied in article 10C, chapter 38 of the Code of West Virginia, and any amendment made or which may hereafter be made thereto.

Section 13. Collection by Suit

The collector may by himself, or a duly appointed agent, collect taxes due and unpaid under this ordinance, together with all accrued penalties under the power conferred on the collector by law. After delinquency shall have continued sixty days, the collector may proceed by himself or his agent, in the circuit court of the 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 ordinance. In any proceeding under this section, upon judgment or decree for the plaintiff, he shall be awarded his costs.

Section 14. Payment when Person Sells Out or Quits Business

Any person exercising any privilege taxable under this ordinance who shall sell out his business or stock of goods, or shall cease doing such business, shall file the return prescribed by section 5 and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out his business or stock of goods, or ceasing to do such business. The tax imposed by this ordinance shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the collector evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty-day period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the collector by action or suit as provided by law.

Section 15. Interstate Commerce Exception

The measure of tax assessed in this ordinance shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign companies.

Section 16. Certificate of Payment Prerequisite to Final Settlement with Contractor

All officers and agents making contracts on behalf of the town shall withhold payment in the final settlement of such contract until the receipt of a certificate from the collector to the effect that all taxes levied or accrued under this ordinance against the contractor with respect to such contracts have been paid.

Section 17. Recordation of Assessment; Notice of Lien; Release of Lien

The collector for the more effective collection of the tax imposed by this ordinance may file with the clerk of the county commission a certified copy of the assessment of taxes under this ordinance for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded and thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the town as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this article the line of which shall have been recorded the collector shall certify in duplicate the fact and amount of payment and balance due, if any and shall forward the certificates, one to taxpayer, and one to clerk of the county commission. The clerk of the county commission shall record such certificates 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 town shall be free from any lien for taxes under this ordinance accrued to the date that the certificate was issued.

Section 18. Collection by Distrain, etc.

The collector may distrain upon any goods, chattels or intangibles represented by negotiable evidences or indebtedness, of any taxpayer delinquent under this ordinance for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this ordinance on real estate may be enforced by suit in equity and other means provided by law.

Section 19. Offenses and Penalties

It shall be unlawful for any person to refuse to make the return provided to be made in section 5; or to make any false or fraudulent return or false statement in any return, with the intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this ordinance; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof imposed by this ordinance; 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 ordinance, with the intent to evade the payment of any tax hereunder.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not more than five hundred dollars or imprisoned not exceeding thirty days in the city jail or punished by both fine and imprisonment, at the discretion of the municipal court within the limitations aforesaid. 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 of conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement as aforesaid, shall be made shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars.

Section 20. Administration of Ordinance

In order to effectively carry out and enforce the provisions of this ordinance there is hereby created the office of collector of all business privilege and occupational taxes hereinbefore provided for, said collector to be appointed by the town council to hold this office during the will and pleasure of said council. The administration of this ordinance is vested in, and shall be exercised by the collector who shall prescribe forms and reasonable rules of procedure in conformity with this ordinance 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 ordinance in any of the courts of the State shall be under the exclusive jurisdiction of the collector.

Section 21. Validity of Ordinance

If any section of this ordinance shall be held invalid, or unconstitutional, its validity shall not affect any other sections of this ordinance that can be given effect without the invalid section, and for this purpose the sections of this ordinance are hereby declared to be severable.

Section 22. Repeal of Inconsistent Ordinances

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 23. Effective Date of Ordinance

This ordinance shall be effective June 1, 1991.

Section 24. Repeal of Prior Ordinance

Ordinance No. 43 is hereby repealed.

Adopted by the Town Council this 19th day of March, 1991.

Marcia A. Bolyard
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NUMBER 44

AND ORDINANCE AMENDING ORDINANCE NUMBER 42
OF THE TOWN OF BARRACKVILLE CONCERNING THE ESTABLISHMENT OF A
FLOOD PLAIN DISTRICT AND RELATED MATTERS

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

Ordinance Number 42 of The Town of Barrackville is hereby
amended to add the following definitions under Article II:

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Basement

Any area of the building having its floor subgrade (below ground level) on all sides.

This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 5th day of March, 1991.

Margaret Belyand
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NUMBER 45

AN ORDINANCE ESTABLISHING A SANITARY SEWER TAP-ON CHARGE

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

Effective upon passage of this ordinance, a sanitary sewer tap-on charge of Two Hundred Fifty Dollars (\$250.00) is established.

Passed by the Town Council this 5th day of March, 1991.

Marlene A. Beyond
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 46

AN ORDINANCE CREATING THE TOWN OF BARRACKVILLE BUILDING COMMISSION

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

Section 1

There is hereby created The Town of Barrackville Building Commission. This Commission is created under the authority of West Virginia Code 8-33-1 et seq.

Section 2

The Town of Barrackville Building Commission, hereinafter referred to as the Commission, shall be a public corporation and have perpetual existence.

Section 3

All property, powers, and duties and the management and control of the Commission shall be vested in a Board consisting of members appointed by the Town Council of the Town of Barrackville. Such Board shall consist of not less than three nor more than five members, each serving for a term of five years. The initial appointments to the Board may be for less than five years so that the terms of the members shall be staggered. As the term of each initial appointee expires, the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

If any member of the Board die, resign, or for any reason cease to be a member of the Board, the Town Council shall appoint another individual to fill the unexpired portion of the term of such member. No more than two-thirds of the total number of members of the Board shall be from the same political party, and no member of the Board shall hold any office (other than the office of notary public) or employment under the United States of America, the State of West Virginia, any county or political subdivision thereof, or any political party. All members of the Board shall be residents of the Town of Barrackville. No member of the Board shall receive any compensation for his services as such, but each member shall be reimbursed by the Commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the Board.

Section 4

The Commission shall have the powers and authority set forth in West Virginia Code 8-33-4.

Section 5

The Commission shall be exempt from the payment of any taxes or fees to the State or any subdivision thereof, or any municipalities, or to any officer or employee of the State, or of any subdivision thereof, or of any municipality. The property of the Commission shall be exempt from all municipal and county taxes. Bonds, notes, debentures, and other evidences of indebtedness of the Commission are

declared to be issued for a public purpose and to be public instrumentalities, and, together with the interest thereon, shall be exempt from taxation.

Section 6

Contributions may be made to the Commission from time to time by the Town of Barrackville, and persons that shall desire to do so. All funds received by the Commission shall be deposited in such banking institution or banking institutions as the Board may direct and shall be withdrawn therefrom in such manner as the Board may direct. The Commission shall keep a strict account of all of its receipts and expenditures and shall each quarter make a quarterly report thereon to the Town of Barrackville, and such report shall contain an itemized account of its receipts and disbursements during the preceding quarter. Such report shall be made within sixty days after the termination of the quarter. Within sixty days after the end of each fiscal year, the Commission shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding fiscal year and publish the same as a Class II-0 legal advertisement in compliance with the laws of the State of West Virginia. The books, records, and accounts of the Commission shall be subject to audit and examination by the State Tax Commissioner and by other public officials or bodies in the manner provided by law.

Section 7

In the event the Town Council of the Town of Barrackville shall so direct in writing and if all indebtedness of the Commission has been paid in full, the Commission shall sell all or any part of its properties and assets so directed and distribute the proceeds thereof to the Town of Barrackville.

Section 8

If any section of this ordinance shall be held invalid, or unconstitutional, its validity shall not affect any other sections of this ordinance that can be given effect without the invalid section, and for this purpose the sections of this ordinance are hereby declared to be severable.

Section 9

This ordinance shall be effective upon passage.

Adopted by the Town Council this 4th day of August, 1992.

Randolph K. DCE
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 47

AN ORDINANCE PROHIBITING WEEDS, TRASH, AND DEBRIS AND PENALTIES THEREFOR

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

Section 1. The owner and occupants of all lands, lots, and other premises are required to keep the same clean, sanitary, and free from weeds, high grass, trash, and debris, and any other rubbish and refuse which causes said premises to become or remain offensive, unsanitary, unsightly, unsafe, a fire hazard, or hazardous to public health.

Section 2. If the owner or occupants of such lands shall fail to comply with the requirements of Section 1, then the Mayor shall serve notice upon the owner and/or occupant thereof by certified mail or by other legal service, and if said owner and/or occupant shall fail to comply within ten (10) days of receipt of said notice, then the Mayor may cause the weeds, high grass, trash, debris, or other rubbish and refuse to be removed, and all charges and expense incurred in connection therewith shall be chargeable to the owner and/or occupant of such property and may be collected by appropriate legal action from either the owner and/or occupant.

Section 3. Violation of Section 1 shall be misdemeanor, and upon conviction thereof, a person shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall not be fined more than \$500.00 for the second and subsequent offenses.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 21st day of September, 1993.

/s/ Randolph K. Ice
Mayor

ATTEST:

/s/ James D. Doyle
Recorder

James D. Doyle

ORDINANCE NO. 48

AN ORDINANCE ESTABLISHING AND FIXING RATES,
FEES, CHARGES AND DELAYED PAYMENT PENALTY
CHARGES FOR SERVICE TO CUSTOMERS OF THE
SEWERAGE SYSTEM OF THE TOWN OF BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS:
The following schedule of rates, fees, charges and delayed payment
penalty charges are hereby fixed and determined as the rates, fees,
charges and delayed payment penalty to be charged to customers of the
sewerage system of the Town of Barrackville throughout the territory
served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable in entire area served.

AVAILABILITY OF SERVICE

Available for sanitary sewer service.

RATE (Based upon the metered amount of water supplied)

Flat Rate - \$5.90 per 1,000 gallons of water used.

MINIMUM MONTHLY CHARGE

The minimum monthly charge to any user of the sewerage
system shall be \$11.80.

NON-METERED CUSTOMER CHARGE

The monthly charge to users without public water service
shall be \$11.80.

DELAYED PAYMENT PENALTY

A 10% penalty shall be added to all charges not paid within
20 days from the date of the billing. This delayed payment is not
interest and is only to be collected once for each bill where it is
appropriate.

TAP FEE

A tap-on charge to new customers shall be \$250.00.

SECTION 2. EFFECTIVE DATE

The rates, fees, charges and delayed payment penalty charges
provided herein shall be effective 45 days after the enactment
thereof.

SECTION 3. SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect. All prior rate ordinances are hereby repealed.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall publish a copy of this Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, being the only newspaper published and of general circulation in Marion County, West Virginia, and being of general circulation in the Town of Barrackville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the 21st day of September, 1993, at 7:00 p.m., which date is not less than 10 days subsequent to the date of the first publication of the Ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

The above Ordinance has been introduced at a meeting of Council held September 7, 1993.

Passed on First Reading:	September 7, 1993
Passed on Second Reading Following Public Hearing:	September 21, 1993
Effective as of	September 21, 1993

Passed by the Town Council this 21st day of September, 1993.

/s/ Randolph K. Ice
Mayor

ATTEST:
/s/ James D. Doyle
Recorder

ORDINANCE NO. 49AN ORDINANCE PROVIDING FOR
THE ELECTION OF MUNICIPAL OFFICERS

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

Section 1. It is hereby declared that the conduct of elections of municipal officers of the Town of Barrackville is hereby integrated with the system of permanent registration of voters of the State of West Virginia, and unless otherwise provided herein, all laws governing the conduct of elections as set forth in the West Virginia Code shall govern the conduct of municipal elections in the Town of Barrackville.

Section 2. The regular general election of officers of the municipality shall be held on the 2d Tuesday in June, 1994, and on the 2d Tuesday in June of every second year thereafter.

Section 3. One precinct is hereby established for the municipality, and all voting shall take place at the Barrackville Municipal Building.

Section 4. Two ballot commissioners shall be appointed by the Town Council between the 15th and 31st days of January in each year in which a general election is to be held, for a term of two years beginning on the 1st day of April next ensuing.

Section 5. Officers to be elected at each election shall be a mayor, recorder, and five councilmembers.

Section 6. All eligible persons who desire to become candidates for election shall file with the Town Recorder a certificate of candidacy, along with a filing fee of \$10.00, between the 1st and 15th days of April immediately prior to the election. To be eligible, a candidate must reside within the municipality, be

eligible to register to vote, and be at least 18 years old.

Section 7. The date for drawing for ballot position shall be at the next regular Council meeting following April 15.

Section 8. This ordinance shall be effective immediately upon passage.

Section 9. Ordinance No. 36 of the Town of Barrackville is hereby repealed.

Passed by the Town Council this 19th day of April, 1994.

Mayor

Attest:


Recorder

* * *

ORDINANCE NO. 50

AN ORDINANCE PROVIDING PENALTIES FOR
ALLOWING DOMESTIC ANIMALS TO RUN AT LARGE

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

Section 1. Any owner or keeper of any dog, cat, or other domestic animal or fowl, who permits such animal or fowl to run at large within the Town of Barrackville, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall be fined not more than \$500.00 for the second and subsequent offenses thereof.

Section 2. Unrestrained domestic animals or domestic animals running at large may be taken by police, the city or county dog warden, or the humane society, and impounded in an animal shelter, and there confined in a humane manner. Impounded animals shall be kept for not less than five (5) days unless reclaimed by their owners. If by a permit tag or other means the owner can be identified, the police or dog warden shall immediately upon impoundment notify the owner by telephone and registered mail of the impoundment of the animal. Animals not claimed by their owners within five (5) days may

be humanely disposed of by the humane society or by an agency delegated by the mayor to exercise that authority.

Section 3. An owner reclaiming an impounded animal shall pay to the animal shelter the fee set by them for care of the animal, which fee shall be in addition to any fine levied under the provisions of this ordinance.

Section 4. Ordinance No. 24 of the Town of Barrackville is hereby repealed.

Section 5. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 5th day of July, 1994.

Donald Neptune
Mayor

ATTEST:

James P. Doyle
Recorder

ORDINANCE NO. 51

AN ORDINANCE SETTING A
CURFEW FOR PERSONS UNDER 18

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

Section 1. No person under eighteen years of age shall be or remain upon any street or alley or other public place or unauthorized private property in the Town between 10:00 p.m. and 6:00 a.m. Sunday through Friday and 11:00 p.m. Saturday to 6:00 a.m. Sunday unless such person is accompanied by a parent or guardian or other person having custody of such minor, or unless in the performance of duty directed by such parent or guardian or other person having custody, or unless such person is in lawful employment making it necessary to be in such places after curfew.

Section 2. No person having the legal care and custody of any person under eighteen years of age shall allow or permit such person to go or be upon any public street, alley or other public place or unauthorized private property as restricted in Section 1.

Section 3. Any person who violates this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than Twenty Five Dollars (\$25.00) or more than One Hundred Dollars (\$100.00) for each violation.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 2d day of August, 1994.

Donald Neptune
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 52

AN ORDINANCE ESTABLISHING A MUNICIPAL COURT FOR THE TOWN OF BARRACKVILLE

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

Section 1. A Municipal Court is hereby established for the Town in accordance with the West Virginia Code, and sessions of the Municipal Court shall be held at such times and places as may be set by the Municipal Judge of this Town.

Section 2. The mayor shall act as Municipal Judge, and in his absence the recorder shall act as Municipal Judge. In the discharge of his duties and in the trial of cases the Municipal Judge shall follow the rules prescribed by law for criminal proceedings before a magistrate, except that all cases shall be tried by the Judge without a jury. The Judge shall keep a record of all warrants issued by him, of all persons arrested and brought before him, and of all trials, fines, or sentences imposed, or judgments entered by him in a permanent book or record file as the Judge deems necessary or desirable but in accordance with applicable state laws governing the same.

Section 3. A person convicted in the Municipal Court of this Town shall have right to appeal and a trial de novo as is provided by law.

Section 4. In the execution of any process or order of the Municipal Court, the Chief of Police or his subordinates shall have the same powers, be governed by the same rules of law, and subject to the same liabilities as the Sheriff of Marion County, West Virginia, in the performance of like services. All such fines, costs, and penalties imposed by the Court shall be collected by the Judge or Chief of Police, and accounted for and paid by him to the Town.

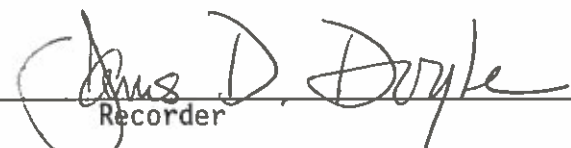
Section 5. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 4th day of October, 1994.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 53

AN ORDINANCE SETTING COMPENSATION FOR THE MUNICIPAL JUDGE AND CLERK.

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

Section 1. The Municipal Judge shall be paid Twenty Five Dollars (\$25.00) for each session in which he presides as municipal judge.

Section 2. The clerk shall be paid at his or her regular hourly rate for duties as clerk at each session.

Section 3. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 31 day of January, 1995.

Donald Neptune
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 54

AN ORDINANCE SETTING THE SPEED LIMIT ON STREETS

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

Effective upon passage, the speed limit for motor vehicles on all public streets, alleys, and highways within the Town, except for state highways, shall be 15 miles per hour.

Passed by the Town Council this 17th day of October, 1995.

Donald Neptune
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 55

AN ORDINANCE SETTING THE COMPENSATION FOR THE MAYOR, RECORDER, AND COUNCIL MEMBERS
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE:

1. The salary of the mayor shall be \$700.00 per year.
2. The salary of the recorder shall be \$500.00 per year.
3. The salary of councilmembers shall be \$300.00 per year.
4. One-half of the salary will be paid in June, and one-half of the salary shall be paid in December.
5. For each regular meeting of the Town Council missed by any of the above officers, one twenty first (1/21) of the annual salary shall be deducted when the salary is paid.
6. This ordinance shall be effective July 1, 1996.

Passed by the Town Council this 7th day of November, 1995.

Donald Neptune
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 56

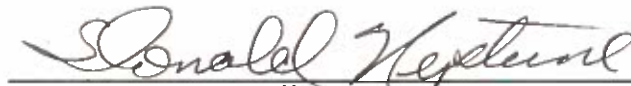
AN ORDINANCE LEVYING A FEE ON LICENSED PRIVATE CLUBS

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

1. A fee is hereby levied upon any licensee of a private club under West Virginia Code 60-7-1 et seq, whose premises are situate within the Town of Barrackville.
2. The annual fee for a fraternal or veterans organization or a nonprofit social club shall be \$375.00.
3. The annual fee for any other private club shall be \$500.00 if such private club has less than 1000 members and \$1250.00 if such private club has 1000 or more members.
4. The fee for any licensee whose license is issued following the first day of January of any year and to expire on the 30th day of June of such year shall be one-half (1/2) of the annual fee prescribed above.
5. All such fees shall be due and payable on or before July 1 of each year, and within ten days of the issuance of a license if the license is issued after July 1.
6. In the event the fees required by this ordinance are not paid in a timely manner, a penalty of \$500.00 shall be added to such fee and collected as a part of such fee, and any officer, owner, operator, manager, manager or other official of any private club failing to pay such fee shall be personally responsible for the same and the same may be collected from such person as other town taxes are collected.
7. Any person or corporation who fails to pay the above fee when due shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$500.00, in addition to the amount of the fee.

8. This ordinance shall be effective December 5, 1995.

Passed by the Town Council this 5th day of December, 1995.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 57

AN ORDINANCE GRANTING POLICE POWERS TO MARION COUNTY DOG WARDEN

WHEREAS the problem of dogs and other animals running at large within the Town of Barrackville continues to be a problem involving the health and safety of the residents of the town; and

WHEREAS the Town of Barrackville is willing to receive assistance in enforcing its ordinance in this regard;

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

1. The Marion County dog warden or humane officer, or other duly designated official serving in a like capacity, while engaged in his or her official duties within the Town of Barrackville, is hereby granted the same powers of enforcing the ordinances of the Town of Barrackville as any duly appointed police officer of the municipality.

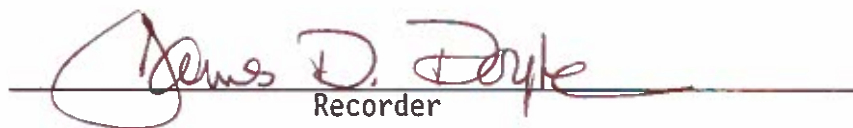
2. Any officer exercising authority under this ordinance shall do so without monetary compensation from the Town of Barrackville.

3. This ordinance shall be effective upon passage.

Passed by the Town Council this 2nd day of April, 1996.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 59AN ORDINANCE PROHIBITING AND PROVIDING PENALTIES
FOR ALLOWING JUNKED, DISABLED, INOPERATIVE, AND
UNLICENSED MOTOR VEHICLES, OR INOPERATIVE OR ABANDONED
HOUSEHOLD APPLIANCES WITHIN THE TOWN OF BARRACKVILLE

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

1. No person or other entity (except a licensed auto repair shop) shall, within this municipality, place, deposit, or allow to be placed or deposited, any junked, disabled, inoperative, or unlicensed motor vehicle, or any major part thereof, or inoperative or abandoned household appliance, upon any private or public property, except in an enclosed building, for any period of more than thirty (30) days.

2. Any person or entity who violates this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00).

3. When the Barrackville Police Department has knowledge that any motor vehicle or household appliance violates this ordinance, the Police Department may take the same into custody and possession and make arrangements for the removal thereof. The Police Department shall call a garage keeper or other person to remove such motor vehicle to a safe place of storage, and in the event of such appliance shall cause it to be hauled to a refuse disposal facility. The cost of such removal, storage, and disposal shall be paid by the owner of the vehicle or appliance or by the person who allows such item to be placed on his or her property. Prior to taking possession of any vehicle or appliance, the Police Department shall give written notice to the violator of this ordinance, and upon receipt of this notice, within five days thereafter, such person has the right to appeal the proposed taking of possession to the Mayor or Municipal Judge of The Town of Barrackville.

