



City of Elkins

s and Ordinances Committee Meeting

April 12, 2023
9:00 AM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

- 1. Call to order and roll call**
- 2. Public comment**
- 3. Minutes**
 - a. Minutes proposed for the meeting of March 8, 2023.
- 4. Unfinished business**
 - a. City Code Section 90: Animals
- 5. New business**
 - a. Revision of City Code Chapter 52: Sewers and Sewage
 - b. Murals and wall signs
- 6. Announcements**
- 7. Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 12, 2023
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Minutes proposed for the meeting of March 8, 2023.
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. rules and ordinances - 2023_03_08 - minutes

RULES AND ORDINANCES COMMITTEE REGULAR MEETING MINUTES

***401 Davis Avenue
City Hall, Council Chambers
March 8, 2023
9:00 a.m.***

Present were Committee Members: Nanci Bross-Fregonara, Chad Griggs, and Marilyn Cuonzo.

Also present were: Jerry Marco (mayor), Mike Kesecker (operations manager), Gerry Roberts (city attorney), Steve Himes (fire chief), Travis Bennett (police chief), and Sutton Stokes (city clerk).

MINUTES

Cw. Cuonzo **MOVED APPROVAL OF THE MINUTES OF THE FEBRUARY 8, 2023 MEETING.** The motion carried.

UNFINISHED BUSINESS

Roberts presented a March 7 draft of a proposed update to City Code Section 90: Animals, containing changes requested by the committee at the last meeting. Discussion ensued about definitions, enforcement authority, and practices at other jurisdictions. The discussion proceeded through Section 90.14 of the proposed draft, to be continued at the next meeting.

Cw. Cuonzo, **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 10:10 a.m.

The foregoing minutes were approved at the meeting of _____, 2023.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 12, 2023
Section:	Unfinished business
Category:	Action Item
Agenda Item Name:	City Code Section 90: Animals
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Chapter 90 - Animals 2023_04_11 - changes after 3-8 meeting

CHAPTER 90: ANIMALS (Note: These titles and any sections numbers will be adjusted once the chapter is finalized.)

Section

General Provisions

90. Definitions

90.01 Keeping of livestock and fowl

90.05 Cruelty (combined as proposed with 90.06 and 90.07)

90.06 Poisoning (combined as proposed)

90.07 Birds and wild fowl (combined as proposed)

90.08 Fighting gamecocks or keeping cockpits

90.09 Disposal of dead animals

90.10 Staking cows or other animals on streets or property of another

90.11 Exhibiting stallion, jack or bull

90.12 Slaughtering

90.13 Administration and enforcement of chapter; Humane Officer; state law applicable

90.14 Procedure on complaint of an animal that is vicious, dangerous or infected with a potentially harmful communicable disease

Dogs

90.25 Definition

90.26 Annual head tax; imposed; duty of keepers to report to County Assessor; dog tags

90.27 Annual head tax; failure to pay

90.28 Running at large

90.29 Tethering

90.30 Barking or howling

Impoundment

90.45 Conditions; procedure; alternative procedure

90.46 Notice to owners or persons in charge

90.47 Redemption; costs

- 90.48 Disposition of unredeemed animals and fowl
- 90.49 Disposition of proceeds of sale
- 90.50 Prosecution of violations
- 90.51 Interference with pound and with release of animals

Waterfowl

- 90.65 Purpose and intent
- 90.66 Definitions
- 90.67 Prohibited acts

- 90.99 Penalty

Cross-reference:

- Animals on sidewalks, see § 93.004
- Disposition of carcasses generally, see § 91.021

Statutory reference:

- Authority of city to regulate or prohibit the keeping of animals and fowl, see W.Va. Code § 8-12-5(26)
- Diseases among domestic animals, see W.Va. Code §§ 19-9-1 et seq.
- General stock law, see W.Va. Code §§ 19-18-1 et seq.

GENERAL PROVISIONS

§90.____ DEFINITIONS

Add "dangerous wild animal" as defined in state code.

~~1) "Domestic animal" means any animal commonly kept as a pet in households, including, but not limited to dogs, cats, guinea pigs, hamsters, rabbits, and common caged birds; and any animal commonly kept as a companion.~~

~~2) "Domestic waterfowl" includes those species of birds which are non-native ducks, geese and swans, not retained in agricultural activities.~~

~~3)1) _____~~ "Enforcement Officer" means any person authorized by this Chapter or State Law to enforce the provisions hereof, or of State law and specifically including any officer of the City of Elkins Police Department.

~~4)2)~~ “Feed or feeding” means to place or deposit, scatter or distribute any type of food or sustenance with the intention of feeding, attracting or enticing waterfowl, both migrating and domestic.

~~5)3)~~ “Fowl” means any chicken, duck, goose, turkey, guinea fowl or pigeon.

~~6)4)~~ “Livestock” means any hog, pig, goat, cow, horse, pony, emu, alpaca or other hoofed animal.

~~7)5)~~ “Migratory waterfowl” includes those species of birds commonly known as ducks, geese, swans and other waterfowl falling under the jurisdiction of the United States Fish and Wildlife Service.

~~8) “Non-domestic animal” means those animals commonly considered to be naturally wild and not naturally trained or domesticated, or which are commonly considered to be inherently dangerous to the health, safety and welfare of humans.~~

§ 90.01 KEEPING OF LIVESTOCK AND FOWL AND DANGEROUS WILD ANIMALS

No person shall keep any livestock OR DANGEROUS WILD ANIMALS within the City. This section shall not apply to hogs or pigs kept at commercial stock yards to be sold at auction.

