

CODIFIED ORDINANCES OF CLARKSBURG

PART SEVENTEEN - BUILDING CODE

CHAPTER ONE - Administration

- Art. 1705. Enforcement and Penalty.
- Art. 1706. Contractors. (Repealed)
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- Art. 1705. Enforcement and Penalty.
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ARTICLE 1705

Enforcement and Penalty

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CROSS REFERENCES

Permits for construction and alteration - see W. Va. Code 8-12-14

Municipal inspection - see W. Va. Code 8-12-15

1705.01 POSITION OF BUILDING INSPECTOR CREATED.

The Office of Code Enforcement is hereby created, and the executive officer in charge thereof shall be known as the Building Inspector. The City Engineer is hereby designated the Building Inspector. During the temporary absence or disability of the Building Inspector, the City Manager may, if he deems it necessary, designate an acting Building Inspector, who shall act in such capacity during the temporary absence or disability of the Building Inspector. (Ord. 03-16. Passed 9-18-03.)

1705.02 DUTIES OF BUILDING INSPECTOR.

(a) The Building Inspector or his authorized agents shall receive applications required by this Building Code, issue permits and furnish the prescribed certificates. He shall examine premises for which permits have been issued and shall make necessary inspections to see that the law is complied with and that construction is prosecuted safely. He shall enforce all provisions of this Building Code. He shall, when requested by proper authority, or when the public interest so requires, make investigations in connection with matters referred to in this Building Code and render written reports on the same. To enforce compliance with law, to remove illegal or unsafe conditions to secure the necessary safeguards during construction or to require adequate exit facilities in buildings and structures, he shall issue such notices or orders as may be necessary.

(b) Inspections required under the provisions of this Building Code shall be made by the Building Inspector or his duly authorized agents. The Building Inspector or his duly authorized agents may accept reports of inspectors of recognized inspection services, after investigation of their qualifications and reliability. No certificate called for by any provision of this Building Code shall be issued on such reports unless the same are in writing and certified to by a responsible officer of such service.

(c) The Building Inspector or his designated representative shall keep comprehensive records of applications, of permits issued, of certificates issued, of inspections made, of reports rendered and of notices or orders issued. He shall retain on file, copies of required plans and all documents relating to building works so long as any part of the building or structure to which they may relate may be in existence.

(d) All such records shall be open to public inspection for good and sufficient reasons at the stated office hours, but shall not be removed from the Office of Code Enforcement without the Building Inspector or his representative's written consent.

(e) The Building Inspector or his designated representative shall make written reports to his immediate superior once each month, or more often if requested, including statements of permits and certificates issued and orders promulgated.

(f) It shall be the duty of the Building Inspector or his designated representative to see to the enforcement of all ordinance provisions relating to zoning and the City's Building Code. The Building Inspector and inspectors within the Code Enforcement Department may issue citations for violations of the City's Building Code. Each and every day during which any such violation continues shall be deemed a separate offense, unless otherwise set forth in said code. (Ord. 03-16. Passed 9-18-03.)

1705.03 COOPERATION OF OTHER CITY OFFICIALS.

The Building Inspector or his designated representative may request and shall receive, so far as may be necessary, in the discharge of his duties, the assistance and cooperation of other officials of the City.
(Ord. 03-16. Passed 9-18-03.)

1705.04 RIGHT OF ENTRY AND INSPECTION.

(a) The Building Inspector or any of his designated agents may at any reasonable hour, enter any dwelling, multifamily dwelling, building, structure or premises within the City to perform any duty imposed on him by this Building Code, provided that permission to enter is obtained from the occupant or, in the case of unoccupied property, from the owner or his agent. If such permission is refused or is otherwise unobtainable, a search warrant must be obtained before such entry or inspection is made, except in the case of an existing emergency in which case entry may be made at any time and no search warrant is necessary.

(b) No person shall refuse to permit such emergency entry or inspection, nor shall any person hinder, obstruct, resist, or abuse any person making or attempting to make such entry or inspection.

(c) Identification. The Building Inspector or any of his designated agents shall carry proper identification when inspecting structures or premises in the performance of duties under the Building Code.

(Ord. 03-16. Passed 9-18-03.)

1705.05 BUILDING PERMIT; USE AND OCCUPANCY CERTIFICATES; FEES.

In addition to other sections of this Building Code which may require a building permit or use and occupancy certificate, or regulate the same, the following shall apply:

- (a) No person shall perform any improvement, repair, construction, demolition, excavation, remodeling, erection or otherwise perform work on any premises within the City unless such person first obtains a building permit from the Building Inspector or his authorized representative.
- (b) No owner of premises, either as a person, business entity, or other within the City shall use or occupy or authorize the use or occupancy of a vacant structure, a structure becoming vacant, or a structure newly constructed without first obtaining a use and occupancy certificate from the Building Inspector or his authorized representative. The Building Inspector shall have the right to attach such conditions in the granting of the use and occupancy certificate as required to make the use and occupancy of the structure safe, sanitary and otherwise in conformance with applicable law.
- (c) The Building Inspector or his representative is hereby authorized to conduct inspections at any reasonable time pursuant to the issuance, renewal or revocation of a building permit or a use and occupancy certificate under this section. The Fire Inspector shall also make an inspection pursuant to the issuance of a certificate for all structures except one and two family dwelling structures. The fee schedule for inspections of electrical service shall be as follows and shall be collected in the same manner as provided hereinafter in subsection (f) hereof: fifty dollars (\$50.00) for single-phase inspection and one hundred dollars (\$100.00) for three-phase inspection. For new construction or demolition, an inspection fee of one hundred dollars (\$100.00) for asbestos assessment, along with sample analysis fees, shall apply.

- (d) The Building Inspector or his designated representative is hereby authorized to design written applications for the issuance and renewal of building permits and use and occupancy certificates under this section and shall have the right to promulgate reasonable rules and regulations for the implementation of such applications.
- (e) Whoever violates the terms of a permit or certificate issued under this section or submits a false or inaccurate application, shall be subject to the revocation of such permit or certificate and/or a stop work order. Stop work orders and revocation notices shall be issued by and at the discretion of the Building Inspector or his designated representative upon proper investigation of facts and circumstances.
- (f) The following fee schedule shall be effective for building permits issued from the effective date of this section. Fees shall be collected by the Director of Finance at the time application for a permit is made. The Director of Finance shall have the authority to appoint a collection agent.