4. This ordinance shall be effective on passage.

Passed by the Town Council this 20th day of May, 1997.

Mark A. Bagard
Mayor

ATTEST: Diana D. Doyle
Recorder

ORDINANCE NO. 58AN ORDINANCE PROHIBITING FIREARMS AND ALCOHOLIC BEVERAGES ON
MUNICIPAL PROPERTY

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

1. No persons shall use, possess, or consume any alcoholic beverages in any building or on any property owned, operated, or controlled by the Town of Barrackville.

2. No person shall use or possess any firearm of any kind at any time in any building or on any property owned, operated, or controlled by the Town of Barrackville, except for on-duty licensed law enforcement officers of the United States of America, the State of West Virginia, or any of its subdivisions.

3. Any person who violates this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than \$50.00 or more than \$500.00 for each violation.

4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 4th day of March, 1997.

Margaret Boezend
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 60

AN ORDINANCE GRANTING A FRANCHISE FOR INSTALLATION AND
OPERATION OF A TELEVISION CABLE SYSTEM

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

SECTION ONE. Fairclark Cable TV, Inc., a corporation is hereby granted a nonexclusive franchise for the purpose of installing and operating a television cable system on, under, and over the streets and public ways of the Town of Barrackville, insofar as the system does not unreasonably interfere with the ordinary uses of such streets and ways by the public.

SECTION TWO. This franchise shall be for a term of 15 years, beginning November 1, 1997, contingent upon the satisfactory upgrading of the system by Fairclark Cable TV, Inc. before that date.

SECTION THREE. The Town Council is authorized to enter into a further written franchise agreement for the purpose of implementing said franchise and determining the amount of compensation due from Fairclark Cable TV, Inc. for franchise fees.

SECTION FOUR. To the extent that it conflicts with the provisions of this ordinance, Ordinance No. 7 of the Town of Barrackville is hereby repealed and revoked.

Passed by the Town Council this 16th day of September, 1997.

Marlene Baerwald
Mayor

ATTEST:

James D. Foyle
Recorder

ORDINANCE NO. 61

AN ORDINANCE PROHIBITING CERTAIN PUBLIC NUDITY

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

SECTION 1. DEFINITION. As used in this Ordinance "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

SECTION 2. UNLAWFUL ACTS. Every person who knowingly, voluntarily and intentionally appears in public or in a public place or in a place open to the public or open to public view in a state of nudity, or employs, encourages or procures another person to so appear, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than One Thousand Dollars (\$1,000.00).

SECTION 3. EXCEPTIONS TO APPLICATION OF ORDINANCE. Nothing contained in this ordinance shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, act or drama as differentiated from commercial business advertising, promotion or exploitation of nudity for the purpose of advertising, promotion, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and take effect one day from and after the date of its passage, a clear and present danger existing which is totally unrelated to any object of the suppression of expression or speech but which is related to the morals, health, safety and general welfare of the public.

Passed by the Town Council this 4th day of November, 1997.

Marc A. Boeyard
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 62AN ORDINANCE PROVIDING FOR THE
SALARIES OF MUNICIPAL OFFICERS AND POLICE OFFICERBE IT ORDAINED BY THE TOWN COUNCIL
OF THE TOWN OF BARRACKVILLE:Effective July 1, 1998, the following salaries shall be in effect for
municipal officers of the Town of Barrackville:

Mayor -- \$800.00 per annum
Councilmembers - \$400.00 per annum
Recorder -- \$600.00 per annum
Treasurer -- \$200.00 per annum
Police Officer -- \$8.00 per hour
Fire Chief - \$550.00 per annum

Insofar as prior ordinances set the above salaries, those ordinances are
hereby repealed to that extent.Passed by the Town Council this 16th day of June, 1998.

Margaret A. Baeyens
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 63AN ORDINANCE PROVIDING FOR THE DISPLAY
OF HOUSE NUMBERS

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

SECTION 1. To aid safety and emergency vehicles in locating homes within the municipality, the owner and occupant of each residence or business establishment within the municipality is required to display prominently the street number of such building so that it can be easily read from the street.

SECTION 2. The street numbers to be used are those designated by the Fire Chief of the Town of Barrackville.

SECTION 3. Any person who shall violate this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not to exceed Fifty Dollars (\$50.00) for each violation.

SECTION 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 16th day of June, 1998.

Mark A. Balgord
Mayor

ATTEST:

Donna Hall
Recorder

ORDINANCE NO. 64

AN ORDINANCE CONCERNING ANIMAL DEFECATION

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

Section 1. It shall be unlawful for the owner or person having the charge or control of any animal to permit such animal to defecate and to allow the feces to remain upon any public property or public right of way or any private property unless such private property is owned, possessed or under the control of said owner or person having charge or control of such animal, and such owner or person shall immediately and securely enclose all feces deposited by the animal in a bag wrapper or other container and dispose of it in a sanitary manner so that it shall pose no threat or danger to the health and well being of the citizens.

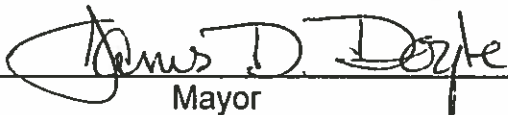
Section 2. It shall be unlawful for any person being the owner or having charge of any animal on any public property or right of way ^{or} private property other than property of such owner or under the control of such owner or person having charge or control of such animal, to fail to have in his/her possession a wood, plastic or metal device, bag wrapper or container for the purpose of picking up and properly disposing of any fecal matter left or deposited by such animal. Failure ^{of} any such person to have in his/her possession such suitable device or container shall be prima facie evidence of a violation of this section.

Section 3. The prohibitions of this section shall not apply to a legally blind or otherwise legally handicapped person who is in need of and is the owner, keeper or custodian of a guide or support dog.

Section 4. Violation of this ordinance shall be a misdemeanor, and upon conviction thereof, a person shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall not be fined more than \$500.00 for the second and subsequent offenses.

Section 5. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 6th day of July, 1999.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 38

AN ORDINANCE PROHIBITING
MEMBERS OF TOWN COUNCIL FROM BEING
FULL TIME EMPLOYEES OF THE TOWN

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

Section 1. No member of the Town Council of the
Town of Barrackville shall serve as a full time paid employee
of the Town.

Section 2. This ordinance shall be effective
immediately upon passage.

Passed by the Town Council this 4th day of
November, 1986.

Mark A. Bryant
Mayor

ATTEST:

James D. Doyle
Recorder

ORDINANCE NO. 65

AN ORDINANCE REGULATING THE REPAIR, CLOSING, AND DEMOLITION OF CERTAIN DWELLINGS OR BUILDINGS AND PROCEDURES AND PENALTIES THEREFOR

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

Section 1. Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless a different meaning clearly appears from the context:

Agency. The town housing enforcement agency established by this ordinance.

Dwelling or other building. Any building or structure, or part thereof, whether used for human habitation or not, including any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Officer. The officers authorized by this ordinance to exercise the powers of the agency prescribed hereby.

Owner. The holder of the title in fee simple and every mortgagee of record.

Parties in interest. All individuals, firms, associations and corporations who have interests of record in a building or structure and any who are in possession thereof.

Section 2. Housing enforcement agency created; composition of agency.

There is hereby created The Town of Barrackville Housing Enforcement Agency (hereinafter referred to in this ordinance as the "agency"), which shall consist of the mayor, the municipal engineer or building inspector, and one member at large to be selected by, and to serve at the will and pleasure of the mayor. The chief of the fire department shall serve as an ex officio member of the agency.

Section 3. Powers of agency generally.

The agency shall exercise such powers as may be necessary or convenient to carry out and effectuate the purposes of this ordinance, including the following powers in addition to others herein granted.

(a) To investigate the dwelling and other building conditions in the town in order to determine which dwellings or other buildings therein are unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare;

(b) To administer oaths, affirmations, examine witnesses and receive evidence;

(c) To enter upon premises for the purpose of making examinations; provided, however, that any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(d) To appoint and fix the duties of such officers, agents and employees as it deems necessary to carry out the purpose of this ordinance; and

(e) To delegate any of its functions and powers under this ordinance to such officers and agents as it may designate.

Section 4. Enforcement officer generally.

Upon the adoption of this article, the agency may designate and appoint an officer to exercise the powers granted it hereby, and such officer shall serve at the will and pleasure of the agency and shall be paid such compensation as the agency may prescribe.

Section 5. Complaint, notice and hearing upon filing of petition; order upon determination; repair, alteration, demolition, etc., by town upon failure of owner to comply with order.

(a) Whenever a petition is filed with the agency or officer by at least five residents of the town who are property owners, charging that any dwelling or other building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or whenever it appears to the agency or officer that any dwelling or other building is unfit for human

habitation due to dilapidation, defects increasing the hazard of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or if the state fire marshal, has made such a determination as provided in West Virginia Code 29-3-12 et seq.; if the preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the agency, at a place therein fixed, not less than ten nor more than thirty days after the serving of such complaint. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint. The hearing should be informal and strict rules of procedure shall not be followed or required.

(b) If, after such notice and hearing, the agency determines that the dwelling or building under consideration is unfit for human habitation, whether used for human habitation or not, or is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, it shall state in writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties in interest thereof an order requiring:

(1) If the repair, alteration, or improvement of the dwelling or building can be made at a costs of not more than twenty five percent of the value of the dwelling or building, exclusive of the real estate upon which it stands, the owner shall within the time specified in the order repair, alter, or improve such dwelling or building so as to render it fit for human habitation, or eliminate those things causing it to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or

(2) If the repair, alteration, or improvement of the dwelling or building cannot be made at a cost of more than twenty five percent of the value of the dwelling, exclusive of the real estate upon which its stands, the owner shall within the time specified in the order remove or demolish such dwelling.

(c) If the owner fails to comply with the order of the agency to repair, alter, or improve, or vacate and close, the dwelling or building, the agency may cause such dwelling or building to be repaired, altered, or improved, or to be vacated and closed, and from and after the date specified in the order of the agency for the repair, alteration, or improvement, or vacation and closing of the dwelling or building, the officer may cause to be posted on such dwelling or building a placard with the following

words: "This building is unfit for human habitation or is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, and the use or occupation of this building is prohibited and unlawful."

(d) If the owner fails to comply with an order of the agency to remove or demolish the dwelling or building, the agency may cause such dwelling to be removed or demolished upon such condition as the agency may prescribe.

Section 6. Cost of repairs, improvements, demolition, etc., to be lien; sale of materials of removed or demolished dwelling and disposition of proceeds.

The amount of the costs of the repairs, alterations, or improvements, or vacating and closing, or removal or demolition, as provided for by the preceding section, shall be a lien against the real estate upon which such cost was incurred for an amount not to exceed the assessed value of the property as recorded in the Office of the County Assessor. The town shall also have the right to institute a civil action in the Marion County Circuit Court against the landowner or other responsible parties for all costs incurred by the town with respect to the property and for all reasonable attorney fees and court costs incurred in the prosecution of the action. Not less than ten days prior to instituting a civil action as provided for in this section, the town council shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the town council's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the Office of the Assessor of Marion County. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the town shall cause a Class III-O legal advertisement to be published in the Times-West Virginian, a newspaper of general circulation in Marion County, West Virginia, and shall post the notice on the front door or other conspicuous location on the subject property.

Section 7. Power of agency to determine dwelling unfit or unsafe; condition.

The agency may determine that a dwelling or building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accident, or other calamities, lack of ventilation, lights, or sanitary facilities, or any other conditions prevailing in any dwelling or buildings, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

Section 8. Service of complaints and orders.

All complaints or orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order may also be filed for record in the Office of the Clerk of the County Commission of Marion County, and such filing of a copy of such complaint or order shall have the same force and effect as other lis pendens notices have under the laws of this state.

Section 9. Appeals from orders.

Any person affected by an order issued by the agency or its officer may petition the Circuit Court of the county in which the premises affected are located for an injunction restraining the agency and officer from carrying out the provisions of such order, and the court may, upon such petition, issue a temporary injunction restraining the agency pending the final disposition of the cause; provided, however, that such petition shall be filed not more than sixty days after the service and posting of the order. Hearings shall be had by the court on such petitions within twenty days after the filing of the same, or as soon thereafter as possible, and upon the application of any party in interest may, in the discretion of the court, be given preference over other matters on the court's calender. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the findings of the agency as to facts, if supported by evidence, shall be conclusive. Costs shall be assessed in the discretion of the court against the party substantially prevailing in the proceeding.

The remedies herein provided shall be exclusive remedies, and no person affected by an order of the agency shall be entitled to recover any damages for action taken pursuant to its order, or because of noncompliance by such person with any order of the agency.

Section 10. Agency equipment, personnel and supplies; grants, and donations.

The costs of equipment, personnel and supplies necessary for periodic examinations and investigations for the purpose of determining the fitness of dwellings in the town for human habitation, and for the enforcement and administration of this ordinance, shall be made by appropriations from the revenues of the town as the town counsel may deem necessary, and the agency may accept and apply grants or donations to assist it in carrying out the provisions hereof.

Section 11. Liability of city officers, agents and employees.

No officer, agent or employee of the town shall be personally liable for any damage incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of his duties pursuant to this ordinance, and any suit brought against any officer, agent or employee of the town as a result of any act required, permitted or authorized in the discharge of his duties under this article may be defended by the town.

Section 12. Authority; construction of article.

This article is enacted pursuant to the authority of the Code of the State of West Virginia, and nothing herein contained shall be construed to abrogate or impair the powers of any department of the town to enforce any provisions of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law of the state or ordinance of the town.

Section 13. Violations and penalties.

(a) The owner or other person having dominion and control over any dwelling determined by the agency to be unfit for human habitation, who shall willfully fail to comply with any order to repair, vacate or demolish such dwelling, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars for each offense, and the further sum of Ten Dollars for each day such failure to comply continues beyond the date fixed for compliance.

(b) The occupant or lessee in possession who willfully fails to comply with any order to vacate, and who fails to repair such dwelling in accordance with any order given, as provided for in this ordinance, shall be guilty of a misdemeanor, shall be fined not exceeding One Hundred Dollars for each offense, and a further sum of Ten Dollars for each day such failure to comply continues beyond the date fixed for compliance.

(c) Any person who removes any notice or order of the agency posted as required under any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars.

(d) Any person who shall willfully obstruct, impede or interfere with the agency, or any representative or officer of the agency, or with any person who owns or holds any estate or interest in any dwelling or building which has been ordered by the agency to

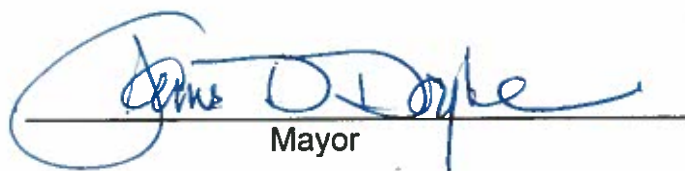
be vacated, demolished, or removed, or with any person to whom such dwelling or building has been lawfully sold, pursuant to the provisions of this article, whenever any such representative or officer of the agency, purchaser or person having an interest or estate in such dwelling, or building, is engaged in repairing, vacating, closing or demolishing any such dwelling, or building, or in performing any necessary act preliminary to or incidental to such work, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars for each offense.

Section 14.

This ordinance shall be effective immediately upon passage.

Section 15. Ordinance No. 18 of The Town of Barrackville is hereby repealed.

Passed by the town council this 21st day of November, 2000.



Mayor

Attest:



Recorder

ORDINANCE NO. 66

AN ORDINANCE OF THE TOWN OF BARRACKVILLE TO PROVIDE FOR A PROHIBITION AGAINST THE OPERATION OF ANY MOTORIZED RECREATIONAL APPARATUS WITHIN THE CORPORATE LIMITS OF THE TOWN OF BARRACKVILLE UPON ANY PUBLIC STREET, ALLEY, WAY, SIDEWALK, PARKING LOT, OR RIGHT OF WAY AND UPON ALL OTHER REAL PROPERTY WHICH IS PUBLICLY OWNED, LEASED, OR CONTROLLED, OR UPON PRIVATE PROPERTY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE OWNER; TO MAKE THE OPERATION OF SUCH APPARATUS A CRIMINAL OFFENSE; TO PROVIDE PENALTIES THEREFOR; AND TO PROVIDE EXCEPTIONS.

WHEREAS, pursuant to the provisions of West Virginia Code §8-12-5(1), (2), and (4) The Town of Barrackville is authorized and empowered to keep, maintain, and regulate the use of public streets, roads, alleys, ways, sidewalks, crosswalks and public places and to keep same free from obstructions;

WHEREAS, pursuant to the provisions of West Virginia Code §8-12-5(13) The Town of Barrackville is authorized and empowered to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

WHEREAS, pursuant to the provisions of West Virginia Code §8-12-5(57) The Town of Barrackville is authorized and empowered to provide criminal penalties for the violation of any regulation adopted under authority of West Virginia Code §8-12-5;

WHEREAS, numerous incidents have been observed by, or otherwise reported to municipal authorities involving all-terrain vehicles, off street motorized dirt bicycles and tricycles, golf carts, go-carts, and other such motorized recreational apparatus being operated upon the public streets, alleys, ways, sidewalks, crosswalks and in certain public and private places;

WHEREAS, numerous incidents have been generally reported in the media which reveal the dangerous nature of such all-terrain vehicles, off street motorized dirt bicycles and tricycles, golf carts, go-carts, and other such motorized recreational apparatus;

WHEREAS, these incidents have caused concerns for the safety, health and well-being of the citizens of The Town of Barrackville;

WHEREAS, the Town Council of The Town of Barrackville deems it necessary and proper and in the best interest of its citizens to prohibit the operation or

use of such motorized recreational apparatus upon the public streets, roads, alleys, ways, sidewalks and crosswalks and upon all other real property which is publicly owned, leased or controlled, or upon private property without the express written consent of the owner, within the corporate limits.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BARRACKVILLE THAT:

Section 1. Definition: For the purpose of this ordinance the term motorized recreational apparatus shall include but not be limited to the following: all terrain vehicle (ATV) as defined by West Virginia Code 17A-1-1(ii); go-cart; golf-cart; unregistered off road motorized dirt bike, whether two or three wheeled; snowmobile as defined by West Virginia Code 17A-1-1(mm); or, given The Town's terrain and climate, any other such motorized apparatus which would appear to be used for the principal purpose of recreation and not for the general transportation of persons or goods.

Section 2. Prohibition: No person shall operate, ride upon or use any motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleys, ways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased, or controlled, or upon any privately owned real estate without the express written consent of the owner, within the corporate limits of The Town of Barrackville.

No person shall knowingly permit another person to operate, ride upon or use any motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleys, ways, sidewalks, and crosswalks, or upon any other real property, which is publicly owned, leased or controlled, or upon any privately owned real estate without the express written consent of the owner, within the corporate limits of The Town of Barrackville.

A parent, custodian or guardian of a minor commits an offense hereunder if said parent, custodian or guardian knowingly permits or by insufficient control allows said minor to operate, ride upon or use any motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleys, ways, sidewalks and crosswalks, or upon any other real property, which is publicly owned, leased or controlled, or upon any privately owned real estate without the express written consent of the owner, within the corporate limits of The Town of Barrackville. The term "knowingly" includes knowledge that the parent, custodian or guardian should reasonably be expected to have concerning the whereabouts of said minor in his or her custody. This requirement is intended to hold a neglectful or careless parent, custodian or guardian up to a reasonable community standard of

parental responsibility through an objective test. It shall, therefore, be no defense that the parent or guardian was completely indifferent to the activities or conduct of such minor.

Section 3. Penalty: (a) Any violation of the prohibitions contained in this Ordinance shall constitute the commission of a misdemeanor offense, and the police department for The Town of Barrackville, or any other law enforcement officer of any other policing agency exercising proper jurisdiction within the corporate limits of The Town of Barrackville, is hereby authorized and empowered to issue a citation and to charge any person who violates the prohibitions contained in this ordinance, jurisdiction thereof being in the Municipal Court for The Town of Barrackville.

(b) A person convicted of violating the prohibitions contained in this ordinance shall be punished as follows:

(1) First offense conviction: Any person convicted of a first offense shall be fined not less than \$25.00, nor more than \$100.00 together with all applicable court costs;

(2) Second offense conviction: Any person convicted of a second offense shall be fined not less than \$50.00, nor more than \$100.00 together with all applicable court costs;

(3) Third offense conviction: Any person convicted of a third or subsequent offense shall be fined not less than \$100.00 nor more than \$500.00 together with all applicable court costs.

Section 4. Exceptions: Notwithstanding any other provision of this ordinance, it shall not be an offense for any person to use, ride or operate a motorized recreational apparatus within the corporate limits of The Town of Barrackville, as follows:

(a) Upon a designated parade route, when such person or persons is a duly registered and recognized participant in a parade which has been duly permitted by The Town of Barrackville.

(b) Upon private property with the express written consent of the property owner.

(c) In a natural disaster; emergency; or in a situation requiring immediate action so as to prevent death or serious bodily injury or property damage;

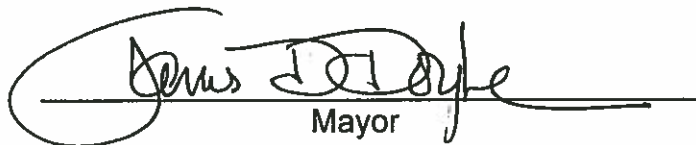
(d) For the purpose of snow and ice removal from streets, alleys, parking lots, and private property within The Town of Barrackville.