No person shall keep any fowl within the city except as provided for in the zoning ordinance Section 152.180.

§ 90.05 CRUELTY, POISONING AND INJURY TO ANIMALS

No person within the city shall cruelly or needlessly beat, torture, mutilate, kill, overload or overdrive any domestic animal or fowl, nor willfully deprive any ~~domestic~~ animal or fowl of necessary sustenance or shelter.

(1991 Code, § 4-5) Penalty, see § 90.99

Statutory reference:

Authority of Council to enact this section, see W.Va. Code § 8-12-5(27)

Malicious killing of, and cruelty to, animals, see W.Va. Code §§ 61-3-27, 61-8-19

No poisoned meat nor any poisonous substance shall be cast into any of the streets, public places, lots or buildings in the city for the purpose of destroying dogs or other animals.

(1991 Code, § 4-6) Penalty, see § 90.99

Statutory reference:

Malicious killing of animals by poison or otherwise, see W.Va. Code § 61-3-27

No person shall, at any time, kill or injure any wild bird of any kind or injure or destroy the nests or eggs of any wild bird or fowl, except, that birds of prey, crows and English sparrows may be killed at any time and their nests and eggs may be destroyed; provided, that if under the law of the state it is at any time lawful to catch or kill any wild fowl or birds, such birds or fowl may, during such time, be caught or killed within the city or if such action is taken pursuant to a state or federal sanctioned programs.

(1991 Code, § 4-7) Penalty, see § 90.99

Statutory reference:

Definitions as to game birds, protected birds and unprotected birds, see W.Va. Code § 20-1-2

Hunting and killing of birds generally, see W.Va. Code §§ 20-2-1 et seq.

§ 90.09 DISPOSAL OF DEAD ANIMALS.

~~Any person knowing of the existence of THE PROCEDURE UPON~~ or finding the carcass of a dead animal within the City shall immediately contact the Enforcement Officer and state the location thereof. If it is a domestic animal, the Enforcement Officer shall attempt to contact the owner. If the owner is not known, or if it is not a domestic animal, the Enforcement Officer shall notify the Operations Department and the dead animal will be removed and disposed of by the Streets Department. If the dead animal is located on the property of the owner, the owner shall be responsible for the removal and disposal of the dead animal in an appropriate manner.

§ 90.10 HITCHING OR STAKING ~~COWS OR OTHER~~ ANIMALS ON STREETS OR PROPERTY OF ANOTHER.??

(Same question as to 90.04.)

It shall be unlawful for any person to stake out any animal on the property of another without such property owner's consent, or upon any street or public place in the city or upon property belonging to the city.

(1991 Code, § 4-10) Penalty, see § 90.99

§ 90.12 SLAUGHTERING.

No person shall keep any slaughterhouse or slaughter any animals within the city. ~~Slaughtering and processing of any animal are prohibited within the City, except where such activity occurs within a butcher shop.~~

(1991 Code, § 4-12) Penalty, see § 90.99

§ 90.14 PROCEDURE ON COMPLAINT OF AN ANIMAL THAT IS VICIOUS, DANGEROUS OR INFECTED WITH A POTENTIALLY HARMFUL COMMUNICABLE DISEASE.

(Note: This section needs moved according to my notes. Need to discuss also how Municipal Court Judge will make this determination as to these animals.)

Procedure upon complaint that an animal is vicious, dangerous or infected with a potentially harmful communicable disease shall be as follows.

(A) (1) Upon complaint to the Judge of the Municipal Court of the city, that an animal is vicious or dangerous, as defined in division (B) below, or infected with a potentially harmful communicable disease, it shall be the duty of the Judge to immediately summon the owner or keeper of the animal to answer the complaint.

(2) In the instance of a complaint of an animal infected with a potentially harmful communicable disease, the Judge shall immediately notify the owner or keeper of such allegedly infected animal that such animal be exposed to any public place whereby the health of humans or animal may be affected; nor shall such animal be shipped or removed from the premises of the owner or keeper of such animal except under the supervision of the Enforcement Officer of the city. The Judge may order proper testing be completed on the alleged infected animal, by a licensed veterinarian, to determine if the animal is in fact infected with a potentially harmful communicable disease.

(3) If upon hearing, the Judge finds that such animal is vicious, dangerous or infected with a potentially harmful communicable disease, he or she may order a fine or may order the animal a menace to public safety and order the animal be destroyed to prevent injury and/or death to the public, The destruction of said animal shall occur immediately, absent a stay of such destruction pending appeal.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DANGEROUS or VICIOUS. Refers to and includes any animal:

(a) With a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or other domestic animals; or

(b) Which attacks human beings or other ~~domestic~~ animals without provocation.

(C) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, the owner or keeper of such animal shall be liable for all costs incurred by the city, associated with said owner's or keeper of the animal's prosecution under this section.

(D) Upon finding of the Judge of the Municipal Court that an animal is vicious, dangerous or infected with a potentially harmful communicable disease, and ordered destroyed, and if the owner or keeper of said animal appeals the Municipal Court Judges' ruling, said animal

shall be impounded, at the cost and expense of the animal's owner or keeper, until such appeal hearing is concluded.