<u>Cost of Work Performed</u>	<u>Fee</u>
\$0.00 to \$99.99	\$12.00
\$ 100.00 to \$499.99	\$18.00
\$500.00 to \$1,000.00	\$25.00
Each additional \$1,000.00 or fraction thereof under \$10,000.00	\$12.00
Each additional \$1,000.00 or fraction thereof over \$10,000.00	\$12.00
Maximum permit fee	\$30,000.00

There will be a minimum 48-hour waiting period after a permit application is made prior to the issuance of a permit for any amount greater than \$20,000.

- (g) The fee schedule for a use and occupancy certificate under this section shall be as follows and shall be collected in the same manner as provided in the preceding subsection (f) hereof: \$20.00 upon issuance of a certificate of occupancy for existing one and two family dwellings and \$50.00 upon issuance of a certificate for a multi-family unit (R-4), commercial property, industrial property, and for all new construction.
- (h) Whoever makes application for a building permit or use and occupancy certificate and willfully makes false or inaccurate statements with the intent of evading the requirements of this section is guilty of a misdemeanor. Whoever performs work without first obtaining a building permit when such work requires a building permit under this section or uses or occupies a structure without first obtaining an occupancy certificate when such use or occupancy certificate is required under this section is also guilty of a misdemeanor.
(Ord. 03-16. Passed 9-18-03.)

- (i) Whoever fails to obtain a building permit or use and occupancy certificate as required under this section, or has a permit or certificate revoked under this section, or submits a false or inaccurate application for a permit or certificate, shall be assessed an administrative surcharge of one hundred dollars (\$100.00), in addition to payment of the required fees, at such time that all requirements of this section are met and a valid permit or certificate becomes issued. The collection and administration of the foregoing surcharge shall be the same as provided in subsection (f) hereof. (Ord. 08-2. Passed 2-7-08.)
- (j) "Person" as used in this section for purposes of obtaining a building permit includes any owner of the premises whereupon work is performed, the contractor or builder in charge of such work, or an agent of the owner at whose insistence the work is performed. The City may require any or all of the foregoing persons to make payment for building permit fees under this section. For a construction project the City will require each contractor to obtain a separate permit for each phase of the work on the project. However, the City shall be prohibited from collecting building permit fees in excess of the schedule of the value of the work performed upon any given premises.
- (k) No building permit will be issued to any contractor who does not possess a valid State of West Virginia contractor's license or who does not possess a valid City contractor's license. No permit will be issued to any person wishing to employ an unlicensed contractor. A permit for a commercial improvement in excess of \$25,000.00 will not be issued until the contractor provides a written certified list of all contractors, who will perform work on such property, or a certified statement that no subcontractors will be hired.
- (l) The Clarksburg Water Board, Harrison County Board of Education, and Harrison County Commission are not required to make application and obtain a building permit when one is required under this section. However, the Clarksburg Water Board, Harrison County Board of Education, and Harrison County Commission shall submit a certified statement to the City listing all contractors to be employed for any work otherwise subject to a building permit under this section.
- (m) The City Engineer, with the written approval of the City Manager, may waive the payment of the required fee for any permit issued to repair or rebuild a commercial structure damaged by fire, flood, or lightning where the cost to repair or rebuild the commercial structure will exceed one million dollars.
- (n) "Ordinary repairs" includes the following when performed on an owner occupied residential dwelling:
 - (1) Ordinary building repairs include:
 - A. Exterior and interior painting - any contractor or person employing a contractor for interior or exterior painting will be required to obtain a permit but will not be required to pay a fee.
 - B. Installation, repair or replacement of any interior finish in a one or two family dwelling, such as vinyl wall covering, or plastering an existing wall. Replacement of paneling and drywall are not to be included as ordinary repairs, except in one and two family dwellings.
 - C. Wall papering at any location.
 - D. The replacement of glass in any window or door. However, the replacement glass shall be of the type and quality so as to comply with minimum requirements of the Building Code.

- E. The repair of any non-structural member such as a railing.
 - F. The repair or replacement of any interior or exterior trim, decoration or moldings.
 - G. The replacement or installation of any flooring material including carpeting, with a new material.
 - H. The repair of any part of a porch or stoop which does not structurally support a roof above.
 - I. The replacement or installation of screens.
 - J. The installation of any roll or batt insulation when installed adjacent to or not more than one and one-half inches from an interior finish.
- (2) Ordinary plumbing repairs include:
- A. Repairs involving only working parts of a faucet, valve or plumbing fixture.
 - B. The clearance of stoppages or the repair of leaks provided such repairs do not require any change in the piping arrangement.
 - C. Replacement of any faucet or valve provided nonrearrangement of the connecting piping system is required.
- (3) Ordinary electrical repairs include:
- A. The replacement of any receptacle, switch, or lighting fixture rated as 20 amps or less and operating at less than 150 volts to ground with a like or similar item.
 - B. Repairs to any installed electrically operated equipment such as doorbells, communication systems, elevators and any motor operated device.
- (4) Ordinary fire protection repairs include:
- A. The replacement of any sprinkler or smoke detector or heat detector head with a like device in a one or two family dwelling only.
 - B. The repair or replacement of any component of a fire alarm or smoke and heat detection equipment in a one or two family dwelling only.
- (5) Ordinary heating, ventilation and air conditioning repairs shall include:
- A. Replacement of motors, pumps and fans of the same capacity.
 - B. Repair and replacement of heating supply and return piping and radiation elements, which does not require rearrangement of the piping system.
 - C. Repair and replacement of duct work.
 - D. Repair and replacement of packaged air-conditioning equipment and systems with a like capacity that are listed by a nationally recognized testing agency.
 - E. Repair and replacement of control devices for heating and air conditioning equipment.
- (Ord. 03-16. Passed 9-18-03.)

1705.06 BUILDING CODE VIOLATIONS.

(a) Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this Building Code.

(b) Notice of Violation. The Building Inspector or his designated agent shall serve a notice of violation in accordance with Section 1705.07 herein.

(c) Prosecution of Violation. Any person failing to comply with a notice of violation or order served in accordance with Section 1705.07 shall be deemed guilty of a misdemeanor, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the Building Inspector or his designated representative shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Building Code or of the order or direction pursuant thereto.