Section 5. Disclaimer. Nothing contained herein is intended to nor shall it be construed so as to create or form the basis for any civil or administrative liability whatsoever on the part of The Town of Barrackville, or any of its officers, agents, insurers, for any injury or damage sustained by any person whomsoever as a consequence of any action or inaction on the part of The Town of Barrackville as related in any manner to the enforcement or nonenforcement of the provisions of this ordinance.

Section 6. Severability. If any portion of this ordinance, or its application to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining portions of this ordinance. The Town Council hereby declares that it would have enacted the remaining portions regardless of whether any part of this ordinance is declared unconstitutional or invalid.

This ordinance shall be effective 15 days from adoption.

Adopted this 6th day of NOVEMBER, 2001.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 66 AAN ORDINANCE PROHIBITING AND PROVIDING PENALTIES
FOR ALLOWING JUNKED, DISABLED, INOPERATIVE, AND
UNLICENSED MOTOR VEHICLES, OR INOPERATIVE OR ABANDONED
HOUSEHOLD APPLIANCES WITHIN THE TOWN OF BARRACKVILLE

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

1. No person or other entity (except a licensed auto repair shop) shall, within this municipality, place, deposit, or allow to be placed or deposited, any junked, disabled, inoperative, or unlicensed motor vehicle, or any major part thereof, or inoperative or abandoned household appliance, upon any private or public property, except in an enclosed building, for any period of more than fifteen (15) days.

2. Any person or entity who violates this ordinance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00).

3. When the Barrackville Police Department has knowledge that any motor vehicle or household appliance violates this ordinance, the Police Department may take the same into custody and possession and make arrangements for the removal thereof. The Police Department shall call a garage keeper or other person to remove such motor vehicle to a safe place of storage, and in the event of such appliance shall cause it to be hauled to a refuse disposal facility. The cost of such removal, storage, and disposal shall be paid by the owner of the vehicle or appliance or by the person who allows such item to be placed on his or her property. Prior to taking possession of any vehicle or appliance, the Police Department shall give written notice to the violator of this ordinance, and upon receipt of this notice, within five days thereafter, such person has the right to appeal the proposed taking of possession to the Mayor or Municipal Judge of The Town of Barrackville.

4. Ordinance No. 59 is hereby repealed.

5. This ordinance shall be effective on passage.

Passed by the Town Council this 3rd day of September, 2002.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 67AN ORDINANCE PROHIBITING PIT BULL TERRIERS
WITHIN THE MUNICIPALITY

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

Section 1. No person shall own, keep, or harbor a pit bull terrier, as defined herein, within the municipal limits of Barrackville. "Pit bull terrier" as used herein is hereby defined as any Staffordshire Bull Terrier or American Staffordshire Terrier ~~breed~~^{breed} of dog, or any mixed breed of dog which contains as an element of its breeding the breed of Staffordshire Bull Terrier or American Staffordshire Terrier as to be identifiable as partially of the breed of Staffordshire Bull Terrier or American Staffordshire Terrier.

Section 2. This section is a necessary control to eliminate the risk of attack by pit bulls, as defined herein, on human beings in the Town which has become a threat to the health, safety and welfare of the public in all areas of the Town; and the lack of knowledge or lack of interest is not a defense to any violation thereof.

Section 3. Any person who shall violate any section of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding \$1,000.00 for each violation.

Section 4. In the event that any pit bull terrier is kept within this municipality in violation of this ordinance, the Town Council may have said animal removed and transported to an appropriate place, and destroyed, without being liable to the owner thereof or any other person for damages, and the owner, keepers, or any other person violating the provisions of this ordinance shall be liable and responsible for all costs of removal, transportation, storage, and destruction of the animal, and any other costs incident thereto.

Section 5. In the event of any violation of this ordinance, the Town Council is authorized to institute an action for injunctive relief in the Circuit Court of Marion County against the violator, and the violator shall be responsible for all costs and expenses incident to said action.

Section 6. This ordinance shall be effective 30 days after passage.

Passed by the Town Council this 3d day of June, 2003.


Mayor

Attest:


Recorder

ORDINANCE NO. 68

AN ORDINANCE ESTABLISHING AND FIXING RATES,
FEES, CHARGES AND DELAYED PAYMENT PENALTY
CHARGES FOR SERVICE TO CUSTOMERS OF THE
SEWERAGE SYSTEM OF THE TOWN OF BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS:
The following schedule of rates, fees, charges and delayed payment penalty charges are hereby
fixed and determined as the rates, fees, charges and delayed payment penalty to be charged to
customers of the sewerage system of the Town of Barrackville throughout the territory served.

SECTION 1. SCHEDULE OF RATES

APPLICABILITY

Applicable in entire area served.

AVAILABILITY OF SERVICE

Available for sanitary sewer service.

RATE (Based upon the metered amount of water supplied)

Flat Rate - \$6.83 per 1,000 gallons of water used.

MINIMUM MONTHLY CHARGE

The minimum monthly charge to any user of the sewerage system shall be \$13.66.

NON-METERED CUSTOMER CHARGE

The monthly charge to users without public water service shall be \$13.66.

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within 20 days, 10% will be
added to the net current amount unpaid. This delayed payment is not interest and is only to be
collected once for each bill where it is appropriate.

TAP FEE

A tap-on charge to new customers shall be \$250.00.

SECTION 2. EFFECTIVE DATE

The rates, fees, charges and delayed payment penalty charges provided herein shall be
effective 45 days after the enactment thereof.

SECTION 3. SEPARABILITY: REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. All resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed; and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior resolutions, orders or parts thereof, the same shall remain in full force and effect. All prior rate ordinances are hereby repealed.

SECTION 4. STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder shall publish a copy of this Ordinance once a week for 2 successive weeks within a period of 14 consecutive days, with at least 6 full days intervening between each publication, in The Times-West Virginian, being the only newspaper published and of general circulation in Marion County, West Virginia, and being of general circulation in the Town of Barrackville, and said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the 16th day of September, 2003, at 7:00 p.m., which date is not less than 10 days subsequent to the date of the first publication of the Ordinance and notice, and present protests. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

The above Ordinance has been introduced at a meeting of Council held September 2, 2003.

Passed on First Reading: September 2, 2003

Passed on Second Reading
Following Public Hearing: September 16, 2003

Effective as of September 16, 2003

Passed by the Town Council this 16th day of September, 2003.


MAYOR

ATTEST:


RECORDER

ORDINANCE NO. 69

AN ORDINANCE AUTHORIZING AND APPROVING A SANITARY SEWER
MANAGEMENT AGREEMENT WITH THE CITY OF FAIRMONT

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

The Town Council of The Town of Barrackville and the appropriate officials of The Town of Barrackville are hereby authorized and directed to enter into an agreement with the City of Fairmont Sanitary Sewer Board for the management and administration of The Town of Barrackville Sanitary Sewer System in the manner and form hereinafter set forth:

“THIS AGREEMENT, Made this ____ day of _____, 2003, by and between the City of Fairmont Sanitary Sewer Board, a public board of the City of Fairmont, West Virginia, a municipal corporation, (hereafter Board) and The Town of Barrackville, a West Virginia municipal corporation, (hereafter Town).

WHEREAS, Town owns and operates a sanitary sewer collection and transmission system;

WHEREAS, the Board owns and operates a public sanitary sewer utility which provides for the collection, transmission and treatment of sewerage to individual, commercial, industrial and bulk rate customers within the corporate limits of said City and its environs located in Marion County, West Virginia;

WHEREAS, since 1991, the Town has contracted with the Board for certain services relating to the operation, maintenance and administration of the Town’s sanitary sewer collection and transmission system pursuant to the terms of that certain Agreement dated April 25, 1991;

WHEREAS, the Town desires to continue its relationship with the Board and to provide for the operation, maintenance and administration of the Town’s system by the Board;

WHEREAS, the Board desires to continue its relationship with the Town;

WHEREAS, by Ordinance duly adopted on the ____ day of _____, 2003, the Council for the Town of Barrackville did approve the form of this Agreement; and

WHEREAS, by Ordinance duly adopted on the ____ day of _____, 2003, upon the recommendation of the Sanitary Sewer Board’s Board of Directors, the Council for the City of Fairmont did approve the form of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH: That for and in consideration of the aforementioned recitals, the terms and conditions hereinafter set forth, and with intent to be legally bound hereby, the City of Fairmont Sanitary Sewer Board (hereinafter Board) and the Town of Barrackville (hereinafter Town) covenant and agree as follows:

A. The Board Agrees:

1. To provide the limited services described herein to and for the Town in the operation and conduct of the collection and transmission of sewerage with the Town's system (hereafter the system or sewer system), including any betterments, improvements, additions, or deletions, which as of the date of this agreement has been defined as consisting of approximately:

- (a) 49,500 lineal feet of sewer lines;
- (b) 200 manholes; and
- (c) 6 lift stations.

2. To provide routine, day to day, operation and maintenance of the system as the same shall be deemed necessary in the sole discretion of the Board, including, but not limited to, collection pipelines and rights of way, pump stations, and any/all other facilities owned by the Town during the term of this Agreement. These services shall include routine operation, routine preventative maintenance, and to the extent reasonably possible maintenance of system mapping. Any obligation on the part of the Board to provide routine operation and maintenance services shall be dependent upon the availability of sufficient Town funds and revenues for same.

3. To provide repair services as the same shall be deemed necessary by the Board. Repair services shall be considered as any unplanned work on the system that may be necessary to ensure continued, safe and compliant sewerage collection and transmission for the customers of the Town and routine installation of new sewer services which do not require a certificate of convenience and necessity from the Public Service Commission of West Virginia. Any obligation on the part of the Board to provide repair services shall be dependent upon the availability of sufficient Town funds and revenues for same.

4. To provide routine administrative services necessary to conduct the daily business of providing routine sewer service to the Town. These services are: billing customers; receiving customer payments; payment of all expenses associated with the operation, maintenance, and repair of the system, including payment of any periodic payments required by any long term capital bond indentures, provided however that the Board shall only be obligated to make such payments from the Town's revenues; delinquent account collection; budget forecasting; job/project cost analysis; routine legal services; and support of audit preparation relating to the sewer system.

5. To provide to the Town periodic reports of revenues and expenditures relating to its system as the Board deems necessary or as the same may be requested by the Town.

6. In consultation with the Town and at Town's request, to provide advice, recommendations and assistance with regard to extraordinary work on or to the system. Extraordinary work shall include, but not be limited to, replacement of any capital asset and/or tasks that require resources and/or staff that must be obtained from a third party or any activity for which the Public Service Commission of West Virginia requires the issuance of a certificate of convenience and necessity. Any obligation on the part of the Board to conduct extraordinary work activities shall be dependent upon the availability of sufficient Town funds and revenues for same.

7. In consultation with the Town and at Town's request, to provide advice, recommendations and assistance with regard to system expansion activities. System expansion activities shall include, but not be limited to, installation of main line extensions and special system mapping or any activity for which the Public Service Commission of West Virginia requires the issuance of a certificate of convenience and necessity. Any obligation on the part of the Board to conduct system expanding activities shall be dependent upon the availability of sufficient Town funds and revenues for same.

8. In consultation with Town and at Town's request, to provide advice, assistance and recommendations to the Town regarding the Town's obligation to obtain and maintain any and all permits which may be necessary for the operation of the sewer system, including any national pollution discharge elimination system (NPDES) permit.

9. To perform all its obligations set out in this Agreement in accordance with and in compliance with all relevant federal, state, and local statutes, regulations and ordinances.

B. The Town Agrees:

1. To compensate the Board for services rendered hereunder and for materials, equipment and labor, in accordance with the rates, fees and charges established by the Board from time to time.

2. To indemnify and hold harmless the Board from any and all liability arising from the maintenance and/or operation of the sewerage system by the Board, and to protect, defend and indemnify and hold the City of Fairmont and the Board and the members thereof, their officers, agents, representatives and employees, completely harmless from and against any claims, action or judgments arising by reason of the injury or death of any person or damage to or loss of property, of any nature whatsoever arising out of operation, maintenance and administration of the system, unless the injury, death or loss or damage is caused by the negligence of the City of Fairmont, its Sanitary Sewer Board or its officers, agents, employees or representatives. The Town's obligation to indemnify and hold the Board and the City harmless shall extend to indemnification for all reasonable costs for investigation and defense of any claim (including but not limited to, attorney fees, court costs, and expert fees). The Town shall give the Board reasonable notice of any such claim or action. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3. To procure and maintain in force during the term of this agreement a public liability policy of insurance with a solvent insurer with coverage adequate to protect against liability for damage claims arising out of incidents occurring or arising out of the operation, maintenance or administration of the system in the amount of not less than \$1,000,000.00, and the Town shall name the City of Fairmont and the Board as additional insureds. The Town shall supply the Board with evidence of such insurance. If the Town fails to provide evidence of such insurance or fails to procure and maintain in force the necessary insurance or requests that the Board procure same, the Board shall procure such insurance and pay the premium therefor from the revenues collected from the sewer system.

4. To direct that all monies collected by the Board from the operation of Town's system shall be applied to and used in the operation, maintenance, repair and administration of the system.

5. To establish from time to time such customer rates, fees and charges for sanitary sewer services which are recommended by the Board and its agents and employees and which may be necessary and adequate to meet the required debt service coverage mandated by any bond indenture and to provide for and meet all operating, maintenance and administrative expenses.

6. To provide to the Board any and all operation and maintenance manuals, as built drawings, system maps, plats and records regarding the system.

7. For purposes of fulfilling the Board's obligations hereunder, to allow the Board access and control of the operation and maintenance of the system; however, acknowledging the fact that the Board's primary objective is to operate the sanitary sewer treatment plant and collection system that serves the City of Fairmont and that the City of Fairmont's system shall have priority with regard to operation, maintenance and repair.

8. In consultation with Town and at Town's request, to provide advice, assistance and recommendations to the Town regarding the Town's obligation to obtain and maintain any and all permits which may be necessary for the operation of the sewer system, including any national pollution discharge elimination system (NPDES) permit.

9. To perform all its obligations set out in this Agreement in accordance with and in compliance with all relevant federal, state, and local statutes, regulations and ordinances.

B. The Town Agrees:

1. To compensate the Board for services rendered hereunder and for materials, equipment and labor, in accordance with the rates, fees and charges established by the Board from time to time.

2. To indemnify and hold harmless the Board from any and all liability arising from the maintenance and/or operation of the sewerage system by the Board, and to protect, defend and indemnify and hold the City of Fairmont and the Board and the members thereof, their officers, agents, representatives and employees, completely harmless from and against any claims, action or judgments arising by reason of the injury or death of any person or damage to or loss of property, of any nature whatsoever arising out of operation, maintenance and administration of the system, unless the injury, death or loss or damage is caused by the negligence of the City of Fairmont, its Sanitary Sewer Board or its officers, agents, employees or representatives. The Town's obligation to indemnify and hold the Board and the City harmless shall extend to indemnification for all reasonable costs for investigation and defense of any claim (including but not limited to, attorney fees, court costs, and expert fees). The Town shall give the Board reasonable notice of any such claim or action. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

3. To procure and maintain in force during the term of this agreement a public liability policy of insurance with a solvent insurer with coverage adequate to protect against liability for damage claims arising out of incidents occurring or arising out of the operation, maintenance or administration of the system in the amount of not less than \$1,000,000.00, and the Town shall name the City of Fairmont and the Board as additional insureds. The Town shall supply the Board with evidence of such insurance. If the Town fails to provide evidence of such insurance or fails to procure and maintain in force the necessary insurance or requests that the Board procure same, the Board shall procure such insurance and pay the premium therefor from the revenues collected from the sewer system.

4. To direct that all monies collected by the Board from the operation of Town's system shall be applied to and used in the operation, maintenance, repair and administration of the system.

5. To establish from time to time such customer rates, fees and charges for sanitary sewer services which are recommended by the Board and its agents and employees and which may be necessary and adequate to meet the required debt service coverage mandated by any bond indenture and to provide for and meet all operating, maintenance and administrative expenses.

6. To provide to the Board any and all operation and maintenance manuals, as built drawings, system maps, plats and records regarding the system.

7. For purposes of fulfilling the Board's obligations hereunder, to allow the Board access and control of the operation and maintenance of the system; however, acknowledging the fact that the Board's primary objective is to operate the sanitary sewer treatment plant and collection system that serves the City of Fairmont and that the City of Fairmont's system shall have priority with regard to operation, maintenance and repair.

8. To obtain and maintain any and all permits which may be necessary for the operation of the sewer system and in doing so, the Town covenants and agrees that it shall be solely and exclusively responsible for obtaining and maintaining any and all permits which may be required by any federal, state or local statute, rule, regulation or ordinance, including any national pollution discharge elimination system (NPDES) permit. Town further covenants and agrees that it shall be solely liable and answerable for any and all fines, damages and liabilities which may be imposed or assessed by any federal, state or local administrative agency or court having jurisdiction to do so for the Town's failure to obtain and maintain any and all permits which may be required by any federal, state or local statute, rule, regulation or ordinance, including any national pollution discharge elimination system (NPDES) permit. The Town further covenants and agrees that it shall protect, defend, indemnify and hold the City of Fairmont and the Board and the members thereof, their officers, agents, representatives and employees harmless of and from any and all liability arising from the Town's failure to obtain and maintain all such permits and from and against any and all fines, damages or liabilities resulting from such failure. The Town shall give the Board reasonable notice of any violation, claim or action regarding any permit or lack thereof. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

C. The Board and the Town Agree That:

1. If at any time during the initial term of this agreement or during any renewal period, the Board determines in its sole discretion that it desires to dissolve the relationship, or the Town determines in its sole discretion that it desires to dissolve the relationship, then, in such event, either party hereto shall have the right to terminate this contract, without liability except for work performed, debts incurred or matters arose prior to the date of termination. In the event that either party shall desire to terminate said contract, the terminating party shall provide sixty (60) days written notice of its intention to do so to the non-terminating party. If such notice is served, this Agreement shall be terminated on the 61st day next preceding the date of service of such notice.

2. The Town's customers shall not be deemed or considered the Board's customers for any purpose and no relationship shall be deemed to be created between the Board and the Town other than described herein.

3. The operation of the Town's sewer system is not a joint venture between the Board and the Town and the Board and the Town shall not be deemed to be co-partners or co-ventures for any purpose. It is covenanted and agreed that for all purposes, the Town is and shall be the sole owner and operator of its sewer system and the Board shall not have any duties, responsibilities or obligations, express or implied, other than the limited duties, responsibilities and obligations as hereinbefore set forth.

4. The West Virginia Public Service Commission's Rules and Regulations for the Government of Sewer Utilities now, or as hereafter promulgated shall be binding on the parties and shall govern their relationship to the extent that said Rules may apply.

5. At any time during the term of this Agreement, the Board, upon thirty (30) days notice, may require the Town to deposit with it a minimum cash deposit to secure the payment of the services provided herein in an amount not to exceed three (3) times the estimated cost of the monthly operation, maintenance and administration expenses relating to the system as determined by a two (2) year average of such costs. As part of the consideration for this Agreement, the Board shall not be required to pay to the Town any interest upon the amount of the deposit so made and the Town expressly covenants and agrees to waive the payment of any such interest.

6. Neither this Agreement, nor any interest or claim arising hereunder shall be assignable or transferable by either party without the prior written consent of the other, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon the Board and the Town and their respective successors in interest.

7. The Term of this Agreement shall be for a period of one (1) year from the date first above written. At the expiration of the initial one (1) year term, this Agreement shall automatically renew for like periods of one (1) year each, until either party shall elect to terminate this Agreement in accordance with the provisions of Paragraph (C) (1) above.

8. The failure of any party or parties to enforce at any time any right or privilege under this Agreement shall in no way constitute or be construed as a waiver of that or any other right or privilege under this Agreement, nor shall it affect in any way the validity and full enforceability of this Agreement and each and every provisions thereby. No waiver of any right or privilege under this Agreement shall operate as a waiver of any other breach of that or any other provision of this Agreement, and no waiver or any remedy for any such breach shall operate as a waiver of any other remedy for such breach.

9. This Agreement may be executed in several counterparts, each of which will be deemed to be an original, and not be necessary in making proof of this Agreement to produce or account for more than one of such counterparts.

10. This Agreement is the entire agreement between the parties hereto, and supersedes any prior agreements between the parties hereto, either oral or written.

11. Should any provisions of this Agreement be declared void and unenforceable by any regulatory agency or a court of law, it is the intention of the parties to give full force and effect to the remaining provisions.

12. Any notices given pursuant to this Agreement shall be deemed effective upon placing same in the hands of the United States Postal Service, certified or registered mail, return receipt requested, as follows:

The City of Fairmont Sanitary Sewer Board
City County Complex
200 Jackson Street
P.O. Box 1428
Fairmont, WV 26554

Town of Barrackville
c/o Mayor
P.O. Box 26
Barrackville, WV 26559

Or, such other address as may be provided in writing to the other party.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed on its behalf by its proper officer duly authorized as of the day and year first above written.

THE CITY OF FAIRMONT SANITARY SEWER BOARD

By _____
Its Chairman

ATTEST:

Secretary

THE TOWN OF BARRACKVILLE

By _____
Its Mayor

ATTEST:

Town Recorder

Passed by the Town Council this 16th day of November, 2003.