10-DAY PERIOD TO SETTLE ACCOUNT OR DOG IS SURRENDERED

(Ord. 104, passed 8-6-2009) Penalty, see § 90.99

§ 90.28 ANIMALS RUNNING AT LARGE. (Do you want to add "cat or any other animal" so that it does not just apply to dogs?)

(A) Any person who owns, keeps or harbors animal within the city shall keep such animal confined to the premises owned or occupied by him or her and shall not permit such animal to run at large; provided, that animal shall not be deemed to be at large when held on leash by and under the control of a responsible person.

(B) It shall be unlawful for any owner or person in control of an animal to:

(1) Knowingly or willfully allow his or her animal to defecate on private property of other persons without their consent or the consent of persons having control of the premises; and

(2) Knowingly or willfully allow his or her animal to defecate on public property; except that defecation by an animal on public property shall not constitute a violation of this section if the owner of the animal immediately removes the material defecated and disposes of it in a safe and sanitary manner.

(3) Knowingly or willfully fail to periodically, properly and completely collect and dispose of any and all animal fecal excrement accumulating upon the premises of such owner. Detection of odor from the animal fecal excrement which constitutes a nuisance as determined by an Enforcement Officer from any neighboring property shall be deemed to be a prima facie evidence of such, animal's owner or other persons failure to abide by this section and shall be subject to penalties under this Chapter.

(1991 Code, § 4-17) (Ord. passed 3-2-1972; Ord. passed 5-5-1994) Penalty, see § 90.99

§ 90.29 TETHERING.

(A) No person shall tether an animal

(1) When the outside temperature, as measured on site by the Enforcement Officer, is equal to or greater than 90°F or equal to or less than 20°F;

(2) In such a manner as to cause injury, strangulation or entanglement on fences, trees or other human-made or natural obstacles;

(3) For a continuous period of time; or

(4) That is sick or injured.

(B) Animals may be restrained by means of a trolley system, or a tether attached to a pulley on a cable run, if the following conditions are met.

(1) Only one animal may be tethered to each cable run.

(2) The tether must be attached to a properly fitting collar or harness worn by the animal, with enough room between the collar and the animal's throat through which two fingers may fit. Choke collars and pinch collars are prohibited for purposes of tethering a dog to a cable run. There must be a swivel on at least one end of the tether to minimize tangling of the tether with stoppers on either side of the cable to ensure the animal is not able to entangle himself or herself.

(3) The tether and cable run must be of adequate size and strength to effectively restrain the animal. The size and weight of the tether must not be excessive, as determined by the Enforcement Officer, considering the age, size and health of the animal.

(4) The length of the tether from the cable run to the animal's collar should allow access to the maximum available exercise area and should allow continuous access to water and shelter. The trolley system must be of appropriate configuration to confine the animal to the owner's property, to prevent the tether from extending over an object or an edge that could result in injury or strangulation, and to prevent the tether from becoming tangled with other objects or animals. The tether must be long enough for the animal to move around or be able to urinate or defecate in an area separate from where it must eat, drink or lie down and allows the animal convenient access to food, water, dry ground or shelter. No vegetation or obstacles can restrict the movement of the animal on the tether.

(C) (1) All tethered animals must have access to shelter which is defined as any natural or artificial area which provides protection from the direct sunlight when that sunlight is likely to cause heat exhaustion. Metal barrels as well as any uninsulated metal structures are prohibited for use as shelter.

(2) Animal shelter shall be a wind-proof and moisture-proof structure and shall include four walls, a roof, a door flap for winter and a solid floor raised off the ground, containing a sufficient quantity of suitable dry bedding material.

(3) The containment area of any shelter shall be free of accumulated debris so that the animal shall be free to walk or lie down without coming in contact with any such waste or debris. A suitable method of draining shall be provided to eliminate excess water or moisture inside the shelter.

(Ord. 086, passed 12-4-2008) Penalty, see § 90.99

§ 90.30 BARKING OR HOWLING. (Note: has been changed recently by Ordinance 307)

Publisher's Note: This Section has been AMENDED by new legislation (Ord. 307, adopted 11-3-2022). The text of the amendment will be incorporated below when the ordinance is codified.

No person shall keep any barking or howling dog within the city nor permit any dog owned or controlled by him or her to bark or howl continuously for more than 15 consecutive minutes.

(1991 Code, § 4-18) (Ord. passed 11-19-1970) Penalty, see § 90.99

IMPOUNDMENT

§ 90.45 CONDITIONS; PROCEDURE; ALTERNATIVE PROCEDURE.

Any animal or fowl found at large within the city contrary to any provision of this chapter shall be considered abandoned and may be taken up by any enforcement officer, and impounded at a place designated for such purpose by the Council or by the Mayor; provided, that if an animal found at large in violation of this chapter is rabid, vicious or otherwise constitutes a danger to human life or limb, the officer may destroy such animal by shooting if it cannot safely be captured and made secure; and provided further, that when the ownership of such animal or fowl is known to the officer and the animal or fowl is not rabid or vicious and does not otherwise constitute a danger to human life or limb, the officer may, in lieu of impounding such animal or fowl, notify the owner thereof to retrieve it promptly and confine it on his or her own premises and, in such case, the officer may cite such owner for violation of this chapter.