(d) Violation Penalties. Any person who shall violate a provision of this Building Code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws.

- (1) Whoever violates a provision of this Building Code pursuant to this Article shall be fined not more than one hundred dollars (\$100.00).
- (2) Whoever violates the same provision of this Building Code previously fined under subsection (d)(1) hereof for the second time shall be fined not more than two hundred fifty dollars (\$250.00).
- (3) Whoever violates the same provision of this Building Code previously fined under subsection (d)(1) hereof for the third, and each consecutive, time shall be fined not more than five hundred dollars (\$500.00).

(e) Abatement of Violation. The imposition of the penalties herein prescribed shall not preclude the Building Inspector or his designated representative from instituting appropriate legal action through the City Attorney to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.

(Ord. 03-16. Passed 9-18-03.)

1705.07 NOTICES AND ORDERS.

(a) Notice to Owner or to Person or Persons Responsible. Whenever the Building Inspector or his designated representative determines that there has been a violation of this Building Code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefor in the manner prescribed hereinafter in subsections (b) and (c). Notices for condemnation procedures shall also comply with Section 1705.08(c).

(b) Form. Such notice prescribed in Section 1705.07 (a) shall be in accordance with all of the following:

- (1) Be in writing.
- (2) Include a description of the real estate sufficient for identification.
- (3) Include a statement of the violation or violations and why the notice is being issued.

- (4) Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this Building Code.
- (5) Inform the property owner of the right to appeal pursuant to Section 1705.11 herein.
- (6) Include a statement regarding transfer of ownership as stated in subsection 1705.07(e) hereinbelow.

(c) Method of Service. Such notice shall be deemed to be properly served if a copy thereof is:

- (1) Delivered personally;
- (2) Sent by certified mail addressed to the last known address; or
- (3) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

(d) Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 1705.06(d).

(e) Transfer of ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the Building Inspector or his designated representative and shall furnish to the Building Inspector or his designated representative a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.
(Ord. 03-16. Passed 9-18-03.)

1705.08 UNSAFE STRUCTURES AND EQUIPMENT.

(a) General. When a structure or equipment is found by the Building Inspector or his designated representative to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this Building Code.

- (1) Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

- (2) Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the premises or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or occupants of the premises or structure.
- (3) Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the Building Inspector or his designated representative finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this Building Code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.
- (4) Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this Building Code, or was erected, altered or occupied contrary to law.

(b) Closing of Vacant Structures. If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Building Inspector or his designated representative is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the Building Inspector or his designated representative shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and may be collected by any other legal resource.

(c) Notice. Whenever the Building Inspector or his designated representative has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 1705.07(c). If the notice pertains to equipment, it shall also be placed on the condemned equipment. The notice shall be in the form prescribed in Section 1705.07 (b).

- (d) Placarding.
- (1) Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the Building Inspector or his designated representative shall post on the premises or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the premises, operating the equipment or removing the placard.
 - (2) The Building Inspector or his designated representative shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the Building Inspector or his designated representative shall be subject to the penalties provided by this Building Code.

(e) Prohibited occupancy. Any person who shall occupy a placarded premises or shall operate placarded equipment, and any owner or any person responsible for the premises who shall let any occupy a placarded premises or operate placarded equipment shall be liable for the penalties provided by this Building Code.
(Ord. 03-16. Passed 9-18-03.)

1705.09 EMERGENCY MEASURES.

(a) Imminent Danger. When, in the opinion of the Building Inspector or his designated representative, there is imminent danger of failure or collapse of a building or structure which endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the Building Inspector or his designated representative is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The Building Inspector or his designated representative shall cause to be posted at each entrance to such structure a notice reading as follows: "This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Building Inspector." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

(b) Temporary Safeguards. Notwithstanding other provisions of this Building Code, whenever, in the opinion of the Building Inspector or his designated representative, there is imminent danger due to an unsafe condition, the Building Inspector or his designated representative shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the Building Inspector or his designated representative deems necessary to meet such emergency.

(c) Closing Streets. When necessary for public safety, the Building Inspector or his designated representative shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, public ways and places adjacent to unsafe structures, and prohibit the same from being utilized.

(d) Emergency Repairs. For the purposes of this Section, the Building Inspector or his designated representative shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

(e) Costs of Emergency Repairs. Costs incurred in the performance of emergency work shall be paid by the City of Clarksburg. The City Attorney shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

(f) Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the BOCA Code Appeals Board, be afforded a hearing as described in this Building Code.
(Ord. 03-16. Passed 9-18-03.)

1705.10 DEMOLITION.

(a) General. The Building Inspector or his designated representative shall order the owner of any premises upon which is located any structure, which in the Building Inspectors or his designated representative's judgment is so dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner's option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

(b) Notices and Orders. All notices and orders shall comply with Section 1705.07. (Ord. 03-16. Passed 9-18-03.)

(c) Failure to Comply. If the owner of a structure fails to comply with a notice of violation, demolition order or other order under this Article, within the time prescribed, the Building Inspector or his designated representative shall cause the structure to be demolished and removed, either through City forces, any available public agency or by contract or arrangement with a private demolition contractor licensed to do business in West Virginia, and in the event that any cost or expense is incurred by the City in connection with such demolition, the said owner or owners of the real property upon which the said structure is situate shall reimburse and pay the City for all cost and expense incurred, and the City shall have the right to file a lien against the said real property in question for an amount that reflects all costs incurred by the City of Clarksburg in connection with the repairing, alteration, improvement, vacating, closing, removing and/or demolishing such building or structure and may, in addition thereto, institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the City with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action, in the manner prescribed by Section 16, Article 12, Chapter Eight of the West Virginia Code of 1931, as amended. (Ord. 08-15. Passed 6-19-08.)

(d) Salvage Material. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state. (Ord. 03-16. Passed 9-18-03.)

1705.11 MEANS OF APPEAL.

(a) Any person aggrieved by a decision of the Building Inspector or his designated representative under this Building Code may appeal such decision to the appropriate appeal board provided herein upon payment of a processing fee of one hundred dollars (\$100.00).

(b) Such appeal shall be made to the Clarksburg BOCA Code Appeal Board as provided in Section 1720.05 entitled BOCA Code Appeal Board in Article 1720 hereinbelow. (Ord. 03-16. Passed 9-18-03.)