MAYOR

ATTEST:


RECORDER

ORDINANCE NO. 70AN ORDINANCE PROVIDING FOR FILING FEES FOR THE ELECTION OF
MUNICIPAL OFFICERS

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

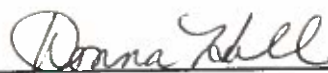
Section 1. The filing fee set forth in Ordinance No. 49 of The Town of Barrackville is hereby revoked, and a filing fee of Twenty Five Dollars (\$25.00) is hereby established, effective immediately.

Passed by the Town Council this 16th day of March, 2004.



Mayor

ATTEST:



Recorder

ORDINANCE NO. 71

AN ORDINANCE REGULATING THE REPAIR, CLOSING, AND DEMOLITION OF CERTAIN DWELLINGS OR BUILDINGS AND PROCEDURES AND PENALTIES THEREFOR

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

Section 1. Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless a different meaning clearly appears from the context:

Agency. The town housing enforcement agency established by this ordinance.

Dwelling or other building. Any building or structure, or part thereof, whether used for human habitation or not, including any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Officer. The officers authorized by this ordinance to exercise the powers of the agency prescribed hereby.

Owner. The holder of the title in fee simple and every mortgagee of record.

Parties in interest. All individuals, firms, associations and corporations who have interests of record in a building or structure and any who are in possession thereof.

Section 2. Housing enforcement agency created; composition of agency.

There is hereby created The Town of Barrackville Housing Enforcement Agency (hereinafter referred to in this ordinance as the "agency"), which shall consist of the mayor, the municipal engineer or building inspector, and one member at large to be selected by, and to serve at the will and pleasure of the mayor. The chief of the fire department shall serve as an ex officio member of the agency.

Section 3. Powers of agency generally.

The agency shall exercise such powers as may be necessary or convenient to carry out and effectuate the purposes of this ordinance, including the following powers in addition to others herein granted.

(a) To investigate the dwelling and other building conditions in the town in order to determine which dwellings or other buildings therein are unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare;

(b) To administer oaths, affirmations, examine witnesses and receive evidence;

(c) To enter upon premises for the purpose of making examinations; provided, however, that any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession;

(d) To appoint and fix the duties of such officers, agents and employees as it deems necessary to carry out the purpose of this ordinance; and

(e) To delegate any of its functions and powers under this ordinance to such officers and agents as it may designate.

Section 4. Enforcement officer generally.

Upon the adoption of this article, the agency may designate and appoint an officer to exercise the powers granted it hereby, and such officer shall serve at the will and pleasure of the agency and shall be paid such compensation as the agency may prescribe.

Section 5. Complaint, notice and hearing upon filing of petition; order upon determination; repair, alteration, demolition, etc., by town upon failure of owner to comply with order.

(a) Whenever a petition is filed with the agency or officer by at least five residents of the town who are property owners, charging that any dwelling or other building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or whenever it appears to the agency or officer that any dwelling or other building is unfit for human

habitation due to dilapidation, defects increasing the hazard of fire, accident or other calamities, lack of ventilation, light or sanitary facilities, or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, or if the state fire marshal, has made such a determination as provided in West Virginia Code 29-3-12 et seq.; if the preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the agency, at a place therein fixed, not less than ten nor more than thirty days after the serving of such complaint. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the time and place fixed in the complaint. The hearing should be informal and strict rules of procedure shall not be followed or required.

(b) If, after such notice and hearing, the agency determines that the dwelling or building under consideration is unfit for human habitation, whether used for human habitation or not, or is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, it shall state in writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner and parties in interest thereof an order requiring:

(1) If the repair, alteration, or improvement of the dwelling or building can be made at a costs of not more than twenty five percent of the value of the dwelling or building, exclusive of the real estate upon which it stands, the owner shall within the time specified in the order repair, alter, or improve such dwelling or building so as to render it fit for human habitation, or eliminate those things causing it to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; or

(2) If the repair, alteration, or improvement of the dwelling or building cannot be made at a cost of less than twenty five percent of the value of the dwelling, exclusive of the real estate upon which its stands, the owner shall within the time specified in the order remove or demolish such dwelling.

(c) If the owner fails to comply with the order of the agency to repair, alter, or improve, or vacate and close, the dwelling or building, the agency may cause such dwelling or building to be repaired, altered, or improved, or to be vacated and closed, and from and after the date specified in the order of the agency for the repair, alteration, or improvement, or vacation and closing of the dwelling or building, the officer may cause to be posted on such dwelling or building a placard with the following

words: "This building is unfit for human habitation or is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, and the use or occupation of this building is prohibited and unlawful."

(d) If the owner fails to comply with an order of the agency to remove or demolish the dwelling or building, the agency may cause such dwelling to be removed or demolished upon such condition as the agency may prescribe.

Section 6. Cost of repairs, improvements, demolition, etc., to be lien; sale of materials of removed or demolished dwelling and disposition of proceeds.

The amount of the costs of the repairs, alterations, or improvements, or vacating and closing, or removal or demolition, as provided for by the preceding section, shall be a lien against the real estate upon which such cost was incurred for an amount not to exceed the assessed value of the property as recorded in the Office of the County Assessor. The town shall also have the right to institute a civil action in the Marion County Circuit Court against the landowner or other responsible parties for all costs incurred by the town with respect to the property and for all reasonable attorney fees and court costs incurred in the prosecution of the action. Not less than ten days prior to instituting a civil action as provided for in this section, the town council shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the town council's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the Office of the Assessor of Marion County. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the town shall cause a Class III-O legal advertisement to be published in the Times-West Virginian, a newspaper of general circulation in Marion County, West Virginia, and shall post the notice on the front door or other conspicuous location on the subject property.

Section 7. Power of agency to determine dwelling unfit or unsafe; condition.

The agency may determine that a dwelling or building is unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accident, or other calamities, lack of ventilation, lights, or sanitary facilities, or any other conditions prevailing in any dwelling or buildings, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

Section 8. Service of complaints and orders.

All complaints or orders issued by the enforcement agency shall be served in accordance with the law of this state concerning the service of process in civil actions, and shall, in addition thereto, be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order may also be filed for record in the Office of the Clerk of the County Commission of Marion County, and such filing of a copy of such complaint or order shall have the same force and effect as other lis pendens notices have under the laws of this state.

Section 9. Appeals from orders.

Any person affected by an order issued by the agency or its officer may petition the Circuit Court of the county in which the premises affected are located for an injunction restraining the agency and officer from carrying out the provisions of such order, and the court may, upon such petition, issue a temporary injunction restraining the agency pending the final disposition of the cause; provided, however, that such petition shall be filed not more than sixty days after the service and posting of the order. Hearings shall be had by the court on such petitions within twenty days after the filing of the same, or as soon thereafter as possible, and upon the application of any party in interest may, in the discretion of the court, be given preference over other matters on the court's calender. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. In all such proceedings the findings of the agency as to facts, if supported by evidence, shall be conclusive. Costs shall be assessed in the discretion of the court against the party substantially prevailing in the proceeding.

The remedies herein provided shall be exclusive remedies, and no person affected by an order of the agency shall be entitled to recover any damages for action taken pursuant to its order, or because of noncompliance by such person with any order of the agency.

Section 10. Agency equipment, personnel and supplies; grants, and donations.

The costs of equipment, personnel and supplies necessary for periodic examinations and investigations for the purpose of determining the fitness of dwellings in the town for human habitation, and for the enforcement and administration of this ordinance, shall be made by appropriations from the revenues of the town as the town counsel may deem necessary, and the agency may accept and apply grants or donations to assist it in carrying out the provisions hereof.

Section 11. Liability of city officers, agents and employees.

No officer, agent or employee of the town shall be personally liable for any damage incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of his duties pursuant to this ordinance, and any suit brought against any officer, agent or employee of the town as a result of any act required, permitted or authorized in the discharge of his duties under this article may be defended by the town.

Section 12. Authority; construction of article.

This article is enacted pursuant to the authority of the Code of the State of West Virginia, and nothing herein contained shall be construed to abrogate or impair the powers of any department of the town to enforce any provisions of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law of the state or ordinance of the town.

Section 13. Violations and penalties.

(a) The owner or other person having dominion and control over any dwelling determined by the agency to be unfit for human habitation, who shall willfully fail to comply with any order to repair, vacate or demolish such dwelling, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars for each offense, and the further sum of Ten Dollars for each day such failure to comply continues beyond the date fixed for compliance.

(b) The occupant or lessee in possession who willfully fails to comply with any order to vacate, and who fails to repair such dwelling in accordance with any order given, as provided for in this ordinance, shall be guilty of a misdemeanor, shall be fined not exceeding One Hundred Dollars for each offense, and a further sum of Ten Dollars for each day such failure to comply continues beyond the date fixed for compliance.

(c) Any person who removes any notice or order of the agency posted as required under any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars.

(d) Any person who shall willfully obstruct, impede or interfere with the agency, or any representative or officer of the agency, or with any person who owns or holds any estate or interest in any dwelling or building which has been ordered by the agency to

be vacated, demolished, or removed, or with any person to whom such dwelling or building has been lawfully sold, pursuant to the provisions of this article, whenever any such representative or officer of the agency, purchaser or person having an interest or estate in such dwelling, or building, is engaged in repairing, vacating, closing or demolishing any such dwelling, or building, or in performing any necessary act preliminary to or incidental to such work, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding One Hundred Dollars for each offense.

Section 14.

This ordinance shall be effective immediately upon passage.

Section 15. Ordinance No. ¹⁸~~77~~ of The Town of Barrackville is hereby repealed.

Passed by the Town Council this 15th day of February, 2005.


Mayor

Attest:


Recorder

ORDINANCE NO. 72

AN ORDINANCE ENABLING THE TOWN COUNCIL
TO DESIGNATE A MUNICIPAL COURT JUDGE

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

Section 1. The Town Council may designate a person, in addition to the mayor, to serve as municipal court judge for The Town of Barrackville, provided such person is qualified in accordance with the provisions of West Virginia Code 8-10-2.

Section 2. The Town Council may set such compensation as it deems reasonable for persons acting as municipal court judge.

Passed by the Town Council this 6th day of June, 2006.


Mayor

Attest:


Recorder

ORDINANCE NO. 73

AN ORDINANCE PROVIDING FOR THE
SALARIES OF MUNICIPAL OFFICERS AND POLICE OFFICER

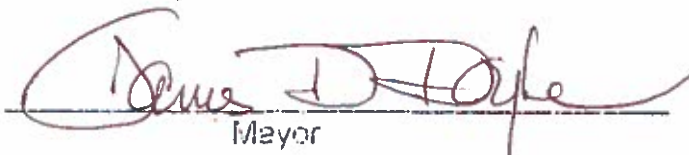
BE IT ORDAINED BY THE TOWN COUNCIL
OF THE TOWN OF BARRACKVILLE:

Effective July 1, 2006, the following salaries shall be in effect for
municipal officers of the Town of Barrackville:

Mayor - \$1,000.00 per annum
Councilmembers - \$500.00 per annum
Recorder - \$800.00 per annum
Treasurer - \$200.00 per annum
Police Officer - \$8.50 per hour
Fire Chief - \$650.00 per annum

Insofar as prior ordinances set the above salaries, those ordinances are
hereby repealed to that extent.

Passed by the Town Council this 6th day of June, 2006.


Mayor

ATTEST:


Recorder

ORDINANCE NUMBER 74

**ORDER OF THE TOWN OF BARRACKVILLE ADOPTING THE NATIONAL
INCIDENT MANAGEMENT SYSTEM (NIMS) AS
THE BASIS FOR ALL INCIDENT MANAGEMENT IN THE BARRACKVILLE,
WEST VIRGINIA GEOGRAPHIC AREA AND JURISDICTION**

WHEREAS, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent countywide approach for Marion County emergency service providers and all designated Town of Barrackville employees to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity;

WHEREAS, the collective input and guidance from the Town of Barrackville and all Marion County homeland security partners has been, and will continue to be, vital to the development, effective implementation and utilization of a comprehensive NIMS;

WHEREAS, it is necessary and desirable that the Town of Barrackville emergency agencies and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management;

WHEREAS, to facilitate the most efficient and effective incident management it is critical that Town of Barrackville emergency service providers and all designated Town of Barrackville employees utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters;

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the Town of Barrackville's ability to utilize federal funding to enhance local agency readiness, maintain first responder safety, and streamline incident management processes.

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the State of West Virginia and Marion County, including current emergency management training programs; and

WHEREAS, the National Commission on Terrorist Attacks (9-11 Commission) recommended adoption of a standardized Incident Command System;

WHEREAS, Governor Bob Wise of West Virginia did on December 23, 2004, issue Executive Order 20-04 mandating the use of the National Incident Management System (NIMS) and its component, Incident Command System (ICS), as the standards for State emergency management;

NOW, THEREFORE, We, the Council of the Town of Barrackville, by the virtue of the authority vested in us by the Constitution and Laws of the State of West Virginia and the Town of Barrackville, do hereby establish the National Incident Management System (NIMS) as the Town of Barrackville's standard for incident management.

ENTERED: 9/5/06

Donna Hall
Mayor

ORDINANCE NO. 75

AN ORDINANCE PROVIDING FOR THE
SALARY OF THE POLICE CHIEF

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

Effective October 16, 2006, the following salary shall be in effect:

Police Chief - \$10.00 per hour

Insofar as prior ordinances set the above salary, those ordinances are
hereby repealed to that extent.

Passed by the Town Council this 7th day of November, 2006.



Mayor

ATTEST:


Recorder

ORDINANCE NO. 76

AN ORDINANCE IMPOSING A REINSTATEMENT FEE FOR DRIVER'S LICENSES

BE IT ORDAINED BY THE CITY COUNCIL
OF THE TOWN OF BARRACKVILLE:

A fee of Fifty Dollars (\$50.00) is hereby imposed upon any person whose driver's license or privilege to operate a motor vehicle in this state is reinstated after having been suspended for any of the following: (1) failure to timely pay costs, fines, forfeitures or penalties imposed by the municipal court; (2) default on a payment plan for such costs, fines, forfeitures or penalties; or (3) failure to appear or otherwise respond in court when charged with a municipal violation, all as provided for by the West Virginia Code. The fee imposed by this section shall be paid at the time the driver's license or privilege to drive is reinstated by the State Division of Motor Vehicles. Such fee is imposed to defer the costs to the town associated with administrative expenses related to the suspension and reinstatement.

This ordinance is effective upon passage.

Passed by the Town Council this 5 day of December, 06.

Donna Hall

Bob Hall, Recorder

ORDINANCE NO. 177

AN ORDINANCE PROVIDING FOR THE SALARY OF POLICE CHIEF

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

Effective July 1, 2010, salary for the police chief of the Town of Barrackville shall be Eleven Dollars (\$11.00) per hour.

Insofar as prior ordinances affect the above salary, those ordinance are hereby repealed to that extent.

Passed by the Town Council this 6th day of July, 2010.



Mayor

ATTEST:


Recorder

ORDINANCE NO. 43B

AN ORDINANCE TO PROVIDE FOR THE RAISING OF REVENUE FOR THE TOWN OF BARRACKVILLE BY IMPOSING A PRIVILEGE TAX UPON THE EXERCISING OF CERTAIN BUSINESSES AND OCCUPATIONS WITHIN THE TOWN

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

Section 1. Definitions

When used in this ordinance the term "person" or the term "company," herein used interchangeably, includes any individual, firm, copartnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"Tax Year" or "taxable year" means the fiscal year beginning on and including the first day of July of each year and extending to and including the thirtieth day of June of the following year.

"Sales," "sales" or "selling" includes any transfer of the ownership of or title to property, whether for money or in exchange for other property.

"Taxpayer" means any person liable for any tax hereunder.

"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 (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever.

"Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

The terms "gross income" and "gross proceeds of sale" shall not be construed to include (1) cash discounts allowed and taken on sales; (2) the proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit; (3) the amount allowed as "trade-in value" for any article accepted as part payment for any article sold; (4) excise taxes imposed by this State; or (5) money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

"Business" shall include 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 not 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.

"Contracting" shall include 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 or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, but shall include only contracts exceeding \$100,000.00 for any one project, and shall not include contracts for construction of a one family residence.

Section 2. Imposition of Privilege Tax

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in Sections 2A to 2C.

If any person liable for any tax under Sections 2A or 2B shall ship or transport his products or any part thereof out of the town without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the town shall be the basis for the assessment of tax imposed in such sections, except in those instances in which another measure of the tax is expressly provided. The collector shall prescribe equitable and uniform rules for ascertaining such value.

In determine value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the collector shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under Sections 2A and 2B shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising privileges taxable under the other sections of this ordinance, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under Section 2, and using or consuming the same in his business, or transferring or delivering the same as any royalty payment, in kind, or the like shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon

which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the collector shall prescribe.

Section 2A. Production of Coal and Other Natural Resource Products

Upon every person exercising the privileges of engaging or continuing within this town in the business of severing, extracting, reducing to possession and 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 rate as follows: Coal, limestone or sandstone, quarried or mined, oil, natural gas, in excess of the value of Five Thousand Dollars, sand, gravel or other mineral product not quarried or mined, and timber, other natural resource products, one percent.

The measure of this tax is the value of the entire production in this town, regardless of the place of sale or the fact that the delivery may be made to points outside the town; provided that for the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple co-owners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined in Section 1, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sub-lessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sub-lessors or other denominated lessors or a part of such natural resources as rents or royalties. Recipients of royalties or rents in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of Section 2I.

Section 2B. Manufactured or Compounded Products

Upon every person engaging or continuing within this town 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 articles, substances or commodities, or electric power produced by public utilities or others and not taxed under other provisions of this ordinance, the amount of the tax referred to in Section 2 shall be equal to the value of the article, substance, commodity or electric power manufactured, compounded or 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 otherwise provided, multiplied by a rate of two-tenths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this town for sale, profit, or commercial use, regardless of the place of sale or the fact that deliveries

may be made to points outside the town. However, the dressing and processing of food by a person, which food is to be sold on a wholesale basis by such person shall not be considered as manufacturing or compounding.

It is further provided, that in those instances in which the same person partially manufactures, compounds or prepares products within this town and partially manufacturers, compounds or prepares such products outside of this town, the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this town bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in the town bears to the full cost of manufacture of the articles.

Section 2C. Business of Selling Tangible Property

Upon every person engaging or continuing within this town in the business of operating a convenient store, grocery store, and/or gasoline service station, there is likewise hereby levied, and shall be collected a tax equivalent to thirty-nine one hundredths of one percent (.39%) 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.

Gross income or gross proceeds of sales derived from sales within West Virginia that is not taxed or taxable by any other municipality are included in the measure of municipal business and occupation tax if the sales are either directed from a location within the municipality or the taxpayer's principal West Virginia office is located in the municipality. Without limiting the generality of the foregoing, when the taxpayer has only one (1) office location and this office is located within the municipality and its activities elsewhere in West Virginia are neither taxed nor taxable by another municipality, the gross income or gross proceeds from those activities are taxable by this municipality.

Persons domiciled outside the municipality who solicit sales within the municipality and sell tangible personal property within the municipality are doing business in the municipality, irrespective of the domicile of such persons and irrespective of whether or not such persons maintain a permanent place of business in the municipality and irrespective of how a sales order is transmitted or processed. If an order is placed in connection with solicitation by a representative (regardless whether there is an employment or agency relationship or whether acting as an independent contractor) who solicits orders within the municipality, and the tangible personal property is to be delivered in the municipality, then the gross proceeds of such sales are included in the measure of the tax imposed by this article.

Section 2D. Public Service or Utility Business

Upon any person engaging or continuing within this town in any public service or utility business, except railroad, railroad car, express, pipe line, telephone and telegraph companies, water carriers by steamboat or steamship, and motor vehicle carriers, there is likewise 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:

Electric light and power companies, four percent on charges for domestic purposes and commercial lighting, and three percent on all other sales and demand charges; natural gas companies, three percent on the gross income; and upon all other public service or utility business, two percent.

The measure of this tax shall not include gross income derived from outside the town.

Section 2E. Business of Contracting

Upon every person engaging or continuing within this town in the business of contracting, the tax imposed shall be equal to one and two-tenths percent of the gross income.

Section 3. Businesses Exempt

The provisions of this ordinance shall not apply to:

- (a) Societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit;
- (b) Corporations, associations and societies organized and operated exclusively for religious and charitable purposes.

Section 4. Computation of Tax Generally

The taxes levied under this ordinance shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by Section 11, of the amount of tax to the office of the collector. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the collector, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the collector, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year periods.

Section 5. Return and Remittance by Taxpayer

On or before the expiration of one month after the end of the tax year each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this ordinance and deduct the amount of quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form required by Section 12 covering the residue of the tax chargeable against him to the office of the collector. Such return shall be signed by the taxpayer, if made by an individual, or by the president, vice president, secretary or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, joint venture, association, trust or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint venture, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The collector, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by him, be deemed advisable.

Section 6. Erroneous Computation

If the taxpayer shall make any clerical error which shall be apparent on the face of the return in computing the tax assessable against him under the provisions of this article, the collector shall correct such error or reassess the proper amount of taxes, and notify the taxpayer of his action by mailing to him promptly a copy of the corrected assessment, and any additional tax for which such taxpayer may be liable shall be paid within fifteen days after the receipt of such statement.

If the amount already paid exceeds that which should have been paid on the basis of the tax so re-computed, the excess so paid shall be immediately refunded to the taxpayer upon the requisition of the collector, and shall be payable out of any funds available for the purpose. The taxpayer may, at his election, apply an overpayment credit to taxes subsequently accruing hereunder.