(1991 Code, § 4-19)

Statutory reference:

Authority of city to regulate or prohibit the keeping of animals or fowl and to provide for the impounding, sale or destruction of animals or fowl kept contrary to law or found running at large, see W.Va. Code § 8-12-5(26)

Impoundment and disposition of dogs, see W.Va. Code §§ 19-20-6a through 19-20-8a

Impoundment, redemption and sale of animals under the general stock law, see W.Va. Code §§ 19-18-1 through 19-18-3

§ 90.46 NOTICE TO OWNERS OR PERSONS IN CHARGE.

(A) If the owner or person in charge of any animal or fowl impounded under the provisions of this subchapter is known to the enforcement officer, the enforcement officer shall promptly notify him or her of such impoundment, so as to inform him or her of:

- (1) The animal or fowl impounded, and a description thereof;
- (2) The date of impoundment;
- (3) The place of impoundment;
- (4) The reason for impoundment;
- (5) The procedure for redemption of his or her animal or fowl;
- (6) The costs for redemption; and
- (7) The consequences of failure to redeem the impounded animal or fowl, include authorized disposition after fourteen (14) days.

(B) If the owner or person in charge of any animal or fowl impounded under the provisions of this subchapter is unknown to the enforcement officer and cannot be ascertained by reasonable effort within 24 hours, the Enforcement Officer shall, within five (5) days following such impoundment, post notices City Hall and other public forums, each such notice to contain all the information required by divisions (A)(1) through (A)(7) above.

(1991 Code, § 4-20)

§ 90.47 REDEMPTION; COSTS.

The owner or person entitled to possession of any animal or fowl impounded under the provisions of this subchapter may redeem such animal or fowl at any time within fourteen (14) days, upon satisfactory proof of his or her right to possession and payment to the city of:

- (A) The expense, if any, incurred in making the impoundment;
- (B) The expense incurred for sustenance, shelter and care of the impounded animal or fowl;
- (C) The expense incurred for giving notice
- (D) Any other expense actually incurred by the city

(1991 Code, § 4-21) (Ord. 099-06, passed 4-20-1999)

§ 90.48 DISPOSITION OF UNREDEEMED ANIMALS AND FOWL.

(A) Upon giving or posting of notice to the owner or person in charge of an impounded animal or fowl, as provided by § 90.46, the Enforcement Officer shall, except as provided by division (C) below, post notices City Hall and other public forums, to inform the public of a description of the impounded animal or fowl and to state that such animal or fowl will be disposed of.

§ 90.49 DISPOSITION OF PROCEEDS OF SALE.

The proceeds of each sale of an impounded animal or fowl shall be paid into the city treasury and shall be applied to:

- (A) The expense incident to the sale;
- (B) The expense, if any, incident to apprehension and making the impoundment;
- (C) The expense of giving notice;
- (D) The expense incurred for sustenance, shelter and care; and

(E) The residue, if any, shall be paid to the owner of the animal or fowl, if known and, if he or she not be known, the residue shall be held in escrow for 90 days and shall be paid within such period upon application by the person entitled thereto, upon satisfactory proof of such entitlement and, if there be no such applicant within such 90-day period, such residue shall be credited to the General Fund of the city.

(1991 Code, § 4-23)

§ 90.50 PROSECUTION OF VIOLATIONS.

Neither the impoundment of an animal or fowl nor the sale thereof nor the payment of any redemption fee shall serve to bar prosecution of any person for the violation of any provision of this chapter which may have resulted in such impoundment.

(1991 Code, § 4-24)

§ 90.51 INTERFERENCE WITH POUND AND WITH RELEASE OF ANIMALS.

It shall be unlawful for any person, without proper authority, to release or cause to be released any animal or fowl impounded pursuant to this subchapter, or to in any way interfere with the operation or maintenance of the place of impoundment designated by the Council or by the Mayor or to molest or injure any animal or fowl therein impounded.

(1991 Code, § 4-25) Penalty, § 90.99

WATERFOWL

§ 90.65 PURPOSE AND INTENT.

It is the purpose and the intent of this subchapter to protect the health, safety and welfare of the community and its waterfowl, both migratory and domestic. It is further the purpose of this subchapter to control the feeding of waterfowl, both migratory and domestic.

(Ord. 121, passed 1-20-2011)

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

§ 90.67 PROHIBITED ACTS.

No person shall feed, cause or permit the feeding of waterfowl, domestic or migratory, within the corporate limits of the city.

(Ord. 121, passed 1-20-2011) Penalty, see § 90.99

§ 90.99 PENALTY. [\(Note: In this penalty section, the number will be changed to reflect new numbered sections.\)](#)

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(1991 Code, § 4-2)

(B) Any owner or keeper of an animal who violates § 90.14, and whose animal is not ordered destroyed, shall be fined an amount set forth by Council from time to time, and ordered to pay court costs.

(C) (1) Any person caught violating § 90.29 in the first instance shall be given a warning, stating what section of the city code he or she is violating and how to comply with the violated section. The person shall be subject to a follow-up visit by the Enforcement Officer, at a later time that is adequate to allow the person to correct the violation, to determine if the person is in compliance with said city code section.

(2) Any person caught violating § 90.29 after being given a warning as specified in division (D)(1) above is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount set forth by Council from time to time or confined in jail not more than 30 days, or both.

(3) Any person convicted of a violation of § 90.29 forfeits his or her interests in any animal and all interest in the animal vests in the County Humane Society and is responsible for any costs incurred by the County Humane Society as a result.