1705.12 BUILDING CODE DEFINED.

As used in this article, Building Code or City Building Code means Part Seventeen (17) - Building Code of the Clarksburg Codified Ordinances. (Ord. 03-16. Passed 9-18-03.)

ARTICLE 1706
Contractors

EDITOR'S NOTE: Former Article 1706 was repealed by Ordinance 92-5, passed April 16, 1992.

ARTICLE 1707
Pavement Cut and Excavation

1707.01	Definitions.	1707.06	Indemnification.
1707.02	Permit to occupy a street or sidewalk required.	1707.07	Surety bond required.
1707.03	Information required on permits.	1707.08	Payment of money due City prerequisite to permit issuance.
1707.04	Emergency work.	1707.09	Inspection.
1707.05	Fees.	1707.99	Penalty.

CROSS REFERENCES

Power to regulate street excavations - see W. Va. Code 8-12-5(2)
Street obstructions - see TRAF. 311.01

1707.01 DEFINITIONS.

As used in this article:

- (a) "Occupy" means to utilize a section of a street or public sidewalk for construction or maintenance operations.
- (b) "Right of way" means all City-owned street and alley rights of way, both improved and unimproved, and all sewer rights of way.
- (c) "Street cut" means removal of a section of pavement usually for the purpose of underground utility repair or construction.
- (d) "Excavation" means any hole or boring within a City right of way, including auger holes for placement of posts and utility poles.
(Ord. 89-2. Passed 1-19-89.)

1707.02 PERMIT TO OCCUPY A STREET OR SIDEWALK REQUIRED.

(a) Any person, corporation or public utility desiring to occupy a City street or public sidewalk shall obtain a permit from the Director of Public Works prior to occupying the street or sidewalk.

(b) Any person, corporation, unincorporated association or public utility desiring to make an excavation within any City right of way, cut any pavement or curb within any City right of way, or undertake existing improvements within the City right of way, shall be required to obtain an excavation and street cut permit.
(Ord. 89-2. Passed 1-19-89.)

1707.03 INFORMATION REQUIRED ON PERMITS.

Both types of permits shall contain the date of issue, the name of the person or utility to whom the permit is issued, the location of the excavation, an estimate of the starting and completion dates of the project, amount of fee charged and a sketch showing dimensions of the excavation and distances to reference points which will clearly identify the excavation.
(Ord. 89-2. Passed 1-19-89.)

1707.04 EMERGENCY WORK.

Public utilities which maintain a standing surety bond with the City may begin emergency excavation or street cutting without a permit. The utility is required to notify the Director of Public Works within twelve hours, and shall make application for a permit before the close of the next work day.
(Ord. 89-2. Passed 1-19-89.)

1707.05 FEES.

- (a) There is no fee for a permit to occupy a street or sidewalk.
- (b) A fee of twenty-five dollars (\$25.00) shall be charged for each excavation or street-cut permit within a City right of way.
(Ord. 89-2. Passed 1-19-89.)

1707.06 INDEMNIFICATION.

No permit to occupy a street or sidewalk and no permit to excavate or cut shall be granted until the applicant has indemnified the City against harm, loss or damage during or subsequent to the exercise of the permit.
(Ord. 89-2. Passed 1-19-89.)

1707.07 SURETY BOND REQUIRED.

No permit shall be granted for a street cut or excavation within a City right of way until the applicant has executed and delivered to the City a bond in the amount hereinafter fixed, with good surety, which surety shall be an approved surety or indemnity company licensed to do business in the City. The amount of such bond shall be one thousand dollars (\$1,000) for each opening or five thousand dollars (\$5,000) for an indefinite number of openings for a twelve month period. Utilities may maintain a standing surety bond in the amount of five thousand dollars (\$5,000) for an indefinite period of time. The bond shall be given upon the condition that the principal will indemnify and save harmless the City from any loss, damage or expenses whatsoever, in any manner caused by or arising from the opening of any street, or right of way, or the work done in consequence thereof, or the manner of doing such work, and the bond shall remain in force for a period of twenty-four months after the permanent resurfacing of each opening.
(Ord. 89-2. Passed 1-19-89.)

1707.08 PAYMENT OF MONEY DUE CITY PREREQUISITE TO PERMIT ISSUANCE.

No permit shall be granted to any applicant unless such applicant pays to the City all money then due to the City from such applicant for prior openings or excavations made or for any loss, damage or expense in any manner caused by or arising from an opening or excavation under prior permits issued to such applicant. This shall not apply to public utilities. (Ord. 89-2. Passed 1-19-89.)

1707.09 INSPECTION.

Anyone issued a permit to occupy a street or sidewalk or an excavation and street cut permit shall adhere to specifications approved by the Director of Public Works. An inspector designated by the Director of Public Works shall inspect all excavations and street cuts within City rights of way. Inspections shall be made upon completion of the permanent resurfacing of the street cut or excavation, and one year and two years after completion. After the final inspection the bond shall be released for that street cut or excavation. Additional inspections may be required at the discretion of the Director of Public Works. Notification of additional required inspections shall be in writing at the time the permit is issued.

In the event that a street cut or excavation is found to not conform to specifications, the Director of Public Works shall notify the persons or utility who made or is making the street cut or excavation to make the necessary corrections. Such notification shall explain that all corrections must be made within two weeks, after which time the City may have the corrections made and bill all reasonable expenses incurred to the responsible party. The notification letter shall explain that the affected party has the right to a hearing before the Director of Public Works prior to the City's performing the necessary corrections. If the right to a hearing is not invoked during the two week period provided for in the notification, the affected party shall be deemed to have waived its right to a hearing.

In the event of an emergency, corrections may be ordered to be made within the same day the order issues. If the responsible party will not or cannot effect emergency repairs on the same day, the City may make all necessary corrections and bill the responsible party for all costs incurred by the City. Any party so billed may appeal the accuracy of the bill to the Director of Public Works if there exists a bona fide reason for doubting the accuracy of the bill. (Ord. 89-2. Passed 1-19-89.)