Section 7. Failure to Make Return

If the collector believes that the tax imposed by this ordinance is sufficiently returned by a taxpayer, either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment therefor.

Section 8. Correction of Assessment

If any person, having made the return and paid the tax as provided by this ordinance, feels aggrieved by the assessment so made upon him for any year by the collector, he shall apply to the town council by petition in writing within thirty days after notice is mailed to him by the collector, for a hearing and a correction of the amount of the tax so assessed upon him by the collector, in which petition shall be set forth the reasons why such hearing should be granted and the amount such tax should be reduced. The town council shall promptly consider such petition, and may grant such hearing or deny the same. If denied the petitioner shall be forthwith notified thereof; if granted, the town council shall notify the petitioner of the time and place fixed for such hearing. After such hearing, the town council may make such order in the matter as may appear to be just and lawful, and shall furnish a copy of such order to the petitioner. Any person improperly charged with any tax, and required to pay the same may recover the amount paid, together with interest, in such proper action or suit against the collector, as may be authorized by law.

Section 9. Tax Year

The assessment of taxes made pursuant to this ordinance and the returns required therefor shall be for the year ending on June 30. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than such year, he may, with the assent of the collector, make annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping his books.

Section 10. Tax to be Cumulative

The tax imposed by this ordinance shall be in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling. A person exercising a privilege taxable under

business, trade or calling. A person exercising a privilege taxable under this ordinance subject to the payments of all licenses and charges which are conditions precedent to exercising the privilege taxes, may exercise the privilege for the current year upon the condition that he shall pay tax accruing under this article.

Section 11. Form of Payment

Every remittance of taxes imposed by this ordinance shall be made in lawful money of the United States or by bank draft, certified check, money order or certificate of deposit, to the collector who shall issue his receipt therefor to the taxpayer and pay the moneys into the town treasury to be kept and accounted for as provided by law.

Section 12. Tax a Debt; Lien of Unpaid Tax

A tax due and unpaid under this ordinance shall be a debt due the town. It shall be a personal obligation of the taxpayer and shall be a lien upon the property of the taxpayer; provided, that such lien shall be subject to the restrictions and conditions embodied in Article 10C, Chapter 38 of the Code of West Virginia, and any amendment made or which may hereafter be made thereto.

Section 13. Collection by Suit

The collector may by himself, or a duly appointed agent, collect taxes due and unpaid under this ordinance, together with all accrued penalties under the power conferred on the collector by law. After delinquency shall have continued sixty days, the collector may proceed by himself or his agent, in the Circuit Court of the 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 ordinance. In any proceeding under this section, upon judgment or decree for the plaintiff, he shall be awarded his costs.

Section 14. Payment When Person Sells Out or Quits Business

Any person exercising any privilege taxable under this ordinance who shall sell out his business or stock of goods, or shall cease doing such business, shall file the return prescribed by Section 5 and remit the entire tax that may be chargeable against him because of all business done, within thirty days after selling out his business or stocks of goods, or ceasing to do such business. The tax imposed by this ordinance shall be a lien upon the property of such person.

The successor in business of any such person shall withhold so much of the purchase money as will satisfy the taxes and penalty which may be due until the former owner shall produce a receipt from the collector evidencing the payment of such taxes and penalty. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes and penalty shall remain unpaid after expiration of the thirty-day period allowed for payment thereof, he shall be personally liable for the payment of all such taxes and penalty, and the same shall be recoverable by the collector by action or suit as provided by law.

Section 15. Interstate Commerce Exception

The measure of tax assessed in this ordinance shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign companies.

Section 16. Certificate of Payment Prerequisite to Final Settlement
with Contractor

All officers and agents making contracts on behalf of the town shall withhold payment in the final settlement of such contract until the receipt of a certificate from the collector to the effect that all taxes levied or accrued under this ordinance against the contractor with respect to such contracts have been paid.

Section 17. Recordation of Assessment; Notice of Lien; Release of Lien

The collector for the more effective collection of the tax imposed by this ordinance may file with the Clerk of the County Commission a certified copy of the assessment of taxes under this ordinance for recordation. A certificate so filed shall be recorded in the book in which similar certificates of the state are recorded and thereafter constitute binding notice of the lien created by this article upon all lands of the taxpayer located within the town as against all parties whose interest arose after such recordation. Upon payment of the taxes delinquent under this article the line of which shall have been recorded the collector shall certify in duplicate the fact and amount of payment and balance due, if any and shall forward the certificates, one to taxpayer, and one to Clerk of the County Commission. The Clerk of the County Commission shall record such certificates 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 town shall be free from any lien for taxes under this ordinance accrued to the date that the certificate was issued.

Section 18. Collection by Distraint, etc.

The collector may distraint upon any goods, chattels or intangibles represented by negotiable evidences or indebtedness, of any taxpayer delinquent under this ordinance for the amount of all taxes and penalties accrued and unpaid hereunder. The lien created by this ordinance on real estate may be enforced by suit in equity and other means provided by law.

Section 19. Offenses and Penalties

It shall be unlawful for any person to refuse to make the return provided to be made in Section 5; or to make any false or fraudulent return or false statement in any return, with the intent to defraud the town or to evade the payment of the tax, or any part thereof, imposed by this ordinance; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof imposed by this ordinance; 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 ordinance, with the intent to evade the payment of any tax hereunder.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not more than Five Hundred Dollars or imprisoned not exceeding thirty days in the city jail or punished by both fine and imprisonment, at the discretion of the Municipal Court within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to be 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 of conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement as aforesaid, shall be made shall be guilty of a misdemeanor, and shall be punished by a fine of not more than Five Hundred Dollars.

Section 20. Administration of Ordinance

In order to effectively carry out and enforce the provisions of this ordinance there is hereby created the office of collector of all business privilege and occupational taxes hereinbefore provided for, said collector to be appointed by the town council to hold this office during the will and pleasure of said council. The administration of this ordinance is vested in, and shall be exercised by the collector who shall prescribe forms and reasonable rules of procedure in conformity with this ordinance 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 ordinance in any of the courts of the State shall be under the exclusive jurisdiction of the collector.

Section 21. Validity of Ordinance

If any section of this ordinance shall be held invalid, or unconstitutional, its validity shall not affect any other sections of this ordinance that can be given effect without the invalid section, and for this purpose the sections of this ordinance are hereby declared to be severable.

Section 22. Repeal of Inconsistent Ordinances

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 23. Effective date of Ordinance

This ordinance shall be effective July 1, 2014.

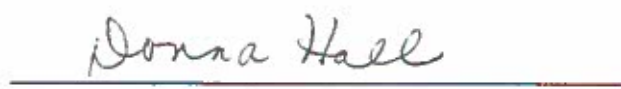
Section 24. Repeal of Prior Ordinance

Ordinance No. 43A is hereby repealed.

Adopted by the Town Council this 1st day of April, 2014.


Mayor

ATTEST:


Recorder

ORDINANCE NO. 78AN ORDINANCE PROVIDING FOR
THE ELECTION OF MUNICIPAL OFFICERS

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

Section 1. It is hereby declared that the conduct of elections of municipal officers of the Town of Barrackville is hereby integrated with the system of permanent registration of voters of the State of West Virginia, and unless otherwise provided herein, all laws governing the conduct of elections as set forth in the West Virginia Code shall govern the conduct of municipal elections in the Town of Barrackville.

Section 2. The regular general election of officers of the municipality shall be held on the 2nd Tuesday in June, 2016, and on the 2nd Tuesday in June of every second year thereafter.

Section 3. One precinct is hereby established for the municipality, and all voting shall take place at the Barrackville Municipal Building.

Section 4. Two ballot commissioners shall be appointed by the Town Council between the 1st and 15th day of January in each year in which an election is to be held, for a term of two years beginning on the 1st day of March next ensuing.

Section 5. Officers to be elected at each election shall be a mayor, recorder, and five councilmembers.

Section 6. All eligible persons who desire to become candidates for election shall file with the Town Recorder a certificate of candidacy, along with a filing fee of \$25.00 between the 1st and 15th day of March immediately prior to the election. To be eligible, a candidate must reside within the municipality, be eligible to register to vote, and be at least 18 years old.

Section 7. The date for drawing for ballot position shall be at the next regular Council meeting following March 31.

Section 8. This ordinance shall be effective immediately upon passage.

Section 9. Ordinance No. 49 of the Town of Barrackville is hereby repealed.

Passed by the Town Council this 5th day of April, 2016.

David Jenkins
Mayor

Attest:

Steven H. Hall
City Clerk

318

ORDINANCE NO. 79

AN ORDINANCE PROVIDING FOR THE VACATION, ABANDONMENT, AND ANNULMENT OF ROBISON STREET IN CONAWAY BROTHERS LOTS ADDITION BETWEEN ICE STREET AND PROPERTY OF STEVEN R. HALL

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

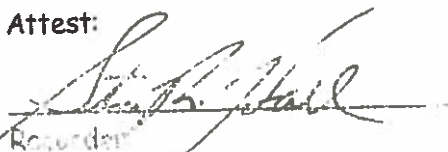
Section One. In the judgment of the Town Council of the Town of Barrackville, Robison Street in Conaway Brothers Lots Addition to the Town of Barrackville, a map or plat of which Addition is of record in the Office of the Clerk of the County Commission of Marion County, West Virginia, in Deed Book No. 534, at page 251, running from Ice Street to property of Steven R. Hall, bounded on one side by Lots 38, 39, and 40, which line runs 205.71 feet, and on the other side by Lots 35, 36, and 37, which line runs a distance of 197.89 feet, is not used by the public or by any persons other than the adjoining property owners, and no public use of said street in the future is foreseen; that the rights of no persons will be injured if said portion of Robison Street is vacated and annulled; that notice of the proposed abandonment, vacation, and annulment of said alley has been given to all adjoining property owners, and none have objected; and that the vacating and annulment of said portion of said street would be desirable and for the best interests of the Town of Barrackville, the public, and all concerned.

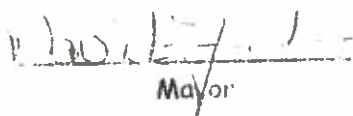
Section Two. The portion of Robison Street in the Conaway Brothers Lots Addition to the Town of Barrackville, running from Ice Street to the property of Steven R. Hall, described above, is hereby vacated, abandoned, and annulled, insofar as it is within the power of the Town of Barrackville to do so.

Section Three. The Town of Barrackville retains all rights of way or easements now existing or which may hereafter be necessary or useful to the Town, together with the right and privilege to enter in and upon said vacated street for the purpose of installing, maintaining, repairing, and removing sanitary and storm sewers, and for all other necessary purposes in connection with the installation, maintenance, repair, and removal of said storm and sanitary sewer lines.

Passed by the Town Council this 3rd day of January, 2017.

Attest:


Recorder


Mayor

ORDINANCE NO. 79

AN ORDINANCE PROVIDING FOR THE VACATION, ABANDONMENT, AND ANNULMENT OF ROBISON STREET IN CONAWAY BROTHERS LOTS ADDITION BETWEEN ICE STREET AND PROPERTY OF STEVEN R. HALL

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

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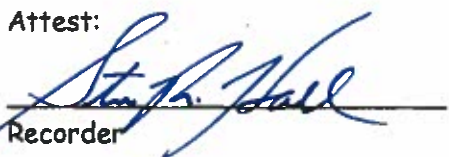
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Section Three. The Town of Barrackville retains all rights of way or easements now existing or which may hereafter be necessary or useful to the Town, together with the right and privilege to enter in and upon said vacated street for the purpose of installing, maintaining, repairing, and removing sanitary and storm sewers, and for all other necessary purposes in connection with the installation, maintenance, repair, and removal of said storm and sanitary sewer lines.

Passed by the Town Council this 3rd day of January, 2017.


Mayor

Attest:


Recorder

ORDINANCE NO. 80

AN ORDINANCE CONCERNING BARKING, NOISY, OR HOWLING DOGS

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

Section 1. Habitually barking, howling, or yelping dogs are hereby found to be and are declared a public nuisance. The keeping or harboring of any dog within the Town of Barrackville, which dog, by frequent or habitually barking, howling, whining, or yelping, creates unreasonably loud or disturbing noises of such character, intensity, or duration as to disturb the peace, quiet, and good order of the neighborhood, or such resident or business neighbors as may be in close enough proximity to such dog, is prohibited.

Section 2. Any person who shall allow such dog to habitually remain, be lodged, or occupy property, dwelling, building, yard, or enclosure which he or she occupies, owns, or over which he or she has control, will be considered as harboring such dog.

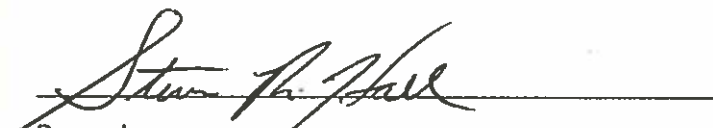
Section 3. Violation of this ordinance shall be a misdemeanor, and upon conviction thereof, a person shall be fined not more than \$100.00 for the first offense thereof, and upon conviction thereof, shall be fined not more than \$500.00 for the second and subsequent offenses.

Section 4. This ordinance shall be effective immediately upon passage.

Passed by the Town Council this 1st day of AUGUST, 2017.


Mayor

Attest:


Recorder

ORDINANCE NO. 81

AN ORDINANCE SETTING FORTH THE RATES, FEES AND CHARGES FOR SERVICE TO CUSTOMERS OF THE SEWERAGE SYSTEM OF THE TOWN OF BARRACKVILLE

THE TOWN COUNCIL OF THE TOWN OF BARRACKVILLE HEREBY ORDAINS:

The following rules, rates and charges are hereby fixed, determined and established for municipal sewerage services provided to all general domestic, commercial, and industrial users and customers of the Town of Barrackville's Municipal Sewage Treatment Plant and Collection System, commencing upon the effective date as hereinafter provided, and in accordance with the following Rates and Schedules:

RULES AND REGULATIONS

Rules and Regulations for the Government of Sewer Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

SECTION ONE - TARIFF

Schedule 1

APPLICABILITY

Applicable in the entire territory served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial, and industrial service.

RATES (Based upon the metered amount of water supplied)

Flat rate of \$13.37 per 1,000 gallons of water used.

MINIMUM CHARGE

No bill will be rendered for less than \$26.74 per month, which is the equivalent of 2,000 gallons. If billing is bimonthly, then no bill will be rendered for less than \$53.48 bimonthly, which is the equivalent of 4,000 gallons.

FLAT RATE CHARGE (CUSTOMERS WITH NON-METERED WATER SUPPLY)

Equivalent of 2,000 gallons of water usage or \$26.74 per month. If billing is bimonthly, then the equivalent of 4,000 gallons of water usage or \$53.48 bimonthly.



LEAK ADJUSTMENT RATE

A leak adjustment rate of \$4.39 per 1,000 gallons shall be applied by the utility when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical usage.

TAP FEE

The following charges are to be made whenever the utility installs a new tap to serve an applicant:

A tap fee of \$400.00 will be charged to customers applying for service.

DISCONNECT AND RECONNECT FEES

Whenever water service has been discontinued for nonpayment of sewer bills in conjunction with a water service termination agreement with the City of Fairmont, a disconnection fee of \$25.00 shall be charged. Whenever water service has been disconnected for non-payment of sewer bills in conjunction with a water service agreement with Ice's Run Public Service District, a disconnection fee of \$20.00 shall be charged.

Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with the City of Fairmont is reconnected, a re-connection fee of \$25.00 shall be charged. Whenever water service, which has been previously disconnected or otherwise withheld for non-payment of a sewer bill in conjunction with a water service termination agreement with Ice's Run Public Service District, a re-connection fee of \$20.00 shall be charged.

SECURITY DEPOSIT

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class or \$50.00, whichever is greater. This fee may be changed by applicable statutory provisions.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed upon any customer whose check for payment of charges is returned by his or her bank due to insufficient funds.

·DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

Schedule 2

SURCHARGE FORMULA TO BE APPLIED IN CASES WHERE SURFACE DRAINAGE IS
CONNECTED TO THE UTILITY'S SANITARY SEWER SYSTEM

·APPLICABILITY

Where the Utility has discovered that a customer's roof drain, downspouts, storm sewer, or other similar facilities conducting surface water has been connected to the Utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the Utility, in accordance with the rules and regulations of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

- S - The surcharge in dollars.

- A - The area under roof and/or the area of any other water collection surface connected to the sanitary sewer, in square feet.

- R - The measured monthly rainfall, in inches.

- .0006233 - A conversion factor to change inches of rain x square feet of surface to thousands of gallons of water.

- C - the Utility's approved rate per thousand gallons of metered water usage.

The utility shall not impose the surcharge unless, and until, the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system.

Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall

give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

Schedule 3

ENERGY CREDIT

All customers served by a septic affluent pump unit who also provide electricity to said pump shall receive a credit toward their monthly bill equal to \$0.69 per 1000 gallons used. This credit is to be reimbursed to the customers for the electrical cost of pumping 1,000 gallons.

SECTION TWO - TARIFF EFFECTIVE DATE

The rates, charges and penalties provided herein shall become effective forty-five (45) days after enactment, or as soon thereafter as the same may be approved by the Public Service Commission of West Virginia.

SECTION THREE - SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are severable, and if any clause, provision or section hereof shall be held void or unenforceable by the West Virginia Public Service Commission or any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date hereof, all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed, and to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION FOUR - STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the Recorder is hereby authorized and directed to publish a notice of a proposed adoption of this ordinance as a Class II-O legal advertisement in compliance with applicable State law, in the Times-West Virginian, a qualified newspaper of general circulation in the Town of Barrackville. This notice shall state the subject matter and title of the ordinance, set forth the proposed schedules of said rates and charges, indicate the date, time, and place of council meetings which shall consider the adoption of the ordinance, and state that any person interested may be heard with respect to this ordinance being adopted. Said notice shall also provide that a copy of this ordinance shall be on file in the office of the Mayor of Barrackville for review by interested persons during the regular office hours of such office. The first publication of said notice shall be at least ten (10) days before the date fixed in said notice as the date on which the council will consider adoption of the ordinance.

Passed this 10th day of July, 2018

By David Foulk
Mayor

JUNE 5, 2018
First Reading

JULY 10, 2018
Second Reading and Public Hearing

Attest:
Star P. Hill
Town Recorder

TOWN OF BARRACKVILLE FLOODPLAIN ORDINANCE

AUTHORITY AND PURPOSE: ORDINANCE AMENDING ORDINANCE #44

AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE; PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED BY THE TOWN OF BARRACKVILLE

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Authority

- A. The provisions of this ordinance have been prepared with the intention of meeting the requirements of THE NATIONAL FLOOD INSURANCE ACT OF 1968 (42 U.S.C. 4001 et seq.) AMENDED BY THE CONGRESS OF THE UNITED STATES THROUGH THE 15TH. OF FEBRUARY, 1975 (PUBLIC LAW 91-152),
- B. Authority to adopt, administer and enforce this Ordinance is vested in the Town of Barrackville pursuant to WEST VIRGINIA, STATE CODES 8-12-14, 7-1-3n, 7-1-3v and 7-1-3kk and/or WEST VIRGINIA STATE CODE 8A-4-2, 8A-5-7, 8A-7-2

Section 1.2 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the Town of Barrackville.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future and protect natural drainage.

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- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future and protect natural drainage.

- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal in cooperation with the County Sanitarian.
- D. Assure the County Assessor obtains information concerning improvement of real property as required by WV State Code 11-3-3A.
- E. Assure County E-911 addresses are obtained to maintain the currency of established emergency response dispatch systems.
- F. Reduce financial burdens imposed on the Town of Barrackville, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.3 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.4 Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within Town of Barrackville, unless a permit application has been completed and a permit or certificate of compliance has been obtained from the Floodplain Administrator. In addition, where land partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed as defined in this ordinance, a site plan with elevation data shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this ordinance and the community's need to minimize the hazards and damage resulting from flooding.

Section 1.5 Matters not provided for specifically

Where conditions are encountered that are not specifically provided for herein, the Floodplain Administrator shall determine the applicability of the provisions of this ordinance in accordance with its intent, and shall require the applicant to take appropriate measures pursuant to such determination.

ARTICLE II - INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

- A. For the purpose of this ordinance, the following interpretations shall apply:
 - 1. Words used in the present tense include the future tense

2. The singular includes the plural.
3. The plural includes the singular.
4. The word "person" includes a corporation, unincorporated association or partnership as well as an individual.
5. The Term "shall" or "will" is always mandatory.
6. The word "building" or "structure" shall be construed as if followed by the phrase "or part thereof".
7. The word "ordinance" shall refer to the Floodplain Ordinance.

Section 2.2 Definitions

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance it's most reasonable application.

Appurtenant Structure

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank.

Base Flood

Means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE)

The water surface elevation of the base flood in relation to the datum specified on the Town of Barrackville's Flood Insurance Rate Map. For the purposes of this ordinance, the one hundred (100) year flood or 1% annual chance flood.

Basement

Any area of the building having its floor sub grade (below ground level) on all sides.

Certificate of Compliance

A certification that all development is in compliance with the provisions of this ordinance.

Compensatory storage

An artificially excavated, hydraulically equivalent volume of storage within the special flood hazard area used to balance the loss of natural flood storage capacity when artificial fill or structures are placed within the special flood hazard area.

A person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more. Contractor includes a construction manager who performs management and counseling services on a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project.

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work

(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this section and who employs full time a registered architect licensed to practice in this state or a Registered Professional Engineer licensed to practice in this state. Contractor also does not include employees of such corporation, partnership or sole proprietorship.