(4) The Enforcement Officer may exercise discretion in citing violators pursuant to § 90.29. In determining whether to cite under § 90.29, the Enforcement Officer shall consider

the overall condition of the dog, and whether the alleged violator is in substantial compliance with § 90.29.

(D) The owner of any dog in violation of § 90.30 shall, upon conviction of such violation, be fined an amount set forth by Council from time to time.

(1991 Code, § 4-18)

(E) Any person or persons violating any provision of §§ 90.65 through 90.67 shall, upon conviction thereof, pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Upon conviction of any subsequent offense under the provisions of §§ 90.65 through 90.67, the person or persons shall pay a fine of an amount set forth by Council from time to time per offense, together with the costs of said prosecution. Each day such violation continues shall constitute a separate offense.

(Ord. passed 11-19-1970; Ord. 086, passed 12-4-2008; Ord. 104, passed 8-6-2009; Ord. 121, passed 1-20-2011)



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 12, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Revision of City Code Chapter 52: Sewers and Sewage
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. CityofElkinsCodeRevision-Chapter52

CHAPTER 52: SEWERS AND SEWAGE

Section

General Provisions

- 52.01 Definitions
- 52.02 Unsanitary discharges
- 52.03 Private sewage disposal systems
- 52.04 Building sewer permits
- 52.05 Prohibited discharges
- 52.06 Tampering with equipment
- 52.07 Authorized employees permitted to enter premises
- 52.08 Rates; schedule

Sanitary Board

- 52.25 Established; composition; qualifications, appointment and term of members; vacancies
- 52.26 Eligibility of city personnel
- 52.27 Officers and by-laws
- 52.28 Compensation of members and allowances for expenses; bond of Treasurer
- 52.29 Authority as to supervision and control of sewerage system
- 52.30 Statutory authority of Board

- 52.99 Penalty

Cross-reference:

- Garbage, refuse and weeds generally, see Ch. 50
- Grades and elevations generally, see §§ 10.08 through 10.12
- Obstructing, changing or diverting streams, sewers, drains and the like, see § 130.021
- Water generally, see Ch. 51

Statutory reference:

Authority of city to establish and maintain a sewer system and sewage treatment and disposal system and to acquire property necessary therefor, see W.Va. Code §§ 8-12-5(32), (33), 8-18-1, 16-13-1

Authority of city to levy assessments for sewer improvements, and to regulate sewer connections, see W.Va. Code §§ 8-18-1 et seq.

Authority of city to make low cost improvements, including construction, repairing and the like, storm, sanitary and combined sewers, see W.Va. Code §§ 8-17-1 et seq.

Authority of city to require certain properties to be connected to public sewer, see W.Va. Code § 8-18-22

Extraterritorial jurisdiction of city for purposes of this chapter, see W.Va. Code §§ 8-12-5(43) and 8-12-19

Municipal sewage works and sanitary districts, see W.Va. Code §§ 16-13-1 et seq.

GENERAL PROVISIONS

§ 52.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOD (BIOCHEMICAL OXYGEN DEMAND). 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. 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 five feet (one and one-half meters) outside the inner face of the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal.

COMBINED SEWER. A sewer receiving both surface runoff and sewage.

GARBAGE. Solid wastes from the domestic and commercial prepared cooking and dispensing of food, and from the handling, storage and sale.

INDUSTRIAL WASTES. The liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

PERSON. Any individual, firm, company, association, society and corporation.

pH. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE. 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 one-half inch (1.27 centimeters) in any dimension.

PUBLIC SEWER. A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

SANITARY SEWER. A sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

SEWAGE. A combination of the water-carried wastes from residents, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.

SEWAGE TREATMENT PLANT. Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS. All facilities for collecting, pumping, treating and disposing of sewage.

SEWER. A pipe or conduit for carrying sewage.

SLUG. 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 five times the average 24-hour concentration or flows during normal operation.

STORM DRAIN (STORM SEWER). A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted water.

SUPERINTENDENT. The ~~Operations Manager~~Wastewater Chief Operator for the city.

SUSPENDED SOLIDS. 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. A channel in which a flow of water occurs, either continuously or intermittently.

(Ord. 262, passed 8-15-2019)

§ 52.02 UNSANITARY DISCHARGES.

(A) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of said city, any human or animal excrement, garbage, or objectionable waste.

(B) It shall be unlawful to discharge to any natural outlet within the city, or in any part under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provision of this chapter.

(C) Except a 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.

(D) The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or rights-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public service in accordance with the provisions of this chapter, within 90 days after date of official notice to do so, provided that said public sewer is within 100 feet of the property line.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.03 PRIVATE SEWAGE DISPOSAL SYSTEMS.

(A) Where a public sanitary or combined sewer is not available under the provisions of § 52.02(D) of this chapter, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

(B) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator. A permit and inspection fee shall be paid to the city at the time the application is filed according to the current fee schedule approved by the Sanitary Board.

(C) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the ~~Operations Manager~~Wastewater Superintendent/Chief Operator. He or she shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the ~~Operations Manager~~Wastewater Superintendent/Chief Operator when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator.

(D) The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the State Department of Public Health. 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 14,400 square feet. No septic tank or cesspool shall be permitted to discharge to any outlet.

(E) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in § 52.02(D) of this chapter, 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) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city.

(G) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

(H) When a public sewer becomes available, the building sewer shall be connected to said sewer within 60 days and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.04 BUILDING SEWER PERMITS.