1707.99 PENALTY.

Any person, corporation, public utility, partnership or other entity that fails to obtain the permit described in this article prior to occupying or excavating or making a street cut, as such terms are defined in Section 1707.01 shall be fined not more than five hundred dollars (\$500.00). Every day that a party continues to be in violation of the provisions of this article shall constitute a separate offense.
(Ord. 89-2. Passed 1-19-89.)

ARTICLE 1710
Building Street Numbers

1710.01 Street numbers.

1710.99 Penalty.

1710.01 STREET NUMBERS.

Each structure to which a street number has been assigned shall have such number displayed in a position easily observed and readable from the public right of way. All numbers shall be in Arabic numerals or script at least three inches (76 mm) high and one-half inch (13 mm) stroke. (Ord. 98-11. Passed 5-7-98.)

1710.99 PENALTY.

If any owner of such structure as described in Section 1710.01 violates said section, such owner shall be fined twenty-five dollars (\$25.00), and every day that such owner continues to be in violation of said section shall constitute a separate offense. As an alternative penalty, the City, in the discretion of the Code Official, may enter onto such owner's real estate and install such street number onto said structure. The City's costs for such numbers and the installation of such numbers shall be billed to the owner of such real estate and be placed as a lien upon such real estate. (Ord. 98-11. Passed 5-7-98.)

CHAPTER THREE - Model Codes Adopted
Art. 1720. State Building Code

ARTICLE 1720
State Building Code

1720.01	Adoption of State Building Code.	1720.03	Violations and penalties.
1720.02	Conflict of laws.	1720.04	Reserved.
		1720.05	BOCA Code Appeal Board.

CROSS REFERENCES

Adoption of State standards required - see W. Va. Code 8-12-13
West Virginia State Building Code - see W. Va. Code 29-3-5(b)

1720.01 ADOPTION OF STATE BUILDING CODE.

(a) There is hereby adopted and incorporated by reference as if set out at length herein for the purpose of safeguarding life and property and to ensure the quality of construction of all structures erected or removed throughout the City that certain code known as the State Building Code, set forth and defined by Legislative Rule Title 87, Series 4 of the West Virginia Code of State Rules, as amended, as promulgated by the Fire Marshal under West Virginia Code 29-3-5b.

(b) The executive official, or "code official," in charge of the departments referred to in the respective national codes adopted hereinabove by reference in subsection (a), as defined in Title 87, Series 4 of the West Virginia Code of State Rules, is the Building Inspector.

(c) The Building Inspector or his designated representative shall enforce the provisions of the State Building Code adopted herein.

(d) Each of the national codes, adopted hereinabove by reference in subsection (a), as defined in Title 87, Series 4 of the West Virginia Code of State Rules, provides for a separate appeals board. However, the intent and requirements for an appeal board for said codes shall be met through a single appeals board for the entire City Building Code herein known as the BOCA Code Appeal Board as defined in Section 1720.05 of this Article.
(Ord. 03-16. Passed 9-18-03.)

1720.02 CONFLICT OF LAWS.

(a) Whenever there arises a conflict between the State Fire Code and the State Building Code, the State Fire Code shall take precedence.

(b) Whenever there arises a conflict between the International Plumbing Code section of the State Building Code and the rules of the West Virginia State Department of Health and Human Resources (DHHR), the rules of the DHHR shall take precedence.

(c) Whenever there arises a conflict between the State Building Code and the statutory laws of the State of West Virginia, the West Virginia State Code shall take precedence.

(d) In the event of any conflict between any of the provisions of this article and any provisions of any other City ordinance, this article shall take precedence.
(Ord. 03-16. Passed 9-18-03.)

1720.03 VIOLATIONS AND PENALTIES.

(a) No person shall erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use, occupy or maintain any building or structure contrary to or in violation of, any provisions of the City Building Code, or cause, permit or allow any such violations to be committed.

(b) Penalties shall continue as presently prescribed by the Clarksburg City Code; specifically those listed in Article 1705.06(d).
Ord. 03-16. Passed 9-18-03.)

1720.04 RESERVED.

(This section reserved for future legislation.)

1720.05 BOCA CODE APPEAL BOARD.

(a) Membership; Appointment. A BOCA Code Appeal Board is established pursuant to West Virginia Code Sections 8-11-4(b) and 8-12-13. The Board shall consist of five (5) members, all residents and electors of the City appointed by the City Manager, one from each of the following professions or disciplines:

- (1) One (1) member of the Board shall be a registered design professional who is a registered architect; or a builder or superintendent of building construction with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.
- (2) One (1) member of the Board shall be a registered design professional with structural engineering or architectural experience.
- (3) One (1) member of the Board shall be a registered design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.
- (4) One (1) member of the Board shall be a registered design professional with electrical engineering experience; or an electrical contractor with at least ten (10) years of experience, five (5) of which shall have been in responsible charge of work.

- (5) One (1) member of the Board shall be a registered design professional with fire protection engineering experience; or a fire protection contractor with at least ten (10) years of experience, five (5) of which shall be in responsible charge of work.

All appointments shall be for a term of one (1) year beginning on July 1 of the year of the appointment. Additionally, any member of this Board appointed by the City Manager who has not been present for at least seventy percent (70%) of all regular and special meetings of the Board in any calendar year, excluding absences deemed by the chairperson to be excusable, shall be removed from office upon the affirmative action of the chairperson of the Board and after approval of such removal by the City Manager and a replacement shall be chosen by the City Manager to serve the remainder of the existing term.

(b) Election; Chairman and Vice Chairman. At the first meeting of each year, the Board shall elect a Chairman and Vice Chairman from its members. The Vice Chairman shall have authority to act as Chairman during the absence or disability of the Chairman.

(c) Quorum. A majority of members of the Board shall constitute a quorum. No action of the Board is official unless authorized by a majority of the Board.

(d) Adoption of Rules. The Board shall adopt such rules and regulations concerning the filing of appeals, applications for variances and exceptions, giving of notice and conduct of hearings as shall be necessary to carry out its duties under the provisions of the Building Code.

(e) Minutes and Records. The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Board and shall be a public record.