Critical Facility

Any facility in which, even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a special flood hazard area if at all possible. If a critical facility must be located in a special flood hazard area it

should be provided a higher level of protection so that it can continue to function and provide services during a flood.

Development

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Flood

A general and temporary inundation of normally dry land areas.

Flood Insurance Rate Map (FIRM)

The official map on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Barrackville. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study

The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for unknown factors that may contribute uncertainty to flood heights of any given flood and floodway condition, such as wave action, blockage at stream crossings, and increased runoff

from urbanization of the watershed. Freeboard also tends to lower the cost of flood insurance.

Highest Adjacent Grade (HAG)

The highest natural elevation of the ground surface immediately adjacent to the development or structure foundation. This is primarily used during insurance rating in approximated floodplains.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By an approved state program as determined by the Secretary of the Interior; or,
 - (ii) Directly by the Secretary of Interior in states without approved programs.

Licensed Manufactured Home Retailer

A business licensed to sell Manufactured Homes in the state of WV as set forth in the WV state code.

Licensed Manufactured Home Installer

A contractor licensed to install Manufactured Homes in WV as set forth in the WV State Code.

Licensed Professional Surveyor

Any person licensed by the WV state board of examiners of land surveyors to engage in the practice of land surveying as defined in WV state code.

Lowest Adjacent Grade (LAG)

The lowest natural elevation of the ground surface immediately adjacent to the proposed development or structure foundation. The primary use of the LAG is to determine whether the structure is located within a special flood hazard area by comparing it to the base flood elevation.

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). An unfinished enclosure constructed with flood resistant materials as defined in FEMA Technical Bulletin 2 and usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure has proper flood openings and is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after 03/16/1988 and including any subsequent improvements to such structures. Any construction started after effective date of the Town of Barrackville's first floodplain ordinance adopted by the Town of Barrackville and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the ordinance was issued, provided the start of construction was within 180 days of permit issuance.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Practice of Engineering

Any service or creative work, as described in WV state code Article 13, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems; planning the use of land and water; teaching of advanced engineering subjects,

engineering surveys and studies; and the review of construction for the purpose of assuring compliance with drawings and specifications any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects.

Any person who practices any branch of the profession of engineering or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a Registered Professional Engineer, or by using another title implies that he or she is a Registered Professional Engineer or that he or she is registered under WV state code, article 13 or who holds himself or herself out as able to perform, or who performs any engineering service or work or any other service designated by the practitioner which is recognized as engineering, is considered to practice or offer to practice engineering within the meaning and intent of WV state code article 13.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered Professional Engineer

A person who has been duly registered or licensed as a Registered Professional Engineer by the West Virginia state board of registration for professional engineers as required under WV state code article 13 et seq.

Remedy a Violation

To bring a structure or other development into compliance with the requirements of this ordinance, or, if full compliance is not possible, to reduce the adverse impacts of the non-compliance to the greatest extent feasible.

Reasonably Safe from Flooding

Means that during the base flood, water should not damage structures and any subsurface waters related to the base flood should not damage existing or proposed structures.

Special Flood Hazard Area

The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and on Flood Insurance Rate Maps as Zones A, AE, AO, A1-30, and A99. This term shall also include areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

Start of Construction

The date the permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial excavation, or the placement of a manufactured home on a foundation. Although a permit must be obtained prior to beginning, permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage

also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

Substantial Improvement

Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the Start of Construction of the improvement.

This term includes structures, which have incurred "substantial damage", as defined herein regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violation of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

For the purpose of this definition improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences whether or not that alteration affects the external dimensions of the structure.

Top of Bank

The lines depicted on the FIRM maps delineating each side of a stream indicate the top of bank. In the field a professional familiar with fluvial geomorphology should document the top of bank. When a professional is not employed the top of the bank may be considered to be the top of the first significant slope landward of the waters edge when it is followed by at least 50 feet of relatively flat land.

Violation

The failure of any structure or development to be fully compliant with all the requirements of this ordinance. Any structure or other development lacking the certifications, finished construction elevation certificate or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

ARTICLE III - ESTABLISHMENT OF THE SPECIAL FLOOD HAZARD AREA

Section 3.1 Identification

- A. The identified special flood hazard area shall be those areas of the Town of Barrackville which are subject to the one hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for the Town of Barrackville by the Federal Emergency Management Agency (FEMA) dated 06/19/2012 or the most recent revision thereof including all digital data developed as part of the FIS.
- B. The identified special flood hazard area shall also be those special flood hazard areas identified by the Town of Barrackville by use of historic or other technical data and shown on an officially recognized "Local Flood Hazards Map". These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 3.2 Descriptions of Special Flood Hazard Areas

- A. The identified special flood hazard area shall consist of the following four specific areas:
 - 1. The Floodway shall be those areas of AE zone identified as Floodways in the FIS and as shown on the FIRM. The term shall also include any floodway areas delineated by developers in the approximated floodplain and designated as such by the community.
 - 2. The Floodway Fringe shall be those areas of AE zone for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area.
 - 3. The AE Area without Floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
 - 4. The Approximated floodplain shall be those areas identified as an A zone on the FIRM included in the FIS prepared by FEMA and for which no one hundred (100) year flood elevations have been provided.

Section 3.3 Changes in Designation of Area

- A. The delineation of the identified special flood hazard area may be revised by the Town of Barrackville where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission or other qualified agency or individual document the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
- B. A Town of Barrackville's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable but, not later than six months after the date such information

becomes available, the Town of Barrackville shall notify the NFIP Administrator of the changes by submitting technical or scientific data.

- C. The Town of Barrackville may identify and regulate new local flood hazard or ponding areas. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

Section 3.4 Boundary Disputes

Should a dispute concerning the location of proposed development relative to a special flood hazard area arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision may appeal to the Town of Barrackville. The burden of proof shall be on the appellant/applicant.

Section 3.5 Elevations Prevail

Elevation data certified by a Licensed Professional Surveyor or Registered Professional Engineer shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

- A. The proposed development will automatically conform to the flood damage reduction requirements of this ordinance if the natural lowest adjacent grade (LAG) to the proposed development is at or above the closest applicable base flood elevation (BFE) specified in the flood insurance study. The applicant shall be advised to apply for a Letter of Map Amendment (LOMA) from FEMA to have the special flood hazard area designation removed from the structure or specific area. If the difference between LAG and BFE is modest the applicant will also be advised to use caution during site preparation or excavation and information concerning the Preferred Risk Policy should be provided.
- B. The proposed development shall be considered to be within the special flood hazard area if the natural LAG to the proposed development is below either; 1. The closest applicable BFE specified in the flood insurance study, or 2. The reasonably safe from flooding elevation determined by the Town of Barrackville in approximate floodplains. The proposed development shall then be required to conform to all appropriate flood damage reduction provisions of this ordinance.

ARTICLE IV - UTILIZATION OF THE SPECIAL FLOOD HAZARD AREA

Section 4.1 Floodway

Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the Town of Barrackville during the occurrence of the base flood discharge. The resultant engineering study shall include a cover letter, signed and sealed by the responsible professional,

providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- A. Because floodways present increased risk to human life and property due to their relatively faster and deeper flowing waters the Floodway shall be preserved to the greatest extent possible.
1. New development shall not be permitted in the floodway where reasonable alternatives exist elsewhere. In addition to the requirements below the applicant shall demonstrate that there are no reasonable alternatives other than the floodway encroachment before a permit is issued.
 2. When the floodway is the only reasonable alternative the applicant shall demonstrate that the floodway encroachment is the minimum necessary to accomplish the project.
 3. All permitted uses, activities, and development shall be undertaken in strict compliance with the flood proofing and related provisions contained herein, and in all other applicable codes, ordinances and regulations.
 4. In special flood hazard areas for which no regulatory floodway has been designated, the regulatory floodway for small, single lot development not incorporating significant amounts of fill can, at the discretion of the Town of Barrackville, be determined to be the channel of the stream and the adjacent land areas to a distance of one-half the width of the special flood hazard area as measured from the top of the bank nearest the site to the upland limit of the 1% annual chance special flood hazard area boundary.

Section 4.2 Floodway Fringe

Within any Floodway Fringe area any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

Section 4.3 AE without Floodway

Within any AE without Floodway area, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway where determined.

Section 4.4 Approximated Floodplain (Zone A)

- A. Within any Approximated Floodplain

1. The Floodplain Administrator shall use elevation and floodway information from Federal, State, or other acceptable sources when available to determine the elevation above which development will be reasonably safe from flooding.
2. When data from an acceptable source is not available, the Floodplain Administrator shall review, or shall cause to be reviewed; all proposed development to determine; 1. The amount being invested and, 2. The specific flood risk at the site. The Floodplain Administrator shall then require the applicant to determine the elevation above which the development will be reasonably safe from flooding using elevation data, hydrologic and hydraulic analyses or other techniques. When hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.
3. Any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

See appendix 4.4 for Sample "Approximated floodplain (Zone A) techniques"

Section 4.5 Alteration or relocation of a stream

- A. Whenever a developer intends to alter or relocate a stream within the special flood hazard area the developer shall notify in writing, by certified mail, the Town of Barrackville, The Floodplain Administrator, the State Coordinating Office, any adjacent communities and any adjacent property owners of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Emergency Management Agency (FEMA). In addition prior to issuing the local permit the Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval..

See appendix 4.5 for Sample "Stream Alteration process and contact sheet"

- B. The developer shall also assure the Town of Barrackville in writing that the flood carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. If hydrologic and hydraulic analyses are required, they shall only be undertaken by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses,

computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- C. Alteration of a stream includes placement of culverts, bridges or other stream crossings. The Floodplain Administrator may require the use of certain "best practice" techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the Town of Barrackville a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- F. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V - CRITERIA FOR BUILDING AND SITE PLAN APPROVAL

Section 5.1 General

Permits are required in order to determine whether all new construction or substantial improvements are:

- A. Located in an identified Floodplain, Floodway or other special flood hazard area.
- B. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Constructed with material and utility equipment resistant to flood damage as outlined in FEMA Technical Bulletin 2 or the most recent revision thereof.
- D. Constructed by methods and practices that minimize flood damage.
- E. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or

located so as to prevent water from entering or accumulating within the components during conditions of flooding.

- F. To comply with WV State Code §11-3-3a. concerning County Assessor "Building or real property improvement notice"
- G. Approved by County Health Department for Water and Sewer to assure facilities are designed or located in compliance with the flood damage reduction requirements of this ordinance.

Section 5.2 Basic Format

The basic format of the permit shall include the following:

- A. Name and address of applicant.
- B. Name and address of owner of land on which proposed development is to occur.
- C. Names, addresses, and valid WV license numbers of all contractors working at the building site, or affidavits stating that work is being performed by individuals exempt from contractor licensing as set forth in Title 28, Series 2, section 3.9 (b) of the West Virginia Code of state regulations or the most recent revision thereof.
- D. A description of Site location sufficient to locate the project including tax map and parcel number and most recent deed book and page number.
- E. A standard site plan showing size and location of the proposed development as well as any existing buildings or structures. The site plan shall also show all adjacent roads and watercourses with direction of flow, the lowest adjacent grade to the proposed foundation and/or toe of fill, the Base Flood Elevation and the location of the floodway boundary when applicable.
- F. An acknowledgement that the applicant agrees to pay any and all fees associated with the permitting process as set forth in Section 7.9 hereof.
- H. An acknowledgement that the applicant agrees to allow authorized representatives of floodplain management programs access to the development to inspect for compliance.
- I. The contract required by WV Code of State Regulations, Title 28, Series 4, and all addendums to the contract(s) shall be presented to the Floodplain Administrator for review within five (5) business days of contract signing. The Town of Barrackville does not require and will not keep copies of the contracts or addendums. Failure to present contract or addendums for review shall void the permit. If a licensed contractor is not involved, or the work is of an aggregate value of less than ten thousand dollars including materials and labor, a brief written description of proposed work and the estimated value will suffice.

Section 5.3 Elevation and Flood Proofing Information

All applicants are encouraged to exceed the minimum elevation requirements contained herein. Flood insurance rates can be lowered significantly by increasing the elevation of the lowest floor above the freeboard height required by this ordinance.

Depending on the type of structure involved, the following information shall also be included in the application for work within the Special flood hazard area:

A. For structures to be elevated two feet above the Base Flood Elevation:

1. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer or Licensed Professional Surveyor.
3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator, a Registered Professional Engineer or Architect shall prepare these plans.
4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to two feet above the Base Flood Elevation at the building site.
5. During the course of construction, as soon as the basic elements of the lowest floor are in place and before further vertical construction, it is highly recommended that the applicant check for error by obtaining elevation data completed by a Registered Professional Engineer or Licensed Professional Surveyor certifying the height of the lowest floor. If a mistake in elevation has been made this is the best time to correct the error.
6. A finished construction elevation certificate shall be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate shall confirm that the structure in question, together with attendant utilities is elevated in compliance with permit conditions.
7. A non-conversion agreement shall be signed by the applicant whenever the Town of Barrackville determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
 - (i) The area below Base Flood Elevation shall not be converted for

use other than for parking, building access or for allowable storage as detailed in this ordinance.

- (ii) The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

B. For structures to be flood proofed to two feet above the Base Flood Elevation (nonresidential structures only):

All applicants are encouraged to exceed the minimum flood proofing requirements contained herein. Flood insurance rates can be lowered significantly by increasing the level of flood proofing above the height required by this ordinance. In order to obtain an "elevation credited" flood insurance rate on dry flood proofed buildings, flood proofing must extend at least one foot above the Base Flood Elevation.

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, showing the size of the proposed structure and its relation to the lot where it is to be constructed.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer or Licensed Professional Surveyor.
3. A Flood proofing Certificate, FEMA 81-65, as revised by FEMA, shall be prepared by the Registered Professional Engineer who prepared the plans in (1) above, stating that the finished structure, together with attendant utility and sanitary facilities is designed so that:
 - (i) The structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

C. For Appurtenant structures constructed of flood resistant materials used solely for parking of vehicles or limited storage, (Appurtenant Structures only)

1. A site plan prepared by a Licensed Professional Surveyor or others of demonstrated qualifications showing elevation of existing ground, proposed finished ground and lowest floor. The plan shall also show details of proposed flood resistant materials usage and the size of the proposed structure and its relation to the lot where it is to be constructed.

The location of the floodway boundary shall be represented on the plan when a floodway is present on the site.

2. An elevation certificate, based on finished construction, must be prepared by a Licensed Professional Surveyor or others of demonstrated qualifications. The elevation certificate confirm that the structure in question, together with attendant utilities is designed so that:
 - (i) Flood resistant materials as detailed in FEMA Technical Bulletin 2 are used in the construction of the structure from the lowest structural element to two feet above the Base Flood Elevation and that all utilities are located at least two feet above the Base Flood Elevation.
 - (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or Architect or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

3. In addition, the applicant shall sign a non-conversion agreement and notify prospective buyers of the existence of the agreement. It shall be the responsibility of the applicant to transfer the non-conversion agreement to any new owner at closing via notarized signature. A signed copy of the transferred non-conversion agreement shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

Section 5.4 Site Plan Criteria

Site plans are required for all development, new construction and substantial improvements determined to be located in a special flood hazard area and all proposed Subdivisions and Manufactured Home Parks. These proposals shall be reviewed by the Floodplain Administrator to assure that they are consistent with the need to minimize flood damage.

The owner or developer shall submit a preliminary site plan to the Floodplain Administrator that includes the following information:

- A. A map showing the location of the proposed subdivision and/or development with respect to special flood hazard areas, proposed lot sites, and fills.
- B. Name of Registered Professional Engineer, Licensed Professional Surveyor or other qualified person responsible for providing the information required in this section.
- C. Where the subdivision or manufactured home park lie partially or completely in the special flood hazard areas, the plan map shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the special flood hazard areas. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.
- D. All subdivision proposals and other proposed new developments which are proposed to take place either fully or partially within the approximated floodplain and which are greater than ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway when directed to do so by the Floodplain Administrator.
 - 1. When a Flood Insurance Study (FIS) is available from FEMA, the data contained in that study shall be used to substantiate the base flood.
 - 2. If a FEMA Flood Insurance Study is not available the required data may be available from an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resource Conservation Service or state and local water resource department.
 - 3. If the required data is not available from other sources the applicant shall develop the technical data using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a Registered Professional Engineer, who shall certify that the methods used correctly reflect currently accepted technical concepts.
- E. Where the subdivision or other development site lies partially in the special flood hazard area and all proposed development including fill will take place on natural grade a significant vertical distance above the approximated floodplain area (Zone "A") boundary depicted on the map, development of detailed Base Flood Elevation data may not be necessary. In these cases the site plan for the proposed development must show contours at intervals of two (2) or five (5) feet, depending on the slope, and clearly delineate the area to be developed and the location of the special flood hazard boundary area as scaled from the FEMA map. A Registered Professional Engineer or Licensed Professional Surveyor shall certify the site plan.

Section 5.5 – Restrictions to Subdivision of land in special flood hazard areas.

Subdivision of land in the special flood hazard area shall result in lots that include a buildable portion outside of the special flood hazard area and be served by streets within the proposed subdivision having surfaces not lower than 1 foot below the elevation of the line defining the special flood hazard area limits. All new structures shall be sited on the portion of the subdivided lot that is located outside of the special flood hazard area.

ARTICLE VI - SPECIFIC REQUIREMENTS

Section 6.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision proposals, manufactured home parks, new construction and to construction of substantial improvements, and the repair of substantial damage, to existing structures occurring in the Special flood hazard area.

A. Basements and Lowest Floors

1. **Residential Structures** - All new construction, relocation, substantial improvements, including repair of substantial damage, of residential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation.
2. **Non-residential Structures** - All new construction, relocation, substantial improvements, including repair of substantial damage, of nonresidential structures shall have the lowest floor, including basement, ductwork and utilities, elevated to two feet above the Base Flood Elevation; or, together with attendant utility and sanitary facilities, be designed so that the structure is water tight with walls substantially impermeable to the passage of water from the lowest structural element to two feet above the Base Flood Elevation.
3. **Openings** - For all new construction, relocation, substantial improvements, and repair of substantial damage, those fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. A non-conversion agreement shall be signed by the applicant on all flood-proofed structures and any elevated structures when the Town of Barrackville determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:
 - i. The area below Base Flood Elevation shall not be converted for use other than for parking, building access or for allowable storage as detailed in this ordinance.
 - ii. The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

B. Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in special flood hazard areas pose an elevated risk to safety and substantial damage to property. Therefore;

1. All manufactured homes to be sited within the special flood hazard areas of Town of Barrackville shall be installed by a contractor possessing a valid WV Manufactured Home Installer's license. The Licensed Manufactured Home Installer shall use an installation design engineered to withstand flood hazards specific to the particular home site. Manufactured homes to be placed or substantially improved within the special flood hazard areas shall be installed in accordance with the following standards:
 - a. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated two feet above the Base Flood Elevation
 - b. Elevation shall be on reinforced piers on a permanent foundation, or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in special flood hazard areas.
 - c. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4 or the most recent revisions thereof. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is

in addition to applicable State and local anchoring requirements for resisting wind forces.

- d. Permanently attached rigid skirts and/or perimeter wall skirts of brick or block shall have openings to prevent collapse and damage to supporting piers. The openings shall be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement shall either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (ii) The bottom of all openings shall be no higher than one foot above grade.
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- e. Any additions to a manufactured home shall be similarly anchored and vented.

- 2. The licensed WV Manufactured Home Installer placing the unit shall perform a site inspection and certify in writing that the manufactured home has been installed to the standards set forth in this ordinance.

C. Appurtenant Structures

- 1. Except as provided in subsection 2 below, appurtenant structures shall be located out of the special flood hazard area or elevated to two feet above the Base Flood Elevation.
- 2. Where appurtenant structures not connected to the principal structure are to be located on sites below the Base Flood Elevation, the following flood damage reduction provisions apply:
 - a. Use of the structure shall be restricted to parking or limited storage.
 - b. Structures shall be no more than 200 square feet in size and valued at less than \$5,000.00.
 - c. Floors shall be at or above grade on at least one side.
 - d. Structures shall be located, oriented and constructed to minimize flood damage.
 - e. Structures shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure

resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

- f. Flood resistant materials as detailed in FEMA Technical Bulletin 2 shall be used in the portions of the structure below BFE.
 - g. Machinery, electric devices or appliances, and all utilities shall be located at least two feet above the Base Flood Elevation.
 - h. The venting requirements contained in Section 6.1 (A) are applicable and shall be strictly adhered to.
3. A non-conversion agreement shall be signed by the applicant stating that the use of the appurtenant structure or detached or attached garage shall not be changed from the use permitted, acknowledging that the structure may be subject to greater flood risk and that higher flood insurance premiums may be possible, and that a change in use may require full compliance with this ordinance. The applicant agrees to notify prospective buyers of the existence of this agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.

D. Recreational Vehicle Placement

1. Recreational vehicles to be placed within any special flood hazard area shall either:
- a. Be on site for fewer than 180 consecutive days. Or,
 - b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions. Or,
 - c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

E. Fill

The Town of Barrackville officially recognizes the beneficial functions the floodplain serves in storage and transportation of water during floods. Therefore;

- 1. Placement of fill in the special flood hazard area is discouraged and should be minimized.
- 2. No fill shall be permitted in the floodway.