(A) 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 ~~Operations Manager~~ Wastewater Superintendent/Chief Operator.

(B) There shall be two classes of building sewer permits: for residential and commercial service; and for service to establishments producing industrial wastes. In either case, the owner or his or her 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 judgement of the ~~Operations Manager~~ Wastewater Superintendent/Chief Operator. A permit and inspection fee for a residential or commercial building sewer permit and fee for an industrial building sewer permit shall be paid to the city at the time the application is filed according to the current fee schedule approved by the Sanitary Board.

(C) 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 city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(D) 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 building sewers may be used in connection with new buildings only when they are found on examination and test by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator, to meet all requirements of this chapter.

(F) 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 ~~A.S.C.E. Manuals of Practice (MOP) MOP 60 / WEF MOP FD-5 W.P.C.F. Manual of Practice No. 9~~ shall apply.

(G) 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) No permit shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(I) The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Codes or other applicable rules and regulations of the city, 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~~A.S.T.M. and A.S.C.E. Manuals of Practice (MOP) MOP 60 / WEF MOP FD-5. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator before installation.

(J) The applicant for the building sewer permit shall notify the ~~Operations Manager~~Wastewater Superintendent/Chief Operator when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the ~~Operations Manager~~Wastewater Superintendent/Chief Operator or his or her representative.

(K) 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 city.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.05 PROHIBITED DISCHARGES.

(A) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation

drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(B) Stormwater 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 ~~Operations Manager~~Wastewater Superintendent/Chief Operator. Industrial cooling water or unpolluted process waters may be discharged on approval of the ~~Operations Manager~~Wastewater Superintendent/Chief Operator, to a storm sewer, combined sewer, or natural outlet.

(C) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l as CN in the wastes as discharged to the public sewer;

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

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

(D) No permit shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the ~~Operations Manager~~Wastewater Superintendent/Chief Operator that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his or her opinion as to the acceptability of these wastes, the ~~Operations Manager~~Wastewater Superintendent/Chief Operator will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities, in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

(1) Any liquid vapor having a temperature higher than one 150° F. (65° C.);

(2) Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° F. and 150° F. (0° C. and 65° C.);

(3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Operations Manager/Wastewater Superintendent/Chief Operator;

(4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;

(5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Operations Manager/Wastewater Superintendent/Chief Operator for such materials;

(6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Operations Manager/Wastewater Superintendent/Chief Operator as necessary, after treatment of the composite sewage, to meet the requirements of state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters;

(7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Operations Manager/Wastewater Superintendent/Chief Operator in compliance with applicable state and federal regulations;

(8) Any waters or wastes having a pH in excess of 9.5;

(9) Materials which exert or cause:

(a) Unusual concentrations of 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 or sodium sulfate);

(b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);

(c) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works; or

(d) Unusual volume of flow or concentration of wastes constituting SLUGS as defined in this chapter.

(10) 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; or

(11) Any waters or wastes having a five-day BOD greater than 300 parts per million by weight; containing more than 350 parts per million by weight of suspended solids; or having an average daily flow greater than 2% of the average sewage flow of the city, shall be subject to the review of the Operations ManagerWastewater Superintendent/Chief Operator. Where necessary in the opinion of the Operations ManagerWastewater Superintendent/Chief Operator, the owner shall provide, at his or her expense, such preliminary treatment as may be necessary to reduce the biochemical oxygen demand to 300 parts per million by weight; reduce the suspended solids to 350 parts per million by weight; or control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Operations ManagerWastewater Superintendent/Chief Operator and no construction of such facilities shall be commenced until said approvals are obtained in writing.

(E) (1) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in division (D) of this section, and which in the judgement of the Operations ManagerWastewater Superintendent/Chief Operator, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Operations ManagerWastewater Superintendent/Chief Operator may:

- (a) Reject the wastes;
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (c) Requite control over the quantities and rates of discharge; and/or
- (d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provision of division (J) of this section.

(2) If the Operations ManagerWastewater Superintendent/Chief Operator 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 Operations ManagerWastewater Superintendent/Chief Operator, and subject to the requirements of all applicable codes, ordinances and laws.

(F) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Operations ManagerWastewater Superintendent/Chief Operator, 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 Operations ManagerWastewater Superintendent/Chief Operator and shall be located as to be readily and easily accessible for cleaning and inspection.

(G) Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective.

(H) When required by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator, 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 accessibly and safely located, and shall be constructed in accordance with plans approved by the ~~Operations Manager~~Wastewater Superintendent/Chief Operator. The manhole shall be installed by the owner at his or her expense and shall be maintained by him or her so as to be safe and accessible at all times.

(I) 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 latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. 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 hours composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples.

(J) No statement contained in this section shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefore, by the industrial concern.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.06 TAMPERING WITH EQUIPMENT.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this section shall be subject to immediate arrest under criminal charges.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.07 AUTHORIZED EMPLOYEES PERMITTED TO ENTER PREMISES.

(A) The ~~Operations Manager~~Wastewater Superintendent/Chief Operator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The ~~Operations Manager~~Wastewater Superintendent/Chief Operator or his or her 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 division (A) of this section, the ~~Operations Manager~~Wastewater Superintendent/Chief Operator or duly authorized employees of the city 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 city employees and the city shall indemnify the company against loss or damage to its property by city 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 in § 52.05(H) of this chapter.