(f) Powers and Duties. The Board shall have the following powers and it shall be its duty to:

- (1) Hear and determine appeals from and review any notice, order, requirement, decision or determination made by the administrative official charged with the enforcement of the Building Code.
- (2) Permit and authorize exceptions to the Building Code only in the classes of cases or in particular situations as specified in this section.
- (3) Hear and decide special exceptions to the terms of the Building Code upon which the Board is required to act under this section.
- (4) The Board shall receive applications for appeal based on a claim that the true intent of the Building Code or the rules and regulations adopted thereunder have been incorrectly interpreted, or the provisions of the Building Code do not apply, or the requirements of the Building Code are adequately satisfied by other means.

- (g) Appeals.
- (1) An appeal taken from the requirement, notice, order, decision or the determination made by the administrative official charged with the enforcement of the Building Code shall be filed with the Board within twenty (20) days after the day the decision, notice or order was served. The appeal shall specify the grounds thereof and in such form as may be prescribed by the Board by general rule. The administrative official from whom the appeal is taken shall, upon request by the Board, transmit to it all documents, plans and papers constituting the record of the action from which an appeal was taken.
 - (2) The Board shall fix a reasonable time for the hearing of an appeal. Public notice shall be given of the hearing and due notice shall be given additionally to the interested parties. The Board may require the party making the appeal to assume the cost of public notice and due notice to interested parties. Upon the hearing, any party may appear in person, by agent or by attorney. The Board shall render a decision within thirty (30) days of receipt of the appeal.
 - (3) When an appeal from the decision of any official has been taken and filed with the Board, all proceedings and work on the premises concerning which the decision was made shall be stayed unless the official from whom the appeal was taken shall certify to the Board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the Circuit Court of Harrison County, on application, on notice to the officer from whom the appeal is taken and the owner of the premises affected and on due cause shown.
 - (4) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken.
- (h) Variances and Special Exceptions.
- (1) The Board shall hear requests for variances where it is alleged that the provisions of the Building Code inflict unnecessary hardship upon the appellant. The Board may grant a variance provided the following findings are made, where relevant, in a given case:
 - A. That there are unique physical circumstances or conditions to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Building Code;
 - B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Building Code and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - C. That such unnecessary hardship has not been created by the appellant;

- D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
 - E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (2) In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Building Code.
 - (3) Special exceptions. The Board shall hear and decide requests for all special exceptions as provided in this section and in accordance with such standards and criteria contained in this section. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the section, as it may deem necessary to implement the purposes and intent of the Building Code.
- (i) Remedies and Penalty.
 - (1) The Board or any designated enforcement official may institute a suit for injunction in the Circuit Court of Harrison County, West Virginia, in the name of the City, to restrain an individual or a governmental unit from violating the provisions of the Building Code. The Board or any designated enforcement official may also institute a suit for mandatory injunction in the Circuit Court of Harrison County, West Virginia, in the name of the City, directing an individual or governmental unit to remove a structure erected in violation of the provisions of this Building Code. If the Board or any designated enforcement official is successful in its suit, the respondent shall bear the costs of the action.
 - (2) Whoever violates any provisions of the Building Code shall be fined pursuant to Article 1705.06(d).
(Ord. 03-16. Passed 9-18-03.)

(The next printed page is page 19.)

ARTICLE 1747
Flood Control

1747.01	Definitions.	1747.06	Specific requirements.
1747.02	General provisions.	1747.07	Administration.
1747.03	Establishment of the floodplain area.	1747.08	Appeals and penalties.
1747.04	Utilization of the floodplain area.	1747.09	Severability and municipal liability.
1747.05	Criteria for building and site plan approval.	1747.99	Penalty.

CROSS REFERENCES

Treatment of streams to prevent floods - see W. Va. Code 7-1-3(u)
Floodplain area management - see W. Va. Code 7-1-3(v)
Flood control projects - see W. Va. Code 8-30-1

1747.01 DEFINITIONS.

(a) "Base flood" means 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 article, the 100 year flood.

(b) "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

(c) "Board" means the Board of Zoning Appeals.

(d) "City" means the City of Clarksburg.

(e) "Development" means 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.

(f) "Flood" means a general and temporary inundation of normally dry land areas.

(g) "Flood plain" means:

- (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.

(h) "Floodway" means 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.

(i) "Floodproofing" means 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.

(j) "Lowest floor" means 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 so as to render the structure in violation of the applicable nonelevation design requirements of this article.

(k) "Manufactured home" means 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 also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days.

(l) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(m) "New construction" means structures for which the start of construction as herein defined commenced on or after the effective date of this article.

(n) "One-hundred (100) year flood" means a flood that has one chance in one hundred or a one percent (1%) chance of being equaled or exceeded in any given year.

(o) "Person" means any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

(p) "Principally above ground" means where at least fifty-one percent (51%) of the actual cash value of a structure, less land value, is above ground.

(q) "Start of construction" means 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.

(r) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(s) "Substantial improvement" means any repair, reconstruction or improvement of a structure the cost of which equals or exceeds fifty percent (50%) of the market value of the structure, either:

- (1) Before the improvement or repair is started, or
- (2) 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 terms 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.
(Ord. 88-19. Passed 10-20-88.)

1747.02 GENERAL PROVISIONS.

(a) Intent. The intent of this article is to:

- (1) Promote the general health, welfare and safety of the community.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health and safety by protecting water supply, sanitary sewage disposal and natural drainage.
- (4) 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.

(b) Abrogation and Greater Restrictions. This article supersedes any provisions currently in effect in flood prone areas. However, any provision shall remain in full force and effect to the extent that it is more restrictive.

(c) Applicability. No person, partnership, business or corporation shall undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless a permit has been obtained from the Building Inspector. 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 Building Inspector prior to any development.

Provisions of all other codes, ordinances and regulations shall be applicable insofar as they are consistent with the provisions of this article and the community's need to minimize the hazards and damage resulting from flooding.
(Ord. 88-19. Passed 10-20-88.)

1747.03 ESTABLISHMENT OF THE FLOODPLAIN AREA.

(a) Identification. The identified floodplain area shall be those areas of the City which are subject to the 100 year flood, as shown on the Flood Boundary and Floodway Map (FBFM) and/or the most recent Flood Insurance Rate Map (FIRM) which accompanies the Flood Insurance Study (FIS) prepared for the City by the Federal Emergency Management Agency (FEMA).