3. Placement of fill in other areas of the special flood hazard area shall be restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. The Floodplain Administrator may require the developer to provide compensatory storage before permitting fill.
4. No fill shall be permitted unless it meets the requirements of Section 4.1 of this ordinance. All fill placed in the special flood hazard area shall meet or exceed the following standards:
 - a. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. The Town of Barrackville may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, hydrologic and hydraulic analyses shall be undertaken only by Registered Professional Engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Town of Barrackville. During permit review the Town of Barrackville shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 - i. Unacceptable increases in flood heights.
 - ii. Blocking drainage from adjacent property.
 - iii. Deflection of floodwaters onto adjacent existing structures.
 - iv. Increases to stream velocity initiating or exacerbating erosion problems.
 - v. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.
 - b. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
 - c. Filled site shall be contoured to drain properly (avoid ponding)
 - d. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.

- e. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted; no trash or woody debris shall be buried on site.
 - f. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards shall be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.
 - g. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
 - h. Fill site and fill shall be protected from erosion.
 - i. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less will be protected from erosion by covering them with grass, vines, weeds, or similar vegetative undergrowth.
 - ii. Fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of greater than five feet per second will be protected from erosion by armoring them with stone or rock slope protection.
 - i. All applicants placing fill in a special flood hazard area shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant shall convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.
 - j. The applicant shall submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and shall pay any fees or other costs assessed by FEMA for this purpose.
- F. Placement of Structures and other development**
- 1. All structures and other development shall be constructed or placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.
 - i. Whenever possible, structures and other development shall be constructed with the longitudinal axis parallel to the direction of flood flow and,
 - ii. So far as practicable, structures and other development shall be placed approximately on the same flood-flow lines as those of adjoining structures or development.

G. Anchoring

1. All structures and other development including stream crossings shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement, thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, swimming pools and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

H. Flood Protection Setback

A Flood Protection Setback equal to twice the width of the watercourse channel measuring from the top of one bank to the top of the opposite bank or 50 feet, whichever is less, shall be maintained from the top of the banks of all watercourses. To reduce erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the watercourse and conditions for replanting are suitable, high priority shall be given to planting vegetation in the setback area to stabilize banks, enhance flood protection and benefit aquatic resources.

2. Necessary public works and temporary construction may be exempted from this subsection.
3. The Floodplain Administrator may consider an appeal to the Flood Protection Setback requirement if the applicant demonstrates that it is impossible to allow any development without encroachment into the Flood Protection Setback area. The appeal conditions shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front and back lot line setbacks.

I. Storage

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal or plant life, shall be stored below Base Flood Elevation.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or readily removable from the area within the time available after flood warning.
3. Due to the potential of masking the natural elevation and making it more difficult to enforce this ordinance, material that resembles "fill" material shall not be considered "storage" material for purposes of this subsection.

J. Utility and Facility Requirements

- 1. All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- 2. All new or replacement sanitary disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- 3. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.
- 4. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

K. Drainage

- 1. Adequate drainage shall be provided to reduce exposure to flood hazard.
- 2. Adequate drainage paths are required around structures on slopes within zones AH and AO to guide floodwaters around and away from proposed structures.

L. Backflow Preventers

Back flow prevention valves should be used for all enclosed structures with sewage or drainage facilities located in the special flood hazard area.

ARTICLE VII - ADMINISTRATION

Section 7.1 Designation of Floodplain Administrator:

The Mayor of Barrackville is hereby appointed as Floodplain Administrator and is vested with the responsibility, authority and means to implement the commitments made in our agreement with the Federal Government to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions. The Floodplain Administrator shall also be responsible for submitting all required reports to FEMA concerning the Town of Barrackville’s participation in the National Flood Insurance Program.

Section 7.2 Development Permits and Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development or the new construction, substantial improvement, repair of substantial damage, the placement or relocation of any structure (including manufactured homes) within Town of Barrackville, unless a permit application and standard site plan has been completed, and a permit has been obtained from the Floodplain Administrator. In addition, where land that is either partially or fully in the special flood hazard area is to be subdivided, utilized for a manufactured home park or subdivision or otherwise developed, a detailed site plan shall be submitted to, and approved by, the Floodplain Administrator prior to any development.

Section 7.3 Approval of Permits and Plans

- A. The Floodplain Administrator shall review, or shall cause to be reviewed; all permit applications and plans in order to determine whether proposed building sites are reasonably safe from flooding.
- B. All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of the state and all other applicable codes and ordinances.
- C. The Floodplain Administrator shall not issue a permit to any person who does not possess a valid contractor's license when a contractor's license is required by West Virginia State Code §21-11-10.
- D. The Floodplain Administrator, before issuance of the permit, shall require the applicant to furnish satisfactory proof that such person is duly licensed as a contractor under the provisions of West Virginia State Code. If the applicant is not licensed a written affidavit that such person is not subject to licensure as a contractor or subcontractor as defined in §21-11-3 shall be provided to the Floodplain Administrator and placed in the permit file.
- E. The Floodplain Administrator shall require copies of all necessary permits from those governmental agencies from which Federal or State Law requires approval.
- F. The Floodplain Administrator shall provide a copy of all permits to the County Assessor as required by West Virginia State Code 11-3-3A.
- G. The Floodplain Administrator shall provide a copy of all permits for new structures to the County E-911 addressing coordinator.
- H. The County E-911 addressing coordinator shall provide a copy of all requests for addresses for new structures to the County Floodplain Administrator.
- I. The Town of Barrackville shall provide sufficient space to allow the Floodplain Administrator to keep on file in perpetuity, in a location safe from natural hazards, all information collected during the course of the administration of this ordinance.

Section 7.4 Application Procedures

Application for a permit and/or site plan approvals shall be made, in writing, on the forms supplied by the Town of Barrackville, and shall include all information stipulated under Article V of this ordinance.

Section 7.5 Changes

After the issuance of a permit or site plan approval by the Floodplain Administrator, no changes of any kind shall be made to the application, permit, or

any or the plans, specification or other documents submitted with the application without the written consent or approval of the Floodplain Administrator.

Section 7.6 Permit Placards

The Floodplain Administrator shall issue a permit placard, which shall be prominently displayed on the premises during the time construction is in progress. This placard shall show the number of the permit, the date of its issuance and be signed by the Floodplain Administrator.

Section 7.7 Start of Construction

Work on the proposed development shall begin within 180 days after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. All work on the proposed development shall be completed within 18 months of permit issuance, at which time the permit shall expire, unless a time extension is granted in writing by the Floodplain Administrator. The request for a time extension shall be in writing and shall state the reasons for the extension. When considering an extension, the Floodplain Administrator shall consider the following criteria:

- A. Has the developer diligently pursued the completion of the proposed development during the 18 months?
- B. Will the granting of the extension be detrimental to public safety, health, or welfare or injurious to other property?

Section 7.8 Inspections, Stop-Work Orders, Violation Notice and Revocations

A. Inspections

- 1. Upon learning of a potential violation of this ordinance, the Floodplain Administrator or staff shall investigate to determine whether a violation has occurred.
- 2. During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.
- 3. The Floodplain Administrator or other authorized official may inspect any development covered by this or previous ordinance to determine whether any portion of the development has been altered to be in non-compliance with the requirements of this ordinance.

B. Stop-Work Orders

- 1. The Floodplain Administrator shall immediately issue, or cause to be issued, a "Stop-Work Order" for any development found ongoing without having obtained a floodplain determination or a permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 8.3 of this local law.

C. Violation Notice and Revocations

1. When it appears after investigation that a permitted development is non-compliant with the provisions of this law and/or the conditions of the permit, the Floodplain Administrator shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation be corrected within fifteen (15) days from the date appearing on the notice. Failure to correct the violation within this time period shall be cause for revocation of the permit and the governing body, or authorized employee or agent to:
 - a. Seek an injunction in the Circuit Court of Marion County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
 - b. Seek a misdemeanor conviction in magistrate court or circuit court.

Section 7.9 Certificate of Compliance

- A. In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- B. In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- C. In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.

- D. A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- E. Issuance of the certificate shall be based upon the inspections conducted as prescribed in this ordinance or local administrative procedures, and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of permit approval.

Section 7.10 Fees

- A. A Floodplain Determination fee shall be assessed on all proposed development. This shall be a flat fee approved by the Town of Barrackville
- B. Proposed development determined to be occurring in a special flood hazard area regulated by this ordinance shall be assessed an additional fee, payable to the Town of Barrackville based upon a set schedule approved by the Town of Barrackville using the estimated value of the proposed construction as determined by the Floodplain Administrator.
- C. In addition, the applicant shall be responsible for reimbursing the Town of Barrackville for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- D. Due to the increased cost of processing, when any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

- 1. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the Town Council of the Town of Barrackville which shall be known as the Appeals Board. Such appeal shall be filed with the Town Council of the Town of Barrackville, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and

place not less than (ten (10) nor more than (sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

Section 8.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- B. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 - 1. Affirmative decisions shall only be issued by the Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 - 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 - 3. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - 4. The Appeals Board shall notify the applicant in writing over the signature of a Town of Barrackville official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
 - 5. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Emergency Management Agency (FEMA)..
 - 6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the Town of Barrackville, shall be unlawful and shall be referred to the prosecuting attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the Town of Barrackville of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the Town Council of the Town of Barrackville to be a public nuisance and abatable as such.

ARTICLE IX – GOVERNMENT ACTIONS

Section 9.1 – Jurisdictional Boundary changes

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets or exceeds the requirements for participation in the National Flood Insurance Program
- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the special flood hazard area boundaries, Base Flood Elevation and location of floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities will notify the Federal Emergency Management Agency (FEMA) and the State Coordinating Office in writing whenever the boundaries of the Town of Barrackville have been modified by annexation or the Town of Barrackville has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the Town of Barrackville's boundaries, a copy of a map of the Town of Barrackville suitable for reproduction, clearly delineating the new corporate limits or new area for which the Town of Barrackville has assumed or relinquished flood plain management regulatory authority shall be included with the notification.

Section 9.2 -- Permits for Government Entities.

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance shall provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X - SEVERABILITY AND MUNICIPAL LIABILITY

Section 10.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

Section 10.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Town of Barrackville, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Barrackville.

ARTICLE XI – ENACTMENT

Passed on FIRST READING this the 7 day of February, 2012.
Passed on SECOND AND FINAL READING this 6 day of March, 2012
Town Council OF THE BARRACKVILLE
Elected Body Community name
County MARION

Signed: Donna Hall Mayor
Mayor or County Commission President

Attest: James D Doyle, Recorder
Typically the Town Recorder or County Clerk

ORDINANCE NO. 83

AN ORDINANCE FOR THE TOWN OF BARRACKVILLE FOR THE REGULATION OF ALL TERRAIN VEHICLES AND OTHER MOTORIZED RECREATIONAL APPARATUS WITHIN THE CORPORATE LIMITS OF THE TOWN OF BARRACKVILLE UPON ANY PUBLIC STREET, ALLEY WAY, AND SIDEWALK, PARKING LOT, OR RIGHT OF WAY AND UPON ALL OTHER REAL PROPERTY WHICH IS PUBLICLY OWNED, LEASED OR CONTROLLED; TO MAKE THE OPERATION OF SUCH APPARATUS A CRIMINAL OFFENSE IN CERTAIN INSTANCES; TO PROVIDE PENALTIES THEREFORE; AND TO PROVIDE EXCEPTIONS:

WHEREAS, pursuant to the provisions of West Virginia Code 17F-1-3 the town of and Barrackville is authorized and empowered to regulate in any manner or prohibit, by a lawfully enacted ordinance the operation of all-terrain vehicles upon any street, road or avenue with the towns corporate limits.

WHEREAS, pursuant to the provisions of West Virginia Code 8-15-5 (1)-(2)-(4) the Town of Barrackville is authorized and empowered to keep, maintain, and regulate the use of public streets, roads, alley ways, sidewalks, crosswalks, and public places and to keep the same free from obstructions.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5(13) the Town of Barrackville is authorized and empowered to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5(58) the Town of Barrackville is authorized and empowered to provide criminal penalties for the violation of any regulation adopted under authority of West Virginia Code 8-12-5.

WHEREAS, numerous incidents have been observed by, or otherwise reported to municipal authorities involving all- terrain vehicles, off street motorized dirt bikes and tricycles, golf cars, go-carts, snowmobiles and other such motorized recreational apparatus being operated upon the public streets, alley ways, sidewalks, crosswalks and in certain public places;

WHEREAS, numerous incidents have been generally reported in the media which reveal the dangerous nature of such all-terrain vehicles, off street motorized dirt bikes and tricycles, golf carts, go-carts, snowmobiles, and other motorized

recreational apparatus when operated upon the public streets, roads, alley ways, sidewalks, and crosswalks, and in particularly where general registered motor vehicles and pedestrian traffic are present;

WHEREAS, these incidents have caused concerns for the safety, health and wellbeing of the citizens of the Town of Barrackville.

WHEREAS, the council for the Town of Barrackville deems it necessary and proper in the best interest of its citizens to regulate the use of all-terrain vehicles and other motorized recreational apparatus upon public streets, roads, alleyways, sidewalks, and crosswalks; to prohibit the operation or use of all –terrain vehicles upon all other real property which is publicly owned, leased or controlled within the corporate limits and to prohibit the operation of any other such motorized recreational apparatus upon the public streets, roads, alley ways, sidewalks and crosswalks and upon all other real property which is owned, leased or controlled within the corporate limits.

NOW, THEREFORE, THE TOWN OF BARRACKVILLE HEREBY ORDAINS THAT:

Section 1. PURPOSE: The Town of Barrackville has determined that in order to protect the safety, health and welfare of its citizens, that it must regulate and in certain instances prohibit the use and operation of all-terrain vehicles and other related recreational vehicles upon any street, road, avenue, alleyway, sidewalk, parking lot or right of way within the Towns corporate limits and upon all other real property which is publicly owned, leased or controlled.

Section 2. DEFINITION: For the purpose of this ordinance the words and phrases identified herein shall have the following meanings:

- a. **ALL-TERRAIN VEHICLE (ATV)** – means any motor vehicle designed for off highway use and designed for operator use only with no passengers having a seat or saddle designed to be straddled by the operator, and handlebars or steering wheel for steering control defined by West Virginia Code 17A-1-1(ii) or the same type of off-highway motor vehicle designed and equipped with a “buddy seat” for the purposes of carrying a single passenger in addition to the operator of said vehicle.
- b. **OTHER MOTORIZED RECREATIONAL APPARATUS**- means go-cart, golf cart, unregistered off road motorized dirt bike, whether two or three wheeled, snowmobile as defined by West Virginia Code 17A-1-1

(mm); or other related vehicles or motorized apparatus used for the principal purpose of recreation other than all-terrain vehicle as hereinbefore defined and which motorized apparatus is not for the general transportation of person or goods.

Section 3. PROHIBITION: No person shall operate, ride upon or use any motorized recreational apparatus or ATV for transportation or recreational purposes, within or upon the public streets, roads, alley ways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville, except as herein permitted.

No person shall knowingly permit another person to operate, ride upon or use any motorized recreational apparatus or ATV for transportation or recreational purposes, within or upon the public streets, roads, alleyways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville, except as herein permitted.

A parent, custodian guardian of a minor under the age of sixteen (16) years or a minor over the age of sixteen (16), but not holding or possessing a valid operator's license commits an offense hereunder if said parent, custodian of guardian knowingly permits or by insufficient control allows said minor to operate, or use an ATV or any other motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleyways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville. The term "knowingly" includes knowledge that the parent, custodian or guardian should reasonably be expected to have concern with the whereabouts of said minor in his or her custody. This requirement is intended to hold a neglectful or careless parent, custodian or guardian up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that the parent or guardian was completely indifferent to the actives or conduct of such minor

Section 4. ALLOWABLE USE: An all-terrain vehicle (ATV) shall be permitted within or upon the public streets, roads, alleys, ways and crosswalks within the corporate limits of the Town of Barrackville between the 8 a.m. to 9 p.m., Eastern standard time, provided that:

- a. The ATV is equipped with taillights and headlights in proper working order and that the same are illuminated at all times while on the public streets.
- b. The ATV is equipped with brake lights in working order;
- c. The owner of the ATV shall be financially responsible and shall maintain liability insurance on the ATV in the minimum amount set forth in West Virginia Code 17D-4-2;
- d. The operator of said ATV must hold a valid general operator's license, pursuant to West Virginia Code 17B-2-1, And a ATV permit issued by the Town of Barrackville at a cost of forty dollars (\$40.00) annually to be paid by the owner/owners of said recreational vehicle. To obtain a permit the owner must apply with the Police Chief and present copies of valid insurance, a valid operator's license and clear photo of the front, rear, and side of the apparatus on which the permit will be displayed.
- e. Any operator or passenger under the age of eighteen (18) years of age must wear size appropriate protective helmet that meets the current performance specifications established by the American Standard institute standard, z-90-1, and United States department of transportation federal motor vehicle safety standard no. 218 or Snell Safety standards for protective headgear for vehicle users. Helmet requirements will State Law
- f. Any ATV carrying a passenger, other than the operator of the ATV, must be properly designed and equipped with a "Buddy Seat" on the manufacturing standards for said ATV allow and intend for passenger in addition to the operator to ride upon said ATV. However, in no event shall more than two persons be seated or saddled upon an ATV while being operated on public roads.
- g. An ATV carrying a passenger under the age of eighteen must be operated by an individual eighteen years of age or older.
- h. An orange safety flag with a 6-foot minimum required on all ATV's in order to obtain a permit.

Section 5: APPLICABILITY OF RULES OF OPERATION: In addition to the regulations set forth in section 4 of this Ordinance, every person operating an ATV upon the public streets, roads, alleys, ways, sidewalks and crosswalks within

the corporate limits of the Town of Barrackville shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of Chapter 17C of the state code which by their nature can have no application.

Section 6: EXEMPTIONS: Any member of the Barrackville Volunteer Fire Department or member of the Barrackville Police Department operating an ATV or other type of off-road motorized recreational apparatus during the course of an emergency situation or under the direction of the fire or police chief will be exempted from this ordinance.

Section 7: PENALTY: (a) Any violation of the regulations set forth in the Ordinance shall constitute the commission of a misdemeanor offense, and the Police department for the Town of Barrackville, or any other Law enforcement of any other policing agency exercising proper jurisdiction within the corporate limits of the Town of Barrackville, is hereby authorized and empowered to issue a citation and to charge any persons who violates the regulations contained in this Ordinance, jurisdiction thereof being in the Municipal Court for the Town of Barrackville.

(b) Except as provided in the provisions of subsection (c) of this and in addition to any other legal remedy for violation of civil or criminal provisions, any person who violates the provisions of this Ordinance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(c) Any parent, legal guardian or person who has actual responsibility for a child under eighteen (18) years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle without a helmet as required by the provisions of this Ordinance is guilty of a misdemeanor and shall, upon conviction, be subject to the following penalties:

1. For a first offense, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or not more than ten (10) hours of community service, or both;

2. For a second offense, a fine not less than a hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or not more than twenty (20) hours of community service, or both;

3. For a third and subsequent offense, a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or not more than one hundred (100) hours of community service, or both.

Section 8: ADMINISTRATIVE LIABILITIES/DISCLAIMER: Nothing contained within this Ordinance is intended nor shall it be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the Town of Barrackville, or any of its officers, officials, employees, or agents for any injury or damage resulting to any person whomsoever, as a consequence of any action or inaction on the part of the Town of Barrackville as related in any manner to the enforcement or non-enforcement of this Ordinance by the Town's officers, officials, agents or employees.

Section 9: SEVERABILITY: The provisions of this Ordinance are severable, and in the event that any or part of be held invalid for any reason by any court exercising competent jurisdiction, then such validity shall not be deemed to affect or impair any of the other provisions or parts of this Ordinance not specifically held to be invalid, it is hereby declared to be the intent of the Town council that this ordinance would have been adopted if any such invalid provision or part thereof had not been included herein. This ordinance hereby repeals ATV ordinance #66.

Section 10: CERTIFICATION:

This Ordinance shall be effective thirty (30) days following the second and final reading, passage and adoption by the Council of the Town of Barrackville.

Passed First Reading September 3, 2019

Passed Second Reading October 1, 2019

Third and Final Reading November 5, 2019

David Tonkin
Mayor

Steven Hall
Recorder

ORDINANCE NO. **84**AN ORDINANCE CREATING A
PLANNING COMMISSION

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

Section 1. Purpose and Creation of the Planning Commission.

To promote the orderly development of its governmental units and its environs; to promote the health, safety, convenience, and welfare of the citizens of the Town of Barrackville, and to plan for the future development of the community, a municipal planning commission is now created and established under the provisions of Chapter 8A of the West Virginia Code.

Section 2. Composition and Organization; Qualifications, Appointment and Terms of Members; Filling Vacancies.

(1) *Composition* - Planning Commission members shall be appointed and confirmed by the Town Council. The Planning Commission shall consist of five (5) members, one of whom shall be a member of the governing body, or their designee, serving for a term coextensive with their term in office. If the Town has an administrative department, one member of the planning commission shall be part of the administrative department of the Town, or their designee, serving for a term coextensive with their employment with the town.

Of the remaining members of the Planning Commission, the positions must be filled to fairly represent different areas of interest, knowledge, and expertise, including, but not limited to business, industry, labor, government, and other relevant disciplines. All appointees to the Planning Commission shall be residents of the Town, and at least three-fifths of those appointed shall have been residents of Barrackville for a period of at least three years prior to confirmation.

(2) *Terms of Service* - The terms of the remaining appointees shall be for one year, two years, and three years, divided as equally as possible between those terms. Thereafter all members shall serve for a term of three years.