(C) The ~~Operations Manager~~Wastewater Superintendent/Chief Operator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.08 RATES; SCHEDULE.

The rates and charges for sewage and sewage disposal service provided by it to customers throughout the territory served, are hereby fixed and determined by the Council pursuant to the sewer tariff, P.S.C. No. 12 and as set forth in schedules of rates on file in the office of the City Clerk.

(1991 Code, § 16-6) (Ord. passed 7-28-1949; Ord. passed 10-5-1953; Ord. passed 8-5-1954; Ord. passed 9-18-1958; Ord. passed 3-17-1966; Ord. passed 3-15-1984; Ord. passed 7-7-1994; Ord. 022, passed 2-6-2006; Ord. 057, passed 10-19-2006; Ord. 155, passed 6-21-2012; Ord. 257, passed 11-1-2018; Ord. 266, passed 11-21-2019)

Statutory reference:

Authority and duty of Council to establish and maintain just and equitable rates or charges for use of and services rendered by municipal sewage works and the like, see W.Va. Code § 16-13-16

City itself being subject to same charges and rates as established for other customers, see W.Va. Code § 16-13-17

SANITARY BOARD

§ 52.25 ESTABLISHED; COMPOSITION; QUALIFICATIONS, APPOINTMENT AND TERM OF MEMBERS; VACANCIES.

There is hereby created a Sanitary Board of the city, which shall be composed of the Mayor and two persons appointed by the Common Council, one of whom, during any construction period, must be a registered professional engineer, and the engineer member of the Board need not be a resident of the city. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. The appointed members of the Board shall serve their terms subject to the will and pleasure of the Common Council. The appointees shall originally be appointed for terms of two and three years respectively and, upon the expiration of each term and each succeeding term, appointment of a successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment.

(1991 Code, § 16-11) (Ord. passed 7-18-1957)

Statutory reference:

Municipal Sanitary Boards, see W.Va. Code Ch. 16, Art. 13, especially §§ 16-13-18 and 16-13-18a

§ 52.26 ELIGIBILITY OF CITY PERSONNEL.

No officer or employee of the city holding a paid or unpaid office or position shall be eligible to appointment on the Sanitary Board until at least one year from the expiration of the term of his or her public office or employment.

(1991 Code, § 16-12) (Ord. passed 7-18-1957)

§ 52.27 OFFICERS AND BY-LAWS.

The Mayor shall be Chairperson of the Sanitary Board, which shall elect a Vice Chairperson from its members and shall designate a Secretary and Treasurer, though the

Secretary and Treasurer may be one and the same person, who need not be members of the Sanitary Board. The Vice Chairperson, Secretary and Treasurer shall hold office, as such, at the will of the Sanitary Board. The Sanitary Board shall have power to establish by-laws, rules and regulations for its own government.

(1991 Code, § 16-13) (Ord. passed 7-18-1957)

§ 52.28 COMPENSATION OF MEMBERS AND ALLOWANCES FOR EXPENSES; BOND OF TREASURER.

(A) Each member of the Sanitary Board shall receive such compensation for his or her services as the Common Council may, from time to time, prescribe, and shall be entitled to payment for his or her reasonable expenses incurred in the performance of his or her duties. The Secretary and Treasurer shall be paid such reasonable compensation for their services as the Council may, from time to time, prescribe, and the Treasurer shall give bond in such amount as the Council may, at any time, require.

(B) All compensation, as well as expenses incurred by the Sanitary Board, its officers and employees, shall be paid solely from funds provided under the authority of W.Va. Code Ch. 16, Art.13.

(1991 Code, § 16-14) (Ord. passed 7-18-1957)

§ 52.29 AUTHORITY AS TO SUPERVISION AND CONTROL OF SEWERAGE SYSTEM.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and disposal of sewage within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the Sanitary Board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the Sanitary Board.

(1991 Code, § 16-15) (Ord. passed 7-18-1957)

§ 52.30 STATUTORY AUTHORITY OF BOARD.

The Sanitary Board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by W.Va. Code Ch. 16, Art. 13.

(1991 Code, § 16-16) (Ord. passed 7-18-1957)

§ 52.99 PENALTY.

(A) Any person found to be violating any provision of this chapter except § 52.04 shall be served by the city 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 stated in such notice, permanently cease all violations.

(B) Any person who shall continue any violation beyond the time limit provided for in division (A) of this section, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$100 for each violation. Each 24-hour period, 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 city for any expense, loss, or damage occasioned the city by reason of such violation.

(Ord. 262, passed 8-15-2019)



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 12, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	Murals and wall signs
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. Issue Brief - murals - 2023_04_11 2. City code on murals and wall signs

Issue Brief: Murals

Elkins City Clerk

April 11, 2023

Background

Two community members (Nevada Tribble, Aira Burkhardt) have approached the city with a proposal to paint/install a mural on a downtown building, in the Central Business District zone. The project is described as “a Tamarack-sponsored public art project we are working on. We are recipients of a \$10,000 Ripple grant, which is designed to promote artist engagement with the community and entrepreneurs and create economic opportunities.” The planned mural would be 8x16 feet, or 128 square feet.

Not Allowed Under Current Zoning Code

Under the city’s current zoning law, the proposed mural is not allowed. The zoning code explicitly defines murals as “wall signs.”

§ 152.056 DEFINITIONS.