(b) Description of Floodplain Areas. The identified floodplain area shall consist of the following three specific areas:

- (1) The Floodway area shall be those areas identified as such in the FIS and as shown on the FBFM. The term shall also include floodway areas identified in other studies for the approximated area discussed in subsection (b)(3) below.
- (2) The floodway fringe area shall be those areas for which specific 100 year flood elevations have been provided in the FIS but which lie beyond the floodway area. These areas are shown on the FBFM.
- (3) The approximated area shall be those areas identified as an A Zone on the FBFM or FIRM and for which no 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 City 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 in sufficient detail to allow a thorough technical review by the City.

(c) Changes in Designation of Area. The delineation of the identified floodplain area may be revised by the City 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 documents the necessity for such changes. However prior to any such change, approval must be obtained from the Federal Insurance Administration (FIA).

(d) Boundary Disputes. Should a dispute concerning any district boundary arise, an initial determination shall be made by the City Engineer and any party aggrieved by this decision may appeal to Council. The burden of proof shall be on the appellant.
(Ord. 88-19. Passed 10-20-88.)

1747.04 UTILIZATION OF THE FLOODPLAIN AREA.

(a) In the floodplain area 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.

(b) Within any floodway area, no development shall be permitted that would cause any increase in the 100 year flood elevation.

(c) Whenever a developer intends to alter or relocate a watercourse within the floodplain area, 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 watercourse, and shall submit copies of such notification to the Federal Insurance Administrator. The developer shall also assure the City in writing, that the flood carrying capacity within the altered or relocated portion of the watercourse in question will be maintained. (Ord. 88-19. Passed 10-20-88.)

1747.05 CRITERIA FOR BUILDING AND SITE PLAN APPROVAL.

(a) 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 of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) Constructed with materials and utility equipment resistant to flood damage.
- (3) Constructed by methods and practices that minimize flood damage.
- (4) 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.

(b) 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.

(c) Elevation and Floodproofing Information. Depending on the type of structure involved, the following information shall also be included in the application for work within the flood plain area:

- (1) For structures to be elevated to the base flood elevation:
 - A. A plan showing the size of the proposed structure and its relation to the lot where it is to be constructed.
 - B. A determination of elevations of the existing ground, proposed finished ground and lowest floor certified by a registered professional engineer, surveyor or architect.
 - C. 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 Building Inspector, these plans shall be prepared by a registered professional engineer or architect.
 - D. 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.
- (2) For structures to be floodproofed to the base flood elevation (nonresidential structures only):
 - A. 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.
 - B. A determination of elevations of existing ground, proposed finished ground, lowest floor and floodproofing limits; certified by a registered professional engineer, surveyor or architect.
 - C. A certificate prepared by the registered professional engineer or architect who prepared the plans in subsection (c)(2)A. above, that the structure in question, together with attendant utility and sanitary facilities is designed so that:
 1. Below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water.
 2. 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.

(d) 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 Building Inspector 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 plain 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 fifty lots or five acres, whichever is the lesser, shall include base flood elevation data.

- (3) Where the subdivision and/or development lies partially or completely in the floodplain 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 or five feet depending upon the slope of the land and identify accurately the boundaries of the floodplain area.
(Ord. 88-19. Passed 10-20-88.)

1747.06 SPECIFIC REQUIREMENTS.

(a) 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 to existing structures occurring in the flood plain area.

(b) Basements and Lowest Floors.

- (1) All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated to or above the base flood elevation. All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated to or above 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 1747.05(c).
- (2) 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.
 - 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) Manufactured homes shall be elevated on a permanent foundation so that the lowest floor of the manufactured home will be at or above the base flood elevation.

(c) 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 feet beyond the building line from all points. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access with fill extending laterally fifteen feet beyond the building line shall be provided to a minimum of twenty-five percent (25%) of the perimeter of a nonresidential 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 vertical on two horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Building Inspector.
- (5) Fill shall be used only to the extent to which it does not adversely affect adjacent properties.

(d) Placement of Buildings. 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.

(e) 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 for manufactured homes less than fifty 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 fifty feet long requiring four additional ties per side.
 - C. All components of the anchoring system shall be capable of carrying a force of 4,500 pounds.
 - D. Any additions to a manufactured home shall be similarly anchored.

This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

(f) Storage. No materials that are buoyant, flammable, explosive or in time of flooding could be injurious to human, animal or plant life, shall be stored below base flood elevation.

(g) Utility and Facility Requirements.

- (1) All new or replacement water systems whether public or private, shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (2) All new or replacement sanitary disposal systems whether public or private, shall be designed to minimize or eliminate infiltration of flood water into the systems and discharges from the systems into flood water.
- (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.

(h) Drainage. Adequate drainage shall be provided to reduce exposure to flood hazard. (Ord. 88-19. Passed 10-20-88.)

1747.07 ADMINISTRATION.

(a) Building Permits and Site Plan Approvals Required. No person, partnership, business or corporation shall undertake or cause to be undertaken, any development or the new construction, substantial improvement, the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless a permit has been obtained from the Building Inspector. 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 Building Inspector prior to any development.

(b) 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 Building Inspector 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 Building Inspector shall be kept on file by the City Clerk.

(c) Application Procedures. Application for building permits and site plan approvals shall be made, in writing to the Building Inspector and shall include all information stipulated under Section 1747.05.

(d) Changes. After the issuance of a building permit or site plan approval by the Building Inspector, 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 Building Inspector.

(e) Placards. In addition to the building permit, the Building Inspector 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 its issuance and be signed by the Building Inspector.

(f) Start of Construction. Work on the proposed construction shall begin within six 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 Building Inspector.

(g) Inspection and Revocation. During the construction period, the Building Inspector 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 Building Inspector discovers that the work does not comply with the permit application or any applicable laws or ordinances or that there has been a false statement or misrepresentation by an applicant, the Building Inspector shall revoke the building permit and report such fact to the City Council for whatever action it considers necessary.

(h) Fees. Application for a building permit shall be accompanied by a fee payable to the City, based upon the estimated cost of the proposed construction as determined by the Building Inspector at the rates set forth in Article 1705. (Ord. 88-19. Passed 10-20-88.)

1747.08 APPEALS AND PENALTIES.

(a) Appeals. Whenever any person is aggrieved by a decision of the Building Inspector with respect to the provisions of this article, it is the right of that person to appeal to the Board of Zoning Appeals. Such appeal must be filed, in writing within thirty days after the determination by the Building Inspector. Upon receipt of such appeal, the Board shall set a time and place not less than ten nor more than thirty 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.