(3) *Removal* - The Town Council may establish procedures for the removal of members of the Planning Commission for inactivity, neglect of duty, or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

(4) *Filling Vacancies* - Should a vacancy arise on the Planning Commission for any reason during the duration of a term, the vacancy shall be filled for the unexpired term in the same manner as provided in Section 2 of this ordinance.

(5) *Officers* - At the first meeting each year the members of the Commission shall elect from among its members a president and a vice president.

- a. The President shall preside over all meetings of the Planning Commission and over all public hearings and public meetings called by the Planning Commission. The president shall transmit reports, plans, recommendations, and other documents from the Planning Commission to all appropriate authorities or bodies. The President shall act as spokesperson for the Planning Commission.
- b. In the President's absence, the Vice-President shall have the power and authority to act as President of the Planning Commission. The Vice-

President shall perform additional duties and functions as may be required by the Planning Commission.

- c. In the absence of both the President and Vice-President, and as long as there is a quorum, the members present shall elect a President *pro tempore*, who shall only act as President for the duration of the meeting.
- d. A Secretary for the Planning Commission shall be appointed by the Town Council. The Secretary is responsible for taking the meeting minutes and keeping an accurate official record.

Section 3. Powers and Duties of the Planning Commission.

The Planning Commission has the following powers and duties, in accordance with W. Va. Code §8A-2-11, and any amendments thereto:

- (1) Exercise general supervision for the administration of the affairs of the Commission;
- (2) Prescribe rules and regulations pertaining to administration, investigations and hearings: Provided, That the rules and regulations are adopted by the governing body;
- (3) Supervise the fiscal affairs and responsibilities of the Commission;
- (4) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the Planning Commission: Provided, that the governing body sets the salaries;
- (5) Keep an accurate and complete record of all Planning Commission proceedings;
- (6) Record and file all bonds and contracts;
- (7) Take responsibility for the custody and preservation of all papers and documents of the Planning Commission;
- (8) Make recommendations to the appropriate governing body concerning Planning;
- (9) Make an annual report to the appropriate governing body concerning the operation of the Planning Commission and the status of planning within its jurisdiction;
- (10) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;
- (11) Adopt a seal, and certify all official acts;
- (12) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;
- (13) Prepare and submit an annual budget to the appropriate governing body;
- (14) If necessary, establish advisory committees;
- (15) Delegate limited powers to a committee composed of one or more members of the Commission; and
- (16) Contract for special or temporary services and professional counsel with the approval of the governing body. Upon request, a county prosecuting

C. Violation Notice and Revocations

1. When it appears after investigation that a permitted development is non-compliant with the provisions of this law and/or the conditions of the permit, the Floodplain Administrator shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation be corrected within fifteen (15) days from the date appearing on the notice. Failure to correct the violation within this time period shall be cause for revocation of the permit and the governing body, or authorized employee or agent to:
 - a. Seek an injunction in the Circuit Court of Marion County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
 - b. Seek a misdemeanor conviction in magistrate court or circuit court.

Section 7.9 Certificate of Compliance

- A. In areas of flood hazard it shall be unlawful to occupy, or to permit the use or occupancy, of any building or premises, or both, or part thereof hereafter created, erected, installed, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the building or land conforms to the requirements of this local law. Occupying or using a building or premises in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- B. In areas of flood hazard it shall be unlawful to inspect and approve a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until the inspector is in possession of a copy of the certificate of compliance issued by the Local Floodplain Administrator stating that the particular development being inspected conforms to the requirements of this local law. Inspection and approval of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.
- C. In areas of flood hazard it shall be unlawful to install a permanent utility connection to any building or premises, or both, or part thereof hereafter created, erected, installed or rebuilt until a certificate of compliance has been issued by the Local Floodplain Administrator stating that the development conforms to the requirements of this local law. Installation of utilities in violation of this section shall subject the violator to the penalties described in Section 8.3 of this local law.

- D. A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- E. Issuance of the certificate shall be based upon the inspections conducted as prescribed in this ordinance or local administrative procedures, and any finished construction elevation certificate, hydraulic data, flood proofing certificate, or encroachment analyses which may have been required as a condition of permit approval.

Section 7.10 Fees

- A. A Floodplain Determination fee shall be assessed on all proposed development. This shall be a flat fee approved by the Town of Barrackville
- B. Proposed development determined to be occurring in a special flood hazard area regulated by this ordinance shall be assessed an additional fee, payable to the Town of Barrackville based upon a set schedule approved by the Town of Barrackville using the estimated value of the proposed construction as determined by the Floodplain Administrator.
- C. In addition, the applicant shall be responsible for reimbursing the Town of Barrackville for any additional costs for services necessary for review and/or inspection of proposed development. Services include, but are not limited to, professional engineering and surveying. The Floodplain Administrator may require a deposit towards these additional costs. Additional costs may include reimbursement for contracted services.
- D. Due to the increased cost of processing, when any work for which a permit is required by this ordinance is started or proceeded with prior to obtaining a permit the fees above specified shall be doubled. The additional fee is intended to partially reimburse the County for the additional cost of processing permits for work already underway. To more fully recover this cost the fees above shall be tripled for every subsequent occurrence by the same person. Payment of the increased fee shall not relieve any person from complying fully with the requirements of this ordinance in the execution of the work or from other penalties prescribed herein.

ARTICLE VIII - APPEALS AND PENALTIES

Section 8.1 Appeals

- 1. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the Town Council of the Town of Barrackville which shall be known as the Appeals Board. Such appeal shall be filed with the Town Council of the Town of Barrackville, in writing, within thirty (30) days after notification of the decision. Upon receipt of such appeal, the Appeals Board shall set a time and

place not less than (ten (10) nor more than (sixty (60) days for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

Section 8.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board.
- B. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
 1. Affirmative decisions shall only be issued by the Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinance.
 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 3. An affirmative decision shall be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 4. The Appeals Board shall notify the applicant in writing over the signature of a Town of Barrackville official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (4) of this section; and
 5. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Emergency Management Agency (FEMA)..
 6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 8.3 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the Town of Barrackville, shall be unlawful and shall be referred to the prosecuting attorney who shall expeditiously prosecute all such violators. A violator shall, upon conviction, pay a fine to the Town of Barrackville of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with the ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the Town Council of the Town of Barrackville to be a public nuisance and abatable as such.

ARTICLE IX – GOVERNMENT ACTIONS

Section 9.1 – Jurisdictional Boundary changes

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets or exceeds the requirements for participation in the National Flood Insurance Program
- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the special flood hazard area boundaries, Base Flood Elevation and location of floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities will notify the Federal Emergency Management Agency (FEMA) and the State Coordinating Office in writing whenever the boundaries of the Town of Barrackville have been modified by annexation or the Town of Barrackville has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the Town of Barrackville's boundaries, a copy of a map of the Town of Barrackville suitable for reproduction, clearly delineating the new corporate limits or new area for which the Town of Barrackville has assumed or relinquished flood plain management regulatory authority shall be included with the notification.

Section 9.2 -- Permits for Government Entities.

Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance shall provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE X - SEVERABILITY AND MUNICIPAL LIABILITY

Section 10.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

Section 10.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the Town of Barrackville, or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Barrackville.

ARTICLE XI – ENACTMENT

Passed on FIRST READING this the 7 day of February, 2012.
Passed on SECOND AND FINAL READING this 6 day of March, 2012
Town Council OF THE BARRACKVILLE
Elected Body Community name
County MARION

Signed: Donna Hall Mayor
Mayor or County Commission President

Attest: James D Doyle, Recorder
Typically the Town Recorder or County Clerk

ORDINANCE NO. 83

AN ORDINANCE FOR THE TOWN OF BARRACKVILLE FOR THE REGULATION OF ALL TERRAIN VEHICLES AND OTHER MOTORIZED RECREATIONAL APPARATUS WITHIN THE CORPORATE LIMITS OF THE TOWN OF BARRACKVILLE UPON ANY PUBLIC STREET, ALLEY WAY, AND SIDEWALK, PARKING LOT, OR RIGHT OF WAY AND UPON ALL OTHER REAL PROPERTY WHICH IS PUBLICLY OWNED, LEASED OR CONTROLLED; TO MAKE THE OPERATION OF SUCH APPARATUS A CRIMINAL OFFENSE IN CERTAIN INSTANCES; TO PROVIDE PENALTIES THEREFORE; AND TO PROVIDE EXCEPTIONS:

WHEREAS, pursuant to the provisions of West Virginia Code 17F-1-3 the town of and Barrackville is authorized and empowered to regulate in any manner or prohibit, by a lawfully enacted ordinance the operation of all-terrain vehicles upon any street, road or avenue with the towns corporate limits.

WHEREAS, pursuant to the provisions of West Virginia Code 8-15-5 (1)-(2)-(4) the Town of Barrackville is authorized and empowered to keep, maintain, and regulate the use of public streets, roads, alley ways, sidewalks, crosswalks, and public places and to keep the same free from obstructions.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5(13) the Town of Barrackville is authorized and empowered to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.

WHEREAS, pursuant to the provisions of West Virginia Code 8-12-5(58) the Town of Barrackville is authorized and empowered to provide criminal penalties for the violation of any regulation adopted under authority of West Virginia Code 8-12-5.

WHEREAS, numerous incidents have been observed by, or otherwise reported to municipal authorities involving all- terrain vehicles, off street motorized dirt bikes and tricycles, golf cars, go-carts, snowmobiles and other such motorized recreational apparatus being operated upon the public streets, alley ways, sidewalks, crosswalks and in certain public places;

WHEREAS, numerous incidents have been generally reported in the media which reveal the dangerous nature of such all-terrain vehicles, off street motorized dirt bikes and tricycles, golf carts, go-carts, snowmobiles, and other motorized

recreational apparatus when operated upon the public streets, roads, alley ways, sidewalks, and crosswalks, and in particularly where general registered motor vehicles and pedestrian traffic are present;

WHEREAS, these incidents have caused concerns for the safety, health and wellbeing of the citizens of the Town of Barrackville.

WHEREAS, the council for the Town of Barrackville deems it necessary and proper in the best interest of its citizens to regulate the use of all-terrain vehicles and other motorized recreational apparatus upon public streets, roads, alleyways, sidewalks, and crosswalks; to prohibit the operation or use of all –terrain vehicles upon all other real property which is publicly owned, leased or controlled within the corporate limits and to prohibit the operation of any other such motorized recreational apparatus upon the public streets, roads, alley ways, sidewalks and crosswalks and upon all other real property which is owned, leased or controlled within the corporate limits.

NOW, THEREFORE, THE TOWN OF BARRACKVILLE HEREBY ORDAINS THAT:

Section 1. PURPOSE: The Town of Barrackville has determined that in order to protect the safety, health and welfare of its citizens, that it must regulate and in certain instances prohibit the use and operation of all-terrain vehicles and other related recreational vehicles upon any street, road, avenue, alleyway, sidewalk, parking lot or right of way within the Towns corporate limits and upon all other real property which is publicly owned, leased or controlled.

Section 2. DEFINITION: For the purpose of this ordinance the words and phrases identified herein shall have the following meanings:

- a. **ALL-TERRAIN VEHICLE (ATV)** – means any motor vehicle designed for off highway use and designed for operator use only with no passengers having a seat or saddle designed to be straddled by the operator, and handlebars or steering wheel for steering control defined by West Virginia Code 17A-1-1(ii) or the same type of off-highway motor vehicle designed and equipped with a “buddy seat” for the purposes of carrying a single passenger in addition to the operator of said vehicle.
- b. **OTHER MOTORIZED RECREATIONAL APPARATUS**- means go-cart, golf cart, unregistered off road motorized dirt bike, whether two or three wheeled, snowmobile as defined by West Virginia Code 17A-1-1

(mm); or other related vehicles or motorized apparatus used for the principal purpose of recreation other than all-terrain vehicle as hereinbefore defined and which motorized apparatus is not for the general transportation of person or goods.

Section 3. PROHIBITION: No person shall operate, ride upon or use any motorized recreational apparatus or ATV for transportation or recreational purposes, within or upon the public streets, roads, alley ways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville, except as herein permitted.

No person shall knowingly permit another person to operate, ride upon or use any motorized recreational apparatus or ATV for transportation or recreational purposes, within or upon the public streets, roads, alleyways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville, except as herein permitted.

A parent, custodian guardian of a minor under the age of sixteen (16) years or a minor over the age of sixteen (16), but not holding or possessing a valid operator's license commits an offense hereunder if said parent, custodian of guardian knowingly permits or by insufficient control allows said minor to operate, or use an ATV or any other motorized recreational apparatus for transportation or recreational purposes, within or upon the public streets, roads, alleyways, sidewalks and crosswalks or upon any other real property, which is publicly owned, leased or controlled, within the corporate limits of the Town of Barrackville. The term "knowingly" includes knowledge that the parent, custodian or guardian should reasonably be expected to have concern with the whereabouts of said minor in his or her custody. This requirement is intended to hold a neglectful or careless parent, custodian or guardian up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that the parent or guardian was completely indifferent to the actives or conduct of such minor

Section 4. ALLOWABLE USE: An all-terrain vehicle (ATV) shall be permitted within or upon the public streets, roads, alleys, ways and crosswalks within the corporate limits of the Town of Barrackville between the 8 a.m. to 9 p.m., Eastern standard time, provided that:

- a. The ATV is equipped with taillights and headlights in proper working order and that the same are illuminated at all times while on the public streets.
- b. The ATV is equipped with brake lights in working order;
- c. The owner of the ATV shall be financially responsible and shall maintain liability insurance on the ATV in the minimum amount set forth in West Virginia Code 17D-4-2;
- d. The operator of said ATV must hold a valid general operator's license, pursuant to West Virginia Code 17B-2-1, And a ATV permit issued by the Town of Barrackville at a cost of forty dollars (\$40.00) annually to be paid by the owner/owners of said recreational vehicle. To obtain a permit the owner must apply with the Police Chief and present copies of valid insurance, a valid operator's license and clear photo of the front, rear, and side of the apparatus on which the permit will be displayed.
- e. Any operator or passenger under the age of eighteen (18) years of age must wear size appropriate protective helmet that meets the current performance specifications established by the American Standard institute standard, z-90-1, and United States department of transportation federal motor vehicle safety standard no. 218 or Snell Safety standards for protective headgear for vehicle users. Helmet requirements will State Law
- f. Any ATV carrying a passenger, other than the operator of the ATV, must be properly designed and equipped with a "Buddy Seat" on the manufacturing standards for said ATV allow and intend for passenger in addition to the operator to ride upon said ATV. However, in no event shall more than two persons be seated or saddled upon an ATV while being operated on public roads.
- g. An ATV carrying a passenger under the age of eighteen must be operated by an individual eighteen years of age or older.
- h. An orange safety flag with a 6-foot minimum required on all ATV's in order to obtain a permit.

Section 5: APPLICABILITY OF RULES OF OPERATION: In addition to the regulations set forth in section 4 of this Ordinance, every person operating an ATV upon the public streets, roads, alleys, ways, sidewalks and crosswalks within

the corporate limits of the Town of Barrackville shall be subject to all of the duties applicable to the driver of a vehicle by the provisions of Chapter 17C of the state code which by their nature can have no application.

Section 6: EXEMPTIONS: Any member of the Barrackville Volunteer Fire Department or member of the Barrackville Police Department operating an ATV or other type of off-road motorized recreational apparatus during the course of an emergency situation or under the direction of the fire or police chief will be exempted from this ordinance.

Section 7: PENALTY: (a) Any violation of the regulations set forth in the Ordinance shall constitute the commission of a misdemeanor offense, and the Police department for the Town of Barrackville, or any other Law enforcement of any other policing agency exercising proper jurisdiction within the corporate limits of the Town of Barrackville, is hereby authorized and empowered to issue a citation and to charge any persons who violates the regulations contained in this Ordinance, jurisdiction thereof being in the Municipal Court for the Town of Barrackville.

(b) Except as provided in the provisions of subsection (c) of this and in addition to any other legal remedy for violation of civil or criminal provisions, any person who violates the provisions of this Ordinance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.

(c) Any parent, legal guardian or person who has actual responsibility for a child under eighteen (18) years of age who knows or should have known the child is operating or is a passenger on an all-terrain vehicle without a helmet as required by the provisions of this Ordinance is guilty of a misdemeanor and shall, upon conviction, be subject to the following penalties:

1. For a first offense, a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) or not more than ten (10) hours of community service, or both;

2. For a second offense, a fine not less than a hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or not more than twenty (20) hours of community service, or both;

3. For a third and subsequent offense, a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00) or not more than one hundred (100) hours of community service, or both.

Section 8: ADMINISTRATIVE LIABILITIES/DISCLAIMER: Nothing contained within this Ordinance is intended nor shall it be construed, so as to create or form the basis for any civil or administrative liability whatsoever on the part of the Town of Barrackville, or any of its officers, officials, employees, or agents for any injury or damage resulting to any person whomsoever, as a consequence of any action or inaction on the part of the Town of Barrackville as related in any manner to the enforcement or non-enforcement of this Ordinance by the Town's officers, officials, agents or employees.

Section 9: SEVERABILITY: The provisions of this Ordinance are severable, and in the event that any or part of be held invalid for any reason by any court exercising competent jurisdiction, then such validity shall not be deemed to affect or impair any of the other provisions or parts of this Ordinance not specifically held to be invalid, it is hereby declared to be the intent of the Town council that this ordinance would have been adopted if any such invalid provision or part thereof had not been included herein. This ordinance hereby repeals ATV ordinance #66.

Section 10: CERTIFICATION:

This Ordinance shall be effective thirty (30) days following the second and final reading, passage and adoption by the Council of the Town of Barrackville.

Passed First Reading September 3, 2019

Passed Second Reading October 1, 2019

Third and Final Reading November 5, 2019

David Tonkin
Mayor

Steven Hall
Recorder

ORDINANCE NO. **84**AN ORDINANCE CREATING A
PLANNING COMMISSION

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

Section 1. Purpose and Creation of the Planning Commission.

To promote the orderly development of its governmental units and its environs; to promote the health, safety, convenience, and welfare of the citizens of the Town of Barrackville, and to plan for the future development of the community, a municipal planning commission is now created and established under the provisions of Chapter 8A of the West Virginia Code.

Section 2. Composition and Organization; Qualifications, Appointment and Terms of Members; Filling Vacancies.

(1) *Composition* - Planning Commission members shall be appointed and confirmed by the Town Council. The Planning Commission shall consist of five (5) members, one of whom shall be a member of the governing body, or their designee, serving for a term coextensive with their term in office. If the Town has an administrative department, one member of the planning commission shall be part of the administrative department of the Town, or their designee, serving for a term coextensive with their employment with the town.

Of the remaining members of the Planning Commission, the positions must be filled to fairly represent different areas of interest, knowledge, and expertise, including, but not limited to business, industry, labor, government, and other relevant disciplines. All appointees to the Planning Commission shall be residents of the Town, and at least three-fifths of those appointed shall have been residents of Barrackville for a period of at least three years prior to confirmation.

(2) *Terms of Service* - The terms of the remaining appointees shall be for one year, two years, and three years, divided as equally as possible between those terms. Thereafter all members shall serve for a term of three years.

(3) *Removal* - The Town Council may establish procedures for the removal of members of the Planning Commission for inactivity, neglect of duty, or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

(4) *Filling Vacancies* - Should a vacancy arise on the Planning Commission for any reason during the duration of a term, the vacancy shall be filled for the unexpired term in the same manner as provided in Section 2 of this ordinance.

(5) *Officers* - At the first meeting each year the members of the Commission shall elect from among its members a president and a vice president.

- a. The President shall preside over all meetings of the Planning Commission and over all public hearings and public meetings called by the Planning Commission. The president shall transmit reports, plans, recommendations, and other documents from the Planning Commission to all appropriate authorities or bodies. The President shall act as spokesperson for the Planning Commission.
- b. In the President's absence, the Vice-President shall have the power and authority to act as President of the Planning Commission. The Vice-

President shall perform additional duties and functions as may be required by the Planning Commission.

- c. In the absence of both the President and Vice-President, and as long as there is a quorum, the members present shall elect a President *pro tempore*, who shall only act as President for the duration of the meeting.
- d. A Secretary for the Planning Commission shall be appointed by the Town Council. The Secretary is responsible for taking the meeting minutes and keeping an accurate official record.

Section 3. Powers and Duties of the Planning Commission.

The Planning Commission has the following powers and duties, in accordance with W. Va. Code §8A-2-11, and any amendments thereto:

- (1) Exercise general supervision for the administration of the affairs of the Commission;
- (2) Prescribe rules and regulations pertaining to administration, investigations and hearings: Provided, That the rules and regulations are adopted by the governing body;
- (3) Supervise the fiscal affairs and responsibilities of the Commission;
- (4) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the Planning Commission: Provided, that the governing body sets the salaries;
- (5) Keep an accurate and complete record of all Planning Commission proceedings;
- (6) Record and file all bonds and contracts;
- (7) Take responsibility for the custody and preservation of all papers and documents of the Planning Commission;
- (8) Make recommendations to the appropriate governing body concerning Planning;
- (9) Make an annual report to the appropriate governing body concerning the operation of the Planning Commission and the status of planning within its jurisdiction;
- (10) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;
- (11) Adopt a seal, and certify all official acts;
- (12) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;
- (13) Prepare and submit an annual budget to the appropriate governing body;
- (14) If necessary, establish advisory committees;
- (15) Delegate limited powers to a committee composed of one or more members of the Commission; and
- (16) Contract for special or temporary services and professional counsel with the approval of the governing body. Upon request, a county prosecuting