(29) WALL SIGN. Any sign, inscription, artwork, figure, marking, or design that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure. **WALL SIGNS include murals.**

In the Central Business District, wall signs are limited in size to 1 sq. foot per 1 foot of lineal frontage, not to exceed 32 square feet. (§ 152.230) As mentioned above, the proposed mural would be 128 square feet.

Can An Exception Be Made?

There is no option for providing an exception under current law, because of the explicit definition of murals as wall signs.

This is not a situation where the Board of Zoning Appeals could grant a variance; variances are only available when the zoning code, if strictly applied, reduces the economic value of a property to near zero (such as when geographic features make it impossible to comply with setback requirements, for example). That is not the case in this situation.

Isn’t There a Difference Between Advertising and Art?

The Supreme Court, in *Reed v. Town of Gilbert*, has held that it is unconstitutional to treat signs differently based on their content.

Sign laws that say things like, for example, “political signs can only be up for 30 days after the election but business signs can be up year round” no longer meet SCOTUS’s requirement that sign laws be “content neutral.” Instead, a law would have to say all “temporary signs” can only be up for, say, 60 days at a time (whether they are political or business in nature).

Following this reasoning, it seems that it would most likely not be constitutional to write a law that says “business signs are limited to 32 square feet, but murals can be 128 square feet.”

It seems likely, then, that the city's best option for allowing 128-square-foot murals would be to also allow 128-square-foot business signs. This would seem to pass the Supreme Court's requirement that sign laws are "content neutral."

Don't Some Cities Manage to Thread This Needle?

The artists involved in this project have forwarded laws and regulations from Morgantown, Charleston, and Bridgeport in hopes that these might provide examples Elkins can follow in allowing murals without allowing similarly large business signs. Indeed, these cities do seem to do just that.

However, as observed by Christy DeMuth of the WVU Land Use and Sustainable Development Law Clinic, the continued existence of these distinctions in these cities' laws simply means "they haven't been sued yet." Almost certainly, these apparently unconstitutional laws in these other cities were in place before the SCOTUS ruling in *Reed v. Town of Gilbert* and haven't yet been challenged by business owners who would like to create similarly large signs advertising their business or services. The fact that these laws remain on the books does not mean they are defensible against such a challenge; apparently, these cities either haven't considered their unconstitutionality or are willing to take the risk for now.

Couldn't Elkins Also Decide to Take this Risk?

One possible remedy to the current impasse might seem to be adopting a law similar to those in place in other cities, explicitly allowing murals while restricting commercial signs. It is important to understand that affirmatively adopting a likely unconstitutional law is different from allowing a likely unconstitutional one to remain on the books from before the SCOTUS ruling. We have gotten great advice and service from the WVU law clinic. Here is the law clinic's official published position on murals:

"Case law has been largely inconsistent as to whether and to what extent murals should be regulated as signs. The most prudent approach for communities is to treat all murals as signs, typically "wall signs."

The Elkins Planning Commission, after much discussion, decided to take this advice in the zoning ordinance adopted last summer. Now, if there are people who would like Elkins to move in a different direction, they must recognize that they are essentially asking the city to trailblaze into territory that is, at best, lightly litigated and, at worst, basically known to be unconstitutional.

Under the circumstances, it won't be enough to simply cut and paste a law from another city that hasn't been challenged yet. The burden must be on anyone wanting Elkins to treat murals differently from other signs to provide research—not laws on the books in other places, which again have simply not been challenged yet—but legal theories and case law toward building a case that will convince the planning commission, council, and the city attorney that the proposed new approach is not throwing the door open to a first amendment legal challenge. Otherwise, council will have to be told that the change being proposed seems likely to be unconstitutional.

What Other Remedies Exist?

The other possible option, of course, is simply to allow larger wall signs and gamble that this will not backfire. That should not be done lightly, either, but at least it would remain clearly inside the constitutional bright lines.

##

Attachment for agenda item: Murals in Central Business District

Section 21-132 Signs for Central Business District.

Purpose. Signage in commercial and districts is allowed to a somewhat greater extent, while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

- (a) Permitted sign use as accessory to dwellings shall be the same as for Section 21-129.
- (b) *Signs permitted as accessory to non-dwellings.*
 - (1) Permitted permanent sign use as accessory to non-dwellings: A-frame, awning, canopy, chalkboard, freestanding, geological, marquee, minor, monument, neon, projecting, temporary, topiary, wall, and window signs. Only one (1) of each is permitted per use per frontage, except wall signs and window signs. More than two hundred (200) square feet of frontage is required for a use to have more than one (1) pole sign. No more than six (6) permanent signs are permitted by right per use.
 - (2) Permitted temporary signs as accessory to non-dwellings: A-frame, banner, chalkboard, minor, person-assisted, wall, wicket, window. No more than six (6) temporary signs are permitted in one calendar year per use.
 - (3) No more than three (3) flags as accessory to a non-dwelling are permitted.
- (c) Off-premises signs are prohibited.
- (d) *Dimension specifications chart.* All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	All Other Signs	Temporary Signs	Flags
Max. Sign Area	1 sq. ft. per 1 ft. of lineal frontage, not to exceed 32 sq. ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 24 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. Height	8 ft.	4 ft.	4 ft.	40 ft.

From Section 21-32 Definitions:

“Wall Sign” means any sign, inscription, artwork, figure, marking, or design that is attached, painted, drawn, marked, etched, or scratched onto a wall or against a flat vertical exterior surface of a structure. **Wall signs include murals.**

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