(b) Judicial Review. Any person aggrieved by the decision of the Board of Zoning Appeals may seek judicial review in circuit court as provided by the laws of the State.

(c) Appeal Review Criteria. All appeals contesting only the permit fee established by the Building Inspector may be handled at the discretion of the Board. All decisions on appeals to all other provisions of this article shall adhere to the following criteria:

- (1) Affirmative decisions shall only be issued by the Board upon:
 - A. A showing of good and sufficient cause,
 - B. A determination that failure to grant the appeal would result in exceptional hardship to the applicant, and
 - C. 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 Board shall notify the applicant in writing over the signature of a City official that:
 - A. 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,
 - B. 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 subsection (c)(4) hereof.
- (4) The Board shall:
 - A. Maintain a record of all decisions including justification for their issuance, and
 - B. Report such decisions issued in its biennial 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 100 year flood elevation.
(Ord. 88-19. Passed 10-20-88.)

1747.09 SEVERABILITY AND MUNICIPAL LIABILITY.

(a) Severability. If any section, subsection, paragraph, sentence, clause or phrase of this article shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this article which shall remain in full force and effect, and for this purpose the provisions of this article are hereby declared to be severable.

(b) 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 City or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the City.
(Ord. 88-19. Passed 10-20-88.)

1747.99 PENALTY.

Any person who fails to comply with any or all of the requirements or provisions of this article or direction of the Building Inspector or any other authorized employee of the City shall be: fined not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00) in default of such payment such person shall be imprisoned for a period not to exceed ten days. Each day during which any violation of this article 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 article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article shall not excuse the violation or noncompliance with this article or permit it to continue; and all such persons shall be required to correct or remedy such violations or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by Council to be a public nuisance and abatable as such.
(Ord. 88- 19. Passed 10-20-88.)

ARTICLE 1779
Weeds

1779.01	Noxious weeds prohibited; height limits prescribed.	1779.03	Removal by City.
1779.02	Notice to cut or destroy.	1779.04	Fines and fees.

CROSS REFERENCES

Authority to regulate - see W. Va. Code 8-12-5(13), (23)

1779.01 NOXIOUS WEEDS PROHIBITED; HEIGHT LIMITS PRESCRIBED.

No owner of any lot or parcel of land within the City, or agent of such owner, shall permit on such lot or parcel of land any noxious, deleterious or unhealthful growth of vegetation, weeds or grasses. No weeds or grasses or vegetation shall be permitted to exceed the height of six (6) inches above the ground surface.
(Ord. 08-1. Passed 2-7-08.)

1779.02 NOTICE TO CUT OR DESTROY.

The Building Inspector, or his duly authorized representative, is hereby directed to notify, in writing, by hand-delivery, or by regular U.S. mail, the owner(s), or agent(s), of such owner(s) or tenant(s) of such owner(s), of any lot or parcel of land in the City to cut and destroy any weeds or plant growth in violation of Section 1779.01 hereinabove. When by mail, such notice of violation shall be sent to the last known address of the owner(s) or the agent(s) of the owner(s) or the tenant(s) of the owner(s), of such lot or parcel. The Building Inspector shall also simultaneously cause a copy of the notice to be posted in a conspicuous place on or about the lot or parcel of land affected by such notice. Service of such notice in the foregoing manner upon the person responsible, whether agent(s) or tenant(s) of the owner(s) for the affected lot or parcel of land shall constitute service of notice upon the owner(s). (Ord. 05-9. Passed 8-18-05.)

1779.03 REMOVAL BY CITY.

Upon the failure, neglect or refusal of the owner(s), or agent(s) of such owner(s), or tenant(s) of such owner(s), notified under Section 1779.02 to cut and destroy any weeds or plant growth in violation of Section 1779.01 hereinabove, within five days after service of notice, if notice was sent by mail, or three days, if notice was hand-delivered, as specified in Section 1779.02 hereinabove, the Building Inspector or his duly authorized representative, is hereby authorized to cut and destroy such growth, weeds or grasses by using City forces.
(Ord. 05-9. Passed 8-18-05.)

1779.04 FINES AND FEES.

(a) The failure of any owner(s), or agent(s) of such owner(s), or tenant(s) of such owner(s), so notified under Section 1779.02 to comply with such notice and/or order to cut and destroy any such vegetation, weeds or grasses within the prescribed time period is an offense that shall be punished by a fine of one hundred dollars (\$100.00). Each day of noncompliance with such order is a separate offense, and the aforementioned fine shall be imposed for each offense. If, after such weeds, grasses or noxious growth of vegetation is cut pursuant to Section 1779.03 and the owner(s), the agent(s) of such owner(s), or the tenant(s) of such owner(s), again violates Section 1779.01 within the same calendar year, all such subsequent offenses in that calendar year shall not require subsequent notices of violation, shall be punished by fine of not less than two hundred fifty dollars (\$250.00) and not more than one thousand dollars (\$1,000.00) and City forces shall be permitted to cut and destroy the offending vegetation without further notice.

(b) In addition to the fine(s) imposed by subsection (a) hereinabove, if City workers are required to cut and destroy any weeds, grasses or noxious growths of vegetation pursuant to Section 1779.03, the City shall charge such owner(s) or agent(s) of such owner(s), or tenant(s) of such owner(s), a minimum service fee of one hundred dollars (\$100.00), and, in addition, shall charge a fee of one hundred dollars (\$100.00) for every hour or portion of an hour beyond the first hour that City workers were used to cut and destroy such weeds, grasses or growths of vegetation. Such fees shall be a debt due the City and may be collected by civil action in any court of competent jurisdiction in the County or elsewhere.

(c) In addition to subsection (b) hereinabove, if the City cuts and destroys any weeds, grasses or noxious growths of vegetation in accordance with Section 1779.03, the City Clerk is directed to include the name of each property owner(s), agent(s) of such owner, or tenant(s) of such owner(s), as well as the amount of the charge for the removal of said vegetation attributable to each such property owner(s), agent(s) of such owner(s), or tenant(s) of such owner(s), in a list to be published in The Clarksburg Exponent-Telegram at intervals to be determined by the City Manager.

(Ord. 05-9. Passed 8-18-05